

NOTICE OF FINAL-OMITTED RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD
[25 PA CODE CH. 127]
Electronic Submission of Air Quality General Plan Approval
and General Operating Permit Applications

The Environmental Quality Board (Board) amends Chapter 127 (relating to construction, modification, reactivation and operation of sources), Subchapter H (relating to general plan approvals and operating permits) to include electronic means as an option for submitting applications to the Department of Environmental Protection (the Department) for the use of air quality general plan approvals (GPA) and general operating permits (GP). This amendment is made to § 127.621(b) (relating to application for use of general plan approvals and general operating permits). 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 public notice and comment procedures specified in sections 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.”

Public notice and solicitation of public comments are unnecessary and contrary to the public interest for the amendment included in this final-omitted rulemaking. A public comment period is unnecessary because, the amendment in this final-omitted rulemaking does not diminish or replace any existing rights under § 127.621(b) related to how an application is required to be submitted; rather, the amendment provides applicants with the additional option of submitting an application for the use of an applicable GPA or GP through electronic means. This additional means of submission is a beneficial expansion of an existing regulatory requirement and is supported by the regulated community as providing for a more efficient and effective means of submitting GPA and GP applications. The amendment in this final-omitted rulemaking is solely procedural in nature and does not change any regulatory requirements related to the Department’s technical review of these applications or change any other regulatory requirements related to the Department’s activities for GPA or GP applications. Therefore, a public comment period is unnecessary.

A public comment period is also contrary to the public interest because it will delay the implementation of the purely beneficial amendment in this final-omitted rulemaking, which authorizes the electronic submission of GPA and GP application to the Department. Providing for electronic submission enables the effective and efficient use of Commonwealth resources. The Department will likely realize savings in costs related to review and issuance of permit applications, as well as postage savings through the reduced use of paper documents. This amendment is also supported by the regulated community because it will result in the expedited review of air quality GPA and GP applications, and result in savings associated with postage costs and hand delivery. This change does not impact the rights of third parties related to a decision on a GPA or GP application. Further, this amendment does

not adversely impact the Department's ability to perform its mission of protecting the environment and public health and welfare. Therefore, a public comment period is not in the public interest.

As a result, the Board finds that the use of the final-omitted rulemaking process to amend § 127.621(b) to include electronic means as an option for submitting applications for the use of an applicable air quality GPA or GP is for good cause.

This final-omitted rulemaking was adopted by the Board at its meeting of _____.

A. *Effective Date*

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

B. *Contact Persons*

For further information, contact Viren Trivedi, Chief, Division of Permits, Bureau of Air Quality, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 717-783-9476; or Robert "Bo" Reiley, Assistant Director, Bureau of Regulatory Counsel, 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 on the Department's web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. *Statutory Authority*

This final-omitted rulemaking is made under the authority of section 6.1(f) of the Air Pollution Control Act (APCA) (35 P.S. § 4006.1(f)) and section 504(d) the Clean Air Act (CAA), (42 U.S.C.A. § 7661c(d)), which authorize the establishment of a general permit program to regulate air contamination sources. This final-omitted rulemaking is also authorized under section 5(a)(1) of the APCA (35 P.S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth; and section 5(a)(8) of the APCA (35 P.S. § 4005(a)(8)), which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the CAA.

D. *Background and Purpose*

The Department's air quality GPA and GP program was established in Chapter 127, Subchapter H in 1994 at 24 Pa.B. 5899 (November 26, 1994). This program was subsequently approved by the U.S. Environmental Protection Agency as part of Pennsylvania's State Implementation Plan. See 61 FR 39594 (July 30, 1996). The regulations under this program limit the submission of an air quality GPA or GP application to either hand delivery or certified mail return receipt requested. See § 127.621(b).

In 1999, the Pennsylvania Electronic Transactions Act, the act of December 16, 1999 (P.L. 971, No. 69) (Act 69) was enacted which allows Commonwealth government agencies to accept

electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures. See 73 P.S. § 2260.502. Since the passage of Act 69, electronic means of delivery is becoming the norm within the Department because it reduces errors, improves processing and review times, and allows for electronic payment of fees.

This final-omitted rulemaking amends § 127.621(b) to include the use of electronic means as an additional way of submitting an air quality GPA or GP application to the Department.

Currently, the Department has 19 air quality GPAs and GPs that regulate air contamination sources in several industrial categories. These air quality GPAs and GPs are available for use to an applicant who demonstrates to the Department that their operations can be regulated through an applicable air quality GPA or GP. Within the past 5 years, the Department has issued 1,922 new authorizations to use an applicable air quality GPA or GP and 204 renewals for a total issuance of 2,126 authorizations to use applicable air quality GPAs and GPs. Adding the option for electronic means of application delivery is expected to enhance Department efficiency by enabling more timely review of these general plan approval and general permit applications.

