

# **Update on Rulemakings and State Implementation Plan Revisions August 18, 2022 AQTAC Meeting**

## **Final Rulemakings**

### Control of Existing Sources of VOC Emissions from the Oil and Natural Gas Industry

On October 27, 2016, the Environmental Protection Agency (EPA) published Control Techniques Guidelines for the Oil and Natural Gas Industry (O&G CTG). The proposed rulemaking establishes RACT requirements for volatile organic compounds (VOCs) from existing oil and natural gas production facilities, compressor stations, processing plants, and transmission stations. In December 2019 the Environmental Quality Board (EQB) voted to publish the proposed rulemaking for public comment. The rulemaking was published, three virtual hearing were held, and the comment period ended in July 2020. The Department received about 4,500 letters of comments and 121 oral testimonies at the public hearings. When the multiple signatories to individual letters and petitions are included, the total number of individuals and organizations expressing an opinion on the proposed rulemaking is over 36,000. DEP presented the draft final-form rulemaking to AQTAC, the Citizens Advisory Council (CAC) and Small Business Compliance Advisory Committee (SBCAC) on December 9, 2021, January 18, 2022, and January 27, 2022, respectively. The CAC voted unanimously with one abstention to send a letter of support to the EQB. On March 15, 2022, the EQB approved the final-form rulemaking. On May 4, 2022, the EQB withdrew the final-form rulemaking from consideration by the Independent Regulatory Review Commission (IRRC).

In November 2020, EPA issued a finding that five states – California, Connecticut, New York, Pennsylvania, and Texas – failed to submit the O&G CTG required State Implementation Plan (SIP) revisions for the 2008 ozone standard. On December 16, 2021, the EPA issued a notice of “Findings of Failure to Submit SIP Revisions for the 2016 Oil and Natural Gas Industry CTG for the 2015 Ozone NAAQS and for States in the OTR,” with an effective date of January 18, 2022. See 86 FR 71385 (December 16, 2021). The findings trigger Clean Air Act (CAA) deadlines for EPA to impose sanctions if a state does not make a complete SIP submission for the CTG and for EPA to promulgate a Federal Implementation Plan if it does not approve a state’s SIP revision. Specifically, on June 16, 2022 (18 months after the effective date of EPA’s finding), a 2-to-1 offset ratio for the nonattainment New Source Review permitting program went into effect. DEP estimates two facilities are subject to the NO<sub>x</sub> sanction upon start-up at an estimated cost of \$1.2 million for each facility; one facility is subject to the VOC sanction at minimal cost; and a fourth facility that is going through the permitting process will be subject to the NO<sub>x</sub> sanction, but the amount cannot be estimated until permit (with emission limit) is issued. On December 16, 2022, six months after the date of offset sanctions, highway funding sanctions will be imposed. At least \$275M in highway funding will be withheld in designated ozone nonattainment areas. On May 23, 2022, EPA Region 3 Administrator Adam Ortiz sent a letter to the Department and the legislature reiterating these sanctions.

On June 14, the EQB voted 15-3-1 to adopt the Control of VOC Emissions from Unconventional Oil and Natural Gas Sources final-form rulemaking. A separate rulemaking for conventional sources of VOC emissions is forthcoming. On July 21, 2021, IRRC voted unanimously (5-0) to

approve the Unconventional O&G VOC Regulation as a final. It will be published in the *Pennsylvania Bulletin* after review by the Office of Attorney General and some administrative steps.

