

**Title 25 – ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CH. 128]**

Alternative Emission Reduction Limitations; St. Joe Resources Company

The Environmental Quality Board (Board) amends Chapter 128 (relating to alternative emission reduction limitations) to read as set forth in Annex A. The purpose of this final-omitted rulemaking is to rescind the “state-specific” requirements to reduce sulfur dioxide (SO₂) emissions codified in § 128.21 (relating to St. Joe Resources Company; Potter Township, Beaver County, Pennsylvania.). Section 128.21 was published as final rulemaking at 16 Pa.B. 521 (February 22, 1986).

Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)), known as the Commonwealth Documents Law (CDL). Section 204(3) of the CDL provides that an agency may omit the notice of proposed rulemaking if the agency for good cause finds that the notice of proposed rulemaking procedure is in the circumstances impracticable, unnecessary or contrary to the public interest. Omission of notice of proposed rulemaking for the rescission of § 128.21 is appropriate because the notice of proposed rulemaking procedure in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) is, in this instance, impracticable, unnecessary and contrary to the public interest. As more fully explained as follows, on December 16, 1988, the owners of the St. Joe facility requested a revision to their Operating Permit # 04-325-001A, removing the alternative emission reduction limitations and adding the applicable requirements of 25 Pa. Code § 123.22(d) (relating to combustion units).

This rescission of the regulation was adopted by order of the Board at its meeting of _____.

A. Effective Date

This final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

B. Contact Persons and Information

For further information, contact Arleen Shulman, Chief, Division of Air Resource Management, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3436; or Robert “Bo” Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-omitted rulemaking is available electronically through the Department of Environmental Protection’s (Department) web site at www.depweb.state.pa.us (Keyword: Public Participation).

C. Statutory Authority

The final-omitted rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (APCA) (35 P. S. § 4005). Section 5(a) of the APCA grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

D. Background of the Amendments

This final-omitted rulemaking rescinds the requirements in § 128.21 that were published at 16 Pa.B. 521. The regulation provided an alternative compliance option to the applicable SO₂ standards in § 123.22(d) for the St. Joe Resources Company (now doing business as Horsehead Industries, Inc.) facility located in Beaver County. The owner of the facility requested the alternative emission reduction limitations in a 1982 Plan Approval application, which proposed emissions of SO₂ from the coal-fired boilers in excess of the emission limitation in § 123.22(d) and in exchange, reduced SO₂ emissions from two other sources at the facility: the sinter machines and the roaster plant.

On October 5, 1987, the Department received notice of a change of ownership from St. Joe Resources Company to The New Jersey Zinc Company, a division of Horsehead Industries, Inc. The New Jersey Zinc Company is also known as Zinc Corporation of America and Horsehead Corporation. On December 16, 1988, Zinc Corporation of America requested a revision to their Operating Permit # 04-325-001A, removing the alternative emission reduction limitations and adding the applicable requirements of § 123.22(d).

Horsehead Corporation's current Title V Operating Permit #04-00044 contains the requirements of § 123.22(d) for the coal-fired boilers and retains the reduced SO₂ emission limits for the sinter machines as required by 25 Pa. Code § 127.441 (relating to operating permit terms and conditions). The roaster plant regulated under § 128.21 is no longer in operation. Continuous emissions monitoring system data indicate the boilers now meet the standards in § 123.22(d) due to a change to low sulfur fuel with lime injection and natural gas.

The alternative emission reduction limitations in § 128.21 are no longer necessary and the owners of the Horsehead facility also agree that the alternative SO₂ limits in § 128.21 should be repealed. As a result, the omission of notice of proposed rulemaking procedure under § 1204 of the CDL is appropriate because the notice of proposed rulemaking procedures under §§ 1201 and 1202 of the CDL are unnecessary, since the emission limits established under 25 Pa. Code § 128.21 are no longer applicable to any source in the facility.

The rulemaking was discussed with the Air Quality Technical Advisory Committee (AQTAC) on June 23, 2011. The AQTAC voted 15-0-0 to concur with the Department's recommendation to forward the rulemaking to the Board. The rulemaking was discussed with the Citizens Advisory Council (CAC) Air Committee on October 19, 2011. The CAC Air Committee had no concerns. On the recommendation of the Air Committee, on November 15, 2011, the CAC voted to concur with proceeding to the Board.

E. Benefits, Costs and Compliance

Benefits

The repeal of the provisions set forth in § 128.21 will reduce the regulatory burden on Horsehead Corporation, the current owners of the St. Joe Resources Company facility. Repeal of the provisions in § 128.21 does not negatively affect the environmental air quality of the Commonwealth. The facility will continue to be subject to the applicable SO₂ standards in § 123.22(d).

Compliance Costs

This final-omitted rulemaking will not require additional costs for compliance since it does not change the current applicable standards for the affected facility.

Compliance Assistance Plan

Personnel at the Horsehead facility were contacted on June 8, 2011, to verify that the repeal of the alternative emission reduction limitations in § 128.21 is warranted. Horsehead personnel support the repeal of § 128.21. Therefore, this final-omitted rulemaking will not require a compliance assistance plan.

Paperwork Requirements

No additional paperwork will be required as a result of this final-omitted rulemaking.

F. Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on _____, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. On the same date, the final-omitted rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on _____, the final-omitted rulemaking was deemed approved by the House and Senate committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-omitted rulemaking.

G. Findings

The Board finds that:

- (1) The amendments as set forth in Annex A are appropriate to rescind the alternative emission

reduction limitations for the St. Joe Resources Company.

(2) Use of the omission of notice of proposed rulemaking procedure is appropriate because the notice of proposed rulemaking procedure in sections 201 and 202 of the CDL is, in this instance, impracticable, unnecessary and contrary to the public interest. Horsehead Corporation's current Title V Operating Permit #04-00044 contains the requirements of § 123.22(d) for the coal-fired boilers and retains the reduced SO₂ emission limits for the sinter machines as required by 25 Pa. Code § 127.441. The roaster plant regulated under § 128.21 is no longer in operation. Therefore, no public comment period is recommended for the repeal of the alternative SO₂ emission reduction limitations for the St. Joe Resources Company.

(3) This final-omitted rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble and in the public interest.

H. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 128, are amended by deleting § 128.21 to read as set forth in Annex A.

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

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

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

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

MICHAEL KRANCER
Chairman