

# Commonwealth of Pennsylvania



## Governor's Office

### CERTIFICATION OF NEED FOR EMERGENCY REGULATION

November 30, 2022

*WHEREAS, the General Assembly has created the Environmental Quality Board in this Commonwealth (71 P.S. § 1340.502); and*

*WHEREAS, the power and duty of the Environmental Quality Board under Pennsylvania's Air Pollution Control Act (35 P.S. § 4001 et seq.) shall be to adopt rules and regulations to implement the provisions of the Clean Air Act (CAA) (42 U.S.C.A. §§ 7401—7671q) that shall be consistent with the requirements of the CAA and the regulations adopted thereunder (35 P.S. § 4005(a)(8)); and*

*WHEREAS, section 110(a) of the CAA (42 U.S.C.A. § 7410(a)) requires that states demonstrate compliance with the CAA by adopting and submitting to the U.S. Environmental Protection Agency (EPA) a state implementation plan (SIP) for implementation, maintenance and enforcement of the National Ambient Air Quality Standards; and*

*WHEREAS, Pennsylvania was and is required to submit a revised SIP under the CAA showing that it has developed and implemented a program establishing Reasonably Available Control Technology (RACT) requirements for sources identified by the EPA in the 2016 Oil and Gas Industry Control Techniques Guidelines requiring oil and natural gas industry equipment and processes to reduce volatile organic compound (VOC) emissions; and*

*WHEREAS, section 179 of the CAA (42 U.S.C.A. § 7509) requires a state to submit a SIP and approvable SIP revisions to comply with all aspects of the CAA by certain dates or else face sanctions; and*

*WHEREAS, section 179 of the CAA (42 U.S.C.A. § 7509) requires the EPA to impose two types of sanctions if Pennsylvania fails to submit an approvable SIP by its deadlines: "2:1 offsets" on new or modified sources of emissions, and withholding of certain Federal highway funds; and*

*WHEREAS, Federal highway sanctions will apply if a revised SIP is not completed by December 16, 2022; and*

*WHEREAS, the Environmental Quality Board proposed a rulemaking (#7-544) to meet Pennsylvania's SIP requirements by requiring oil and natural gas sources to develop and implement an emission reduction program; and*

*WHEREAS, rulemaking #7-544 provided a public comment period of 66 days; and*

*WHEREAS, although rulemaking #7-544 would meet EPA's SIP requirements, the Pennsylvania House Environmental Resources & Energy Committee disapproved the proposed rulemaking on purported technical grounds that it violated Pennsylvania's Act 52 of 2016, (58 P.S. §§ 1201—1208) which requires that rulemakings concerning conventional oil and gas wells be undertaken separately and independently of rulemakings involving unconventional wells or other subjects; and*

*WHEREAS, the Environmental Quality Board separated what was originally submitted as rulemaking #7-544 into two rulemakings – one for conventional sources and one for unconventional sources – that impose the same requirements as the original rulemaking; and*

*WHEREAS, only one of those rulemakings could be submitted to the Independent Regulatory Review Commission (IRRC) on final-form as a continuation of the rulemaking process for #7-544; and*



*WHEREAS, the Environmental Quality Board submitted the rulemaking regarding unconventional sources to IRRC on final-form under regulation #7-544; and*

*WHEREAS, the Environmental Quality Board created a separate rulemaking (Regulation #7-579) to address conventional sources, which it adopted on October 12, 2022; and*

*WHEREAS, on November 14, 2022, the Pennsylvania House Environmental Resources & Energy Committee notified IRRC of the Committee's disapproval of Regulation #7-579 triggering the 14-calendar day legislative review period under section 7(d) of the Regulatory Review Act, (71 P.S. § 745.7(d)); and*

*WHEREAS, due to the Pennsylvania House Environmental Resources & Energy Committee's disapproval, the rulemaking process for the conventional rulemaking (Regulation #7-579) cannot be completed by December 16, 2022, in time to prevent an emergency which would create conditions causing the need for supplemental or deficiency appropriations of at least \$1,000,000; and*

*WHEREAS, Section 6(d) of the Regulatory Review Act, (71 P.S. § 745.6(d)), prohibits IRRC from issuing an order barring an agency from promulgating a final-form or final-omitted regulation if the Governor certifies that the final-form or final-omitted regulation is required to meet an emergency which includes conditions which may threaten the public health, safety or welfare; cause a budget deficit; or create the need for supplemental or deficiency appropriations of greater than \$1,000,000; and*

*WHEREAS, if the Governor so certifies, the final-form or final-omitted regulation may take effect prior to review by the commission and committees under Section 6(d) of the Regulatory Review Act (71 P.S. § 745.6(d)); and*

*WHEREAS, an immediate amendment to the regulations is necessary to prevent an emergency because the absence of a completed regulation and corresponding, complete SIP is a condition that will risk sanctions that will affect approximately \$ 800 million in Federal highway funds and grants and will create the need for supplemental or deficiency appropriations greater than \$1,000,000 to direct state funding to previously Federalized projects so as to carry out planned projects that have been selected to meet the needs of the motoring public; and*

*WHEREAS, the Environmental Quality Board adopted a separate rulemaking on November 30, 2022, identical to Regulation #7-579 (Regulation #7-580) that the Governor may certify under 71 P.S. § 745.6(d) to ensure completion of the regulation by December 16, 2022.*

*NOW THEREFORE, I do hereby certify that the regulatory amendment (Regulation #7-580) to add conventional sources to the Department's regulations in Title 25 (25 Pa. Code §§ 129.131—129.140) to adopt RACT requirements and RACT emission limitations for oil and natural gas sources of VOC emissions as required under the CAA, following this certification as Annex A, is required to meet the emergency conditions enumerated in the recitals above and to avoid an emergency as described therein.*

*FURTHER, I hereby authorize the Chairperson of the Environmental Quality Board to publish this amendment in the Pennsylvania Bulletin as an Emergency Certified Final-Omitted Rulemaking consistent with the provisions of Section 6(d) of the Regulatory Review Act, as amended, 71 P.S. § 745.6(d).*

*FURTHER, this Emergency Certified Final-Omitted Rulemaking shall take effect immediately upon notice or publication in the Pennsylvania Bulletin.*



*GIVEN under my hand and the Seal of the Governor, at the city of Harrisburg, on this thirtieth day of November two thousand twenty-two, the year of the commonwealth the two hundred and forty-seventh.*

*Tom Wolf*  
TOM WOLF  
Governor