### RACT III Major Sources of NO<sub>x</sub> and VOC for the 2015 Ozone NAAQS

In 2015 EPA revised the primary and secondary NAAQS for ozone. A re-evaluation of Reasonably Available Control Technology (RACT) is required each time a revised ozone NAAQS is promulgated for both nonattainment and Ozone Transport Region areas for major sources of nitrogen oxides (NO<sub>x</sub>) or VOCs, or both, statewide. DEP presented draft proposed RACT III major sources rulemaking language to AQTAC, SBCAC, and CAC in April and May 2020. On May 19, 2021, the EQB voted to adopt the proposed rulemaking. The proposed rulemaking was published in the *Pennsylvania Bulletin* on August 7, 2021, with a 67-day public comment period that closed on October 12, 2021. Three public hearings were held on September 7, 8, and 9, 2021, with no attendees. DEP received comments from 24 commenters and has prepared a Comment and Response Document. DEP presented the draft final-form rulemaking to AQTAC, CAC, and SBCAC on April 7, 19, and 27, 2022, respectively. At its May 18, 2022, meeting, the CAC voted to provide a letter on the rulemaking to the Bureau of Air Quality regarding their input on the final-form regulation. The Department anticipates presenting this final-form rulemaking to the EQB in the third quarter of 2022. The Federally mandated deadline for compliance by regulated facilities is January 1, 2023.

### Large Petroleum Dry Cleaners, Shipbuilding and Repair Coatings Operations, and SOCMI Reactors, Distillation, and Air Oxidation Processes

The proposed RACT rulemaking is based on the EPA's Control Technique Guidelines (CTG) for these three industries. The proposed rulemaking would control VOC emissions from certain existing sources to meet requirements under the Clean Air Act and the U.S. Environmental Protection Agency's (EPA) 2015 Ozone Implementation Rule. The Department presented the draft proposed rulemaking to AQTAC, SBCAC, CAC PRO, and CAC on October 15, October 28, November 11, and November 17, 2020, respectively. DEP presented the proposed rulemaking to the EQB on September 21, 2021, and the EQB voted unanimously to adopt the proposed rulemaking. The proposed rulemaking was published in the *Pennsylvania Bulletin* on January 29, 2022, for a 66-day public comment period that closed on April 4, 2022. Written comments were received from one commentator. Three public hearings were held on March 1, 3, and 4, 2022. No testimony was received. IRRC's comment period closed on May 4, 2022, and IRRC submitted comments to the EQB on May 4, 2022.

DEP presented the draft final-form rulemaking to CAC PRO on June 27, 2022, which recommended it unanimously to the full CAC, which will vote on it at their July 19 meeting. DEP will be bringing the rulemaking to AQTAC on August 18, and SBCAC on August 24, 2022. DEP anticipates presenting the final-form rulemaking package to the EQB in fourth quarter of 2022 and promulgation in the same quarter.

### Proposed Rulemakings

No air quality proposed rulemakings are being developed at this time.

### Regulatory State Implementation Plan (SIP) Revisions

### Reasonably Available Control Technology (RACT II)

In May 2019, EPA conditionally approved Pennsylvania's RACT II SIP revision based on DEP's commitment to submit all remaining case-by-case RACT revisions no later than May 9, 2020. DEP successfully submitted all case-by-case SIP revisions to the EPA before May 9, 2020.

In July 2019, the Sierra Club and Earthjustice filed a petition in the US Court of Appeals for the Third Circuit challenging EPA's Conditional Approval. In August 2020, the Court vacated and remanded three aspects of EPA's approval of DEP's RACT II Rule: 1) Emission limits for coal-fired boilers equipped with selective catalytic reduction (SCR) control devices; 2) SCR operating temperature-based exemptions; and 3) the SCR temperature reporting requirement.

In late November 2020, DEP and the Allegheny County Health Department issued letters to the owners and operators of facilities with coal-fired boilers equipped with SCR requiring that they submit case-by-case RACT evaluations no later than April 1, 2021. DEP received and reviewed case-by-case analyses from the owners or operators of four affected facilities. DEP has issued the final permits to the owners or operators of the four facilities.

On May 25, 2022, the EPA issued a proposed notice for a Federal Implementation Plan (FIP) addressing RACT requirements for certain sources in Pennsylvania. See 87 FR 31798 (May 25, 2022). This FIP proposes to set emission limits for NO<sub>x</sub> emitted from coal-fired electric generating units (EGUs) equipped with SCR controls to meet the RACT requirements for the 1997 and 2008 ozone NAAQS. The FIP is being proposed to ensure that the EPA can, if necessary, meet a court-ordered deadline requiring the EPA to approve an amended SIP or issue a FIP by August 27, 2022. The Department has submitted comments in opposition to the FIP.

