

DEP Update on Rulemakings and State Implementation Plan Revisions February 11, 2021 AQTAC Meeting

Rulemakings

Final-form Rulemakings

Title V Fees and Operating Permit Fees –This rulemaking increases certain existing application and permit-related fees and establishes additional application and permit-related fees. The proposed rulemaking was published in the Pennsylvania Bulletin on April 13, 2019, at 49 Pa. B. 1777. The public comment period opened on April 13, 2019, and closed June 17, 2019. The Environmental Quality Board (EQB) received public comments from approximately 1400 commenters, including the House Environmental Resources and Energy (ERE) Committee, the House of Representatives, industry, environmental groups, and the Independent Regulatory Review Commission (IRRC). The draft final-form rulemaking Annex A was discussed at the December 12, 2019 AQTAC meeting and with the SBCAC on January 22, 2020. AQTAC voted 10-3-0 (yes-no-abstain) and the SBCAC voted 3-2-0 (yes-no-abstain) to concur with the DEP’s recommendation to present the final-form rulemaking to the EQB. DEP presented this final-form rulemaking to the EQB on July 21, 2020, who approved it 17-2-0. The final-form rulemaking was considered by IRRC at its September 17, 2020 meeting. IRRC approved the final rulemaking 4-1. The House ERE Committee voted to disapprove IRRC’s approval, and the House ERE disapproval resolution was introduced to the House of Representatives on September 30, 2020. The final-form rulemaking was published in the *Pennsylvania Bulletin* on January 16, 2021.

Proposed Rulemakings

Control of Existing Sources of Emissions from the Oil and Natural Gas Industry - This rulemaking would establish RACT requirements for VOCs from existing oil and natural gas production facilities, compressor stations, processing plants, and transmission stations. It would also reduce methane emissions as a co-benefit. DEP presented the draft proposed rulemaking Annex A to AQTAC, SBCAC, and CAC PRO subcommittee on April 11, April 17 and May 7, 2019, respectively. On June 18, 2019, the CAC concurred with moving the proposed rulemaking to the EQB. DEP presented the proposed rulemaking to the EQB on December 17, 2019. The EQB adopted the proposed rulemaking. The proposed rulemaking was published for public comment in the Pennsylvania Bulletin on May 23, 2020 (Pa. B. 2633), and the public comment period closed July 27, 2020. The EQB received 4,509 comments from approximately 36,211 commenters, including 121 comments from oral testimony at the virtual public hearings held on June 23, 24, and 25. The Bureau of Air Quality is currently drafting a Comment and Response document.

RACT III – This rulemaking will establish presumptive emission limits on certain sources subject to RACT III applicability as set forth in federal regulations. In addition, it establishes a “case-by-case” control evaluation requirement for certain sources. On October 17, 2019, and February 13, 2020, DEP presented initial RACT III rulemaking concepts to AQTAC. Draft

proposed rulemaking language was discussed with AQTAC on April 16, 2020. The draft proposed rulemaking language was discussed with SBCAC on April 22, 2020. SBCAC voted 7-0-0 (yes-no-abstain) to concur with DEP's recommendation to move the proposed rulemaking forward to the EQB. The draft proposed rulemaking was presented to AQTAC on May 7, 2020, for action. AQTAC voted 17-2-0 to concur with DEP's recommendation to move the proposed rulemaking forward to the EQB, with the understanding that DEP would revise the definition for "natural gas compression and transmission facility VOC air contamination source." The draft proposed rulemaking language was discussed with the CAC PRO on May 8, 2020. The CAC discussed the draft proposal on May 19, 2020, and concurred with DEP's recommendation to move the proposal forward to the EQB for consideration.

The Third Circuit Court of Appeals issued its Opinion in *Sierra Club v EPA* on August 27, 2020. Sierra Club challenged the EPA's approval of Pennsylvania's 2016 RACT II regulation. The Court vacated three aspects pertaining to coal-fired power plants with selective catalytic reduction (SCR) controls and remanded EPA's approval. No other provisions in the 2016 RACT II regulation were affected. This decision impacts the Department's current RACT III proposed rulemaking effort. The Department is evaluating the Third Circuit's Opinion and is assessing the ramifications of the Court's decision on the RACT III proposed rulemaking. DEP anticipates bringing the proposed rulemaking to the EQB in the 2nd quarter of 2021.

Stage I & II – This rulemaking updates control requirements relating to gasoline station fuel pumps and storage tanks to account for technological changes since the initial rule was finalized. DEP presented the draft proposed rulemaking Annex A to AQTAC, SBCAC, and the CAC subcommittee on April 11, April 17, and May 22, 2019, respectively. The proposed rulemaking was presented to the EQB on May 19, 2020. The proposed rulemaking was published in the Pennsylvania Bulletin on September 26, 2020 (Pa. B. 5236). The public comment period closed on November 30, 2020. Virtual public hearings were held on October 27, 28, and 29, 2020. No testimony was presented at the virtual public hearings. The EQB received 5 public comments on the proposed rulemaking. IRRC's comment period closed December 30. The Board received 4 comments from IRRC.

