



DATE: November 7, 2012

SUBJECT: November 20, 2012, Environmental Quality Board (EQB) Meeting

TO: EQB Members and Alternates

FROM: Michele L. Tate
Regulatory Coordinator

The next meeting of the EQB is scheduled for Tuesday, November 20, 2012, at 9:00 a.m. in Room 105 of the Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA. The Board will consider the following items:

1. Emergency Certification Final-Omitted Rulemaking: Emergency Response Planning at Unconventional Well Sites (25 Pa Code Chapter 78, Subchapter I): This emergency certified final-omitted rulemaking, developed in response to Act 9 of 2012, establishes emergency response requirements for unconventional well operations in Pennsylvania. On February 2, 2012, Governor Corbett signed into law Act 9, which requires the Department of Environmental Protection (DEP) and the Pennsylvania Emergency Management Agency (PEMA) to adopt emergency regulations directing the operators of all unconventional wells within Pennsylvania to register street and GPS addresses, to post signs, and to develop and implement emergency response plans. Many of Pennsylvania's unconventional well sites are located in very remote areas with limited access to infrastructure. Local first responders and emergency management officials have expressed concern that it may be difficult for them to find well sites should an emergency occur. Because timely emergency response is fundamental to public health and safety, including the protection of the Commonwealth's environmental resources, Act 9 provided that these regulations may be promulgated as an emergency rulemaking. An emergency rulemaking, under certain limited circumstances, enables a state agency to promulgate a rulemaking through publication in the *Pennsylvania Bulletin* prior to the completion of review of the rulemaking by the Standing Legislative Committees and the Independent Regulatory Review Commission (IRRC). For this rulemaking, Governor Corbett issued a Certification of Need for an emergency rulemaking. This rulemaking is also being promulgated as a final-omitted rulemaking under the Commonwealth Documents Law which omits the notice of proposed rulemaking for public comment.

DEP and PEMA worked in close cooperation in the development of this rulemaking and solicited comments on the rulemaking from stakeholders including industry emergency response specialists, representatives of local government, DEP's Oil and Gas Technical Advisory Board, the Marcellus Shale Coalition, the American Petroleum Institute and the Pennsylvania Independent Oil and Gas Association. The rulemaking will be effective upon publication in the *Pennsylvania Bulletin*; however, in recognition that a transition period will be necessary for existing operations to meet the new requirements, the rulemaking allows for delayed effective dates for well sites containing a well that is being drilled or has been drilled, a well site for which a well permit has been issued but no wells have commenced drilling, and well sites for which an administratively complete well permit application is pending.

DEP recommends the Board's adoption of the emergency certified final-omitted rulemaking.

2. Proposed Rulemaking: Air Quality Title V Fee Amendment (25 Pa Code, Chapter 127, Subchapter I): This proposed rulemaking includes amendments to 25 Pa Code, Chapter 127, Subchapter I in order to amend the base Title V annual emission fee. Title V annual emission fees are payable by the owners and operators of facilities in this Commonwealth that are classified as major sources of air pollution under section 501 of the Clean Air Act (CAA) and are subject to the permitting provisions of Title V of the CAA. The current Title V annual emission fee is \$56 per ton of regulated pollutant. For Title V emission fee purposes, a "regulated pollutant" includes a volatile organic compound, each pollutant regulated under section 111 and 112 of the CAA and each pollutant for which a national primary ambient air quality standard has been promulgated, but does not include carbon monoxide. The proposed rulemaking would increase the base Title V annual emission fee paid by the owner or operator of Title V facility to \$85 per ton of regulated pollutant for up to 4,000 tons of each regulated pollutant beginning with emissions occurring in calendar year 2013, payable by September 1, 2014. The proposed rulemaking does not include emission fee requirements for carbon dioxide and other greenhouse gases, including hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons and sulfur hexafluoride.

Federal regulations require that states with authority to implement a Title V Operating Permits Program establish fees sufficient to cover the costs of the permit program. The Air Pollution Control Act also authorizes the establishment of fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process, the operating permit program required by Title V of the CAA, other requirements of the CAA as well as other direct and indirect program costs. DEP has initiated this proposed rulemaking because Title V annual emission fee revenues collected are no longer sufficient to cover program costs. Factors that are contributing to this budgetary situation include decreased emissions of regulated pollutants that are subject to the annual emission fee. For example, the installation of control technology over the last past two decades on major stationary sources, the retirement or curtailment of operations by major sources including certain refineries and coal-fired power plants, and the conversion at many major facilities from burning coal or oil to burning natural gas have resulted in a decrease in emissions applicable to the annual emission fee. Failure by DEP to adjust the emission fee structure to adequately cover program costs may cause significant reductions in the Title V staffing complement and technical services, including the potential for federal sanctions by the U.S. Environmental Protection Agency (EPA). Without an increase in the Title V annual emission fees, deficits of \$6.15 million, \$17.295 million and \$28.840 million are projected for fiscal years 2015-2016, 2016-2017, and 2017-2018.

DEP consulted with a number of advisory groups on the proposed rulemaking, including the Air Quality Technical Advisory Committee (AQTAC) on September 12, 2012, the Citizens Advisory Council (CAC) Air Committee on October 3, 2012, and the Small Business Compliance Advisory Committee on October 24, 2012. If published as a final rulemaking in the *Pennsylvania Bulletin*, the final-form rulemaking would be submitted to EPA as a revision to the State Implementation Plan (SIP) or as an amendment to the Title V Program Approval codified in 40 CFR Part 70, Appendix A, as appropriate.

DEP recommends the Board's approval of the proposed rulemaking, with a 60-day public comment period and three public hearings.

3. Consideration of Rulemaking Petition: Little Sewickley Creek Watershed (25 Pa Code §93.9w): On October 3, 2012, DEP received a rulemaking petition submitted by Duquesne University Center for Environmental Research and Education. The petitioner requests the amendment of 25 Pa

Code §93.9w in order to redesignate the Little Sewickley Creek in Allegheny County from High Quality – Trout Stocking Fishes (HQ-TSF) to Exceptional Value (EV) designation.

Based upon the administrative completeness of the petition, including meeting the requirements for acceptability as defined in §23.2 of the Board's petition policy, the Department recommends the Board accept the petition for further study.

I will be contacting each board member prior to the meeting to discuss any questions or concerns you may have regarding the agenda items for the November 20, 2012, EQB meeting. If you have any immediate questions or concerns, please contact me at 717.783.8727 or by e-mail at mtate@pa.gov.

Thank you.

Enclosures