On May 26, 2022, DEP submitted a RACT II SIP revision for Homer City, Keystone, and Conemaugh Electrical Generating Units (EGUs). On June 6, 2022, DEP submitted a RACT II SIP revision for Montour EGU.

### Stage I/II Vapor Recovery Revision

The final-form rulemaking was published in the Pennsylvania Bulletin on March 26, 2022. See 52 PaB 1875. A SIP revision submittal is being prepared.

The Department is planning to publish in the *PA Bulletin* a notice suspending the enforcement of the requirement in § 129.61a(g)(1)(iii) regarding the inspection of the gasoline storage tank automatic tank gauge cap after every gasoline tank truck delivery. Subsequent to the publication of the final-form regulation on March 26, 2022, and after review of these requirements and discussion with the DEP Bureau of Environmental Cleanup, Storage Tanks Division, the Department has determined that the likelihood that the automatic tank gauge would be compromised is low. Verifying the status of the automatic tank gauge cap after each gasoline tank truck delivery is problematic. Many of these gauges are only accessible beneath a heavy sump lid, some of which require special tools to open, or can be otherwise difficult to access. The Department anticipates changing the requirement to a monthly inspection in a future rulemaking.

### VOC RACT SIP Revisions for the 2008 Ozone NAAQS

In August 2018, DEP submitted two SIP revisions to EPA to address reasonably available control technology (RACT) requirements related to control technique guidelines (CTGs) for volatile organic compounds (VOCs) and the addition of regulations controlling VOC emissions from industrial cleaning solvents. EPA published approval of these SIP revisions on December 14, 2020. On February 12, 2021, the Center for Biological Diversity filed a petition for review in the US District 3<sup>rd</sup> Circuit Court challenging EPA's approval.

On August 2, 2021, the U.S. Department of Justice (DOJ), on EPA's behalf, filed a motion in the U.S. Court of Appeals for the Third Circuit requesting the court to remand without vacatur EPA's December 14, 2020, approval of Pennsylvania's attainment demonstration. Pennsylvania, as an intervenor in the case, took no position on the DOJ's motion.

### Non-Regulatory SIP Revisions

#### 2010 Sulfur Dioxide (SO<sub>2</sub>) NAAQS Attainment Demonstration SIP Revisions

DEP submitted to EPA the required SIP revision for Indiana and Armstrong Counties in October 2017. EPA published its intent to approve the SIP in July 2018. EPA received seven comments. In response to these comments, DEP submitted supplemental SIP information to the EPA in January 2020. On October 19, 2020, EPA published its approval of the attainment demonstration.

On December 18, 2020, Sierra Club, Clean Air Council, and Citizens for Pennsylvania's Future sued EPA in the Third Circuit regarding the agency's approval of the attainment plan. On April 5, 2021, the U.S. Department of Justice on EPA's behalf filed a motion in the U.S. Court of Appeals for the Third Circuit requesting the court to remand without vacatur EPA's October 19, 2020, approval of Pennsylvania's attainment demonstration. Pennsylvania, as an intervenor in the case, took no position on the DOJ's motion.

On August 17, 2021, the Third Circuit granted EPA's motion to remand without vacatur. The order states that the remand proceedings shall be concluded within 12 months of the date of the order and directs the parties to file a status report 11 months from the date of the order.

On March 17, 2022, EPA published a proposed partial approval/partial disapproval of Pennsylvania's SIP revision for the Indiana 2010 SO<sub>2</sub> 1-Hour NAAQS Nonattainment Area. The partial disapproval focuses on the calculation of the SO<sub>2</sub> permit limit averaging periods. The public comment period closed on April 18, 2022.