Regional Greenhouse Gas Initiative (RGGI)(CO2 Budget Trading Program) - On October 3, 2019, Governor Wolf took executive action instructing DEP to join RGGI, a market-based collaboration among nine Northeast and Mid-Atlantic states to reduce greenhouse gas emissions and combat climate change while generating economic growth. DEP provided an update on the CO2 Budget Trading Program to AQTAC on April 16, 2020. DEP presented additional details of and concepts for Pennsylvania's regulation to AQTAC, CAC and SBCAC on February 13, February 18 and April 22, respectively. On April 23, 2020, DEP held a special joint informational meeting with the AQTAC, and CAC to present the modeling results associated with Pennsylvania's participation in a CO2 budget trading program. DEP presented the draft proposed rulemaking Annex A to the AQTAC, CAC, and SBCAC on May 7, May 19 and July 22, 2020, respectively. By votes of 9-9-1, 4-9-1 and 3-4-0, respectively, the three advisory groups failed to concur with the Department's recommendation to forward the proposed rulemaking to the EQB. The proposed rulemaking was considered by the EQB on September 15, 2020; it passed by a 13-6-0 vote. The proposed rulemaking was published in the Pennsylvania Bulletin on November 7, 2020 (50 Pa. B. 6212). Ten virtual hearings are scheduled for December 8-14, 2020, and the public comment period closed on January 14, 2021.

Large Petroleum Dry Cleaners, Shipbuilding and Repair Coatings Operations, and SOCM Reactors, Distillation, and Air Oxidation Processes – This VOC control requirement regulation applies to a very limited number of sources. DEP discussed the draft proposed rulemaking with AQTAC as an informational item on August 13, 2020. DEP presented the draft proposed rulemaking Annex A to AQTAC, SBCAC, and CAC PRO on October 15, 28, and November 9, 2020, respectively. On November 9, 2020, the CAC PRO concurred with moving the proposed rulemaking to the EQB. DEP anticipates presenting the proposed rulemaking to the EQB in 2nd quarter 2021.

Hydrofluorocarbons - DEP presented HFC rulemaking concepts to AQTAC on April 16, 2020, and to the SBCAC on April 22, 2020. DEP is currently evaluating the impact of recently passed federal legislation. Federal Senate Bill, S. 2754, the American Innovation and Manufacturing (AIM) Act, was incorporated into the Consolidated Appropriations Act of 2021 (H.R. 133), which was passed by Congress on December 21, 2020, and signed by President Trump on December 27, 2020. The AIM Act requires EPA to adopt federal regulations to phase down the production, importation, and consumption of HFCs by 85% by 2035. DEP is also evaluating HFC regulations promulgated by other states

Proposed ZEV rulemaking – This proposed rulemaking would amend the Pennsylvania Clean Vehicles (PCV) Program to adopt and incorporate by reference the provisions for the CALLEV Zero Emissions Vehicle (ZEV) Program relating to zero emissions vehicle standards for passenger cars and light-duty trucks and establish a Pennsylvania-specific ZEV fleet percentage requirement for the existing PCV Program. In addition, the rulemaking would add a Pennsylvania greenhouse gas fleet average requirement and add language to allow manufacturers to generate both ZEV and GHG fleet average credits for an additional period.

State Implementation Plan (SIP) Revisions

Nonregulatory SIP Revisions

1997 8-hour Ozone NAAQS 2nd Maintenance Plans

The Department published all twelve proposed SIP revisions in the *Pennsylvania Bulletin* for the following 1997 8-hour ozone nonattainment areas: Altoona (Blair County); Clearfield/Indiana Area; Erie County; Franklin County; Greene County; Harrisburg-Lebanon-Carlisle Area; Johnstown (Cambria County); Scranton/Wilkes-Barre Area; State College (Centre County); Tioga County; York/Adams Area; Youngstown-Warren-Sharon Area (OH-PA). All twelve have been submitted to EPA for approval.

On September 3, 2020, EPA proposed approvals of the Blair County, Harrisburg-Carlisle-Lebanon Area, and Scranton/Wilkes-Barre Area 1997 8-hour ozone limited maintenance plan State Implementation Plan (SIP) revisions (85 FR 54947, 54954, and 54961, respectively). The comment periods closed on October 5, 2020.

2015 8-hour Ozone Infrastructure State Implementation Plan

The Infrastructure State Implementation Plan (I-SIP) for the 2015 Ozone 8-hour NAAQS was published in the PA Bulletin on March 14, 2020. The Department is working to submitting the final package to EPA in the near future.

Regulatory SIP Revisions

Low Sulfur Fuel Oil 15 ppm – This regulation reduces the allowable amount of sulfur in certain fuels. The final-form rulemaking was published in the Pennsylvania Bulletin on July 25, 2020, with a compliance date of September 1, 2020. Additionally, on July 25, 2020, DEP issued a limited suspension of enforcement for No. 2 and lighter commercial fuel oil due to the unusually warm winter of 2019-2020, which left remaining inventories at a high level. This enforcement discretion is provided from September 1, 2020 through February 28, 2021 and only applies to fuel that is already stored at distributors or retail outlets before July 25, 2020. The final-form low sulfur fuel oil regulation was submitted to the EPA on September 4, 2020, as a revision to the Pennsylvania SIP. The revision is under review by the EPA.

PM_{2.5} Precursors – The final-form rulemaking was published in the *Pennsylvania Bulletin* on December 21, 2019. The final-form regulation implements recently promulgated federal requirements for the regulation of volatile organic compounds (VOC) and ammonia as precursor emissions to the formation of PM_{2.5}. This final-form rulemaking also removes the requirement that applications for plan approvals and operating permits for portable sources be submitted by hand delivery or certified mail return receipt requested to allow for greater flexibility in submitting these applications to DEP. DEP submitted the final-form regulation to the EPA on March 10, 2020, as a revision to the Pennsylvania SIP. EPA is in the process of reviewing this SIP revision.

Title V Fees and Operating Permit Fees – This rulemaking increases certain existing application and permit-related fees and establishes additional application and permit-related fees. The final-form rulemaking was published in the *Pennsylvania Bulletin* on January 16, 2021. DEP is preparing to submit the final-form regulation to the EPA as a revision to the Pennsylvania SIP.