

Executive Summary
Department of Environmental Protection
Amendments to 25 Pa. Code Chapters 121 and 127
Nonattainment New Source Review Final Rulemaking

Purpose of the Final Rulemaking

The final-form regulation amends 25 Pa. Code Chapters 121 and 127 (relating to general provisions; and construction, modification, reactivation and operation of sources) for the nonattainment new source review (NSR) program, which is a preconstruction air quality permitting program mandated under the Federal Clean Air Act (CAA) (42 U.S.C.A. §§ 7401-7671q). On May 16, 2008, the United States Environmental Protection Agency (EPA) published its final rule for the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})” at 73 FR 28321. This Federal regulation requires states with PM_{2.5} nonattainment areas to submit revised nonattainment NSR programs to the EPA for approval as revisions to the State Implementation Plan (SIP) by May 16, 2011.

The final-form regulation amends the existing nonattainment NSR requirements in Chapter 127, Subchapter E (relating to new source review), to incorporate the EPA’s May 2008 requirements for PM_{2.5} and sulfur dioxide (SO₂) and nitrogen oxides (NO_x) precursor emissions. These amendments limit the emissions of PM_{2.5} and its precursors from major new or modified facilities which are located in areas of the Commonwealth that are designated as nonattainment for the PM_{2.5} National Ambient Air Quality Standard (NAAQS). This final rulemaking is reasonably required to attain and maintain the 1997 annual and 2006 24-hour PM_{2.5} NAAQS. The final-form regulation, if published in the *Pennsylvania Bulletin* as final rulemaking, will be submitted to the EPA as a SIP revision.

Summary of the Final-form Amendments

The final-form revisions amend § 121.1 (relating to definitions) to add a new term and definition, “PM_{2.5},” and amend the definitions of two terms, “regulated NSR pollutant” and “significant,” to include the requirements for PM_{2.5}. The final-form amendments delete an existing term and definition, “maximum allowable emissions.”

Section 127.201 (relating to general requirements) is amended to include subsection (g). Under subsection (g), PM_{2.5} and PM-10 emissions shall include condensable emissions for determining whether a source is subject to the NSR program.

Section 127.201a (relating to measurements, abbreviations and acronyms) is amended to include the following abbreviations: “PM_{2.5}” and “PM-10” and other minor editorial changes.

Section 127.202 (relating to effective date) is amended to include references to PM_{2.5}.

Section 127.203 (relating to facilities subject to special permit requirements) is amended to provide that aggregated VOC or NO_x emissions shall meet certain applicability requirements. The amendments clarify that the applicant needs to use the provisions in §§ 127.203(b)(2) or (3)

for a determination of control technology requirements when the net emissions increase is equal to or exceeds the applicable emissions rate that is significant (25 tons per year (TPY) of NO_x or VOCs).

Section 127.203a (relating to applicability determination) is amended to clarify the requirements for estimating an emissions increase. Further, § 127.203a(a)(2) is amended to specifically exclude emissions of PM_{2.5} and PM_{2.5} precursors from aggregation for de minimis increases.

Section 127.204 (relating to emissions subject to this subchapter) is amended to include minor editorial changes.

Section 127.206 (relating to ERC general requirements) is amended under subsection (o) to specify that except as provided under § 127.210 (relating to offset ratios), an emission reduction credit (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. Section 127.206(r) is amended to provide a 1-year amnesty period for the submission of a complete ERC Registry Application to the Department for permanent emission reductions that occurred at a facility after April 5, 2005, for which facility owners or operators missed the deadline. The applications must be submitted to the Department within 12 months after the effective date of this final-form regulation.

Section 127.210 is amended to remove the interpollutant trading ratios [40:1 for sulfur dioxide (SO₂) and 200:1 for nitrogen oxides (NO_x)] for PM_{2.5} and PM_{2.5} precursors recommended by the EPA in May 2008. The amended provision provides that 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 Department must provide a public comment period for at least 30 days prior to submitting the ratios to the EPA for approval as a SIP revision. The section is also amended to incorporate by reference any PM_{2.5} interpollutant trading ratios promulgated by the EPA in 40 CFR Part 51. These changes were necessary because the EPA is reconsidering its interpollutant trading approach and will not approve the proposed SO₂ and NO_x interpollutant trading ratios as a SIP revision.

Affected Parties

The owners and operators of new or modified major facilities may be affected by the adoption of the final-form regulation as final rulemaking if PM_{2.5}, SO₂ or NO_x emissions exceed major source thresholds. There are approximately 887 major facilities in this Commonwealth that may be subject to the existing NSR rules if major modifications to those facilities are proposed.

Advisory Groups

Briefings on the NSR PM_{2.5} final rulemaking were held for the Air Quality Technical Advisory Committee (AQTAC) and the Citizens Advisory Council (CAC) Air Committee on September 15, 2010, and October 18, 2010, respectively. The AQTAC and CAC both concurred with the Department's recommendation to move the final-form regulation forward to the Board.

Public Comments and EQB Hearings

The proposed rulemaking was adopted by the Board at its meeting of November 17, 2009. Notice of proposed rulemaking was published at 40 *Pa.B.* 703 on February 6, 2010. The 66-day public comment period opened February 6, 2010, and closed April 12, 2010. Public hearings were held in three locations: Pittsburgh on March 9, 2010; Norristown on March 10, 2010; and Harrisburg on March 12, 2010.