This final-omitted rulemaking was discussed with, and received the support of, the Air Quality Technical Advisory Committee (AQTAC) on June 14, 2018; the Small Business Compliance Advisory Committee (SBCAC) on July 25, 2018; and the Citizens Advisory Council (CAC) Policy and Regulatory Oversight Committee on June 15, 2018. The Policy and Regulatory Oversight Committee briefed the members of the CAC on June 19, 2018. The CAC provided the Board with a letter of concurrence supporting the final-omitted amendment, but included a comment suggesting that the Board consider revising the regulatory language to include the option for the use of ‘reputable express service providers.’ See June 19, 2018, letter from Donald S. Welsh, Chair, CAC, to Patrick McDonnell, Secretary, DEP and Chairperson of the Board. The Board appreciates the comment and will take it under advisement for consideration for a future rulemaking.

The AQTAC, SBCAC and CAC meetings are advertised and open to the public.

E. Summary of the Final-Omitted Rulemaking

Subsection 127.621(b) is amended to establish that the application required by this section shall be hand delivered, transmitted by certified mail return receipt requested or submitted electronically.

F. Benefits, Costs and Compliance

Benefits

An owner or operator of a regulated air contamination source or process for which an air quality GPA or GP is available will benefit from this amendment to § 127.621(b) through the opportunity to submit applications for the use of an applicable air quality GPA or GP by

electronic means authorized by the Department rather than being limited to hand delivering the application or mailing the application by certified mail with a return receipt requested.

Further, adding the option for electronic means of application delivery is expected to enhance Department efficiency by enabling faster review of these general plan approval and general permit applications. Faster review may also benefit the regulated industry by facilitating timely implementation of the approved permitted activities.

Compliance Costs

This amendment is expected to be noncontroversial and cost-neutral to the regulated industry. As noted above, the regulated industry will benefit from this amendment to § 127.621(b) through the opportunity to submit applications for the use of applicable air quality GPAs and GPs by electronic means authorized by the Department rather than being limited to hand delivering the application or mailing the application by certified mail with a return receipt requested.

A specific estimate of the savings to the regulated industry is not feasible because an applicant can currently choose between hand delivery and certified mail with return receipt requested options for submitting an application for an air quality GPA or GP. When the option for a Department-authorized electronic means of submission is available, an applicant will have a choice of three methods for delivery of an application. The regulated industry may experience savings in postage, fuel and staff time spent on hand delivering applications to Department offices or mailing the applications by certified mail return receipt requested versus staff time spent on filing the application electronically.

Adding the option for electronic submission of applications for the use of air quality GPAs and GPs is expected to greatly enhance Department efficiency by enabling faster review and decision-making related to these general plan approval and general permit applications. The Department will also likely realize savings in costs related to review and issuance of permit applications, as well as postage savings through the reduced use of paper documents. Additionally, support staff assistance will no longer be needed to handle paper files, which will also reduce costs.

New legal, accounting, recordkeeping and reporting, or consulting procedures will not be required.

Compliance Assistance Plan

The Department does not anticipate that compliance assistance will be required, as this final-omitted rulemaking provides the option under § 127.621(b) for the regulated industry to use electronic means authorized by the Department to submit applications for the use of air quality GPAs and GPs as an additional delivery method. Most regulated entities already use computer and electronic recordkeeping methods and have the technical capacity to implement this option. The Department will, however, answer questions and provide guidance as needed through the Department's ongoing compliance assistance program.

Paperwork Requirements

This final-omitted rulemaking does not require additional paperwork or forms.

G. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101—13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance requirements. Implementation of this final-omitted rulemaking may reduce paper waste by allowing applicants to submit applications for the use of air quality GPAs and GPs by electronic means authorized by the Department rather than submitting paper copies by hand delivery or certified mail with return receipt requested. Reductions in vehicle tailpipe emissions may be a cobenefit as well because this regulation provides an additional option that does not involve travelling to a Department office to hand deliver an application.

H. Sunset Review

The Board is not establishing a sunset date for these regulations since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

I. Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on DATE, 2018, 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 regulations were 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 DATE, 2018, 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 DATE, 2018, and approved the final-omitted rulemaking.

J. Findings

The Board finds that:

(1) The amendments are appropriate to implement the Air Quality General Plan Approvals and General Permits Application Program.

(2) Use of the omission of notice of proposed rulemaking procedure is appropriate because the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) are, in this instance, unnecessary and contrary to the public interest.

(3) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble and in the public interest.

K. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 127, Subchapter H, are amended by amending § 127.621(b) 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 under the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(d) The Chairperson of the Board shall certify this order and Annex A, as approved for legality and form, 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.

Patrick McDonnell
Chairperson