

Executive Summary

Amendments to 25 Pa. Code Chapters 121 and 127 Nonattainment New Source Review Final Rulemaking

The nonattainment new source review (NSR) program is a preconstruction air quality permitting program mandated under the federal Clean Air Act (CAA). The owners and operators of new or modified major facilities must comply with the lowest achievable emissions rate (LAER) technology and the emission offset requirements which are based on the nonattainment classification of the area in which the new or modified air contamination source is located. The entire Commonwealth of Pennsylvania is included in the Ozone Transport Region established under Section 184(a) of the CAA by operation of law. Consequently, new and modified major sources statewide are subject to the NSR mandates of the Clean Air Act.

On December 31, 2002, EPA promulgated amendments to the federal Prevention of Significant Deterioration (PSD) and Nonattainment NSR regulations. These revisions include procedures for baseline emissions determinations and plantwide applicability limits. 67 Fed. Reg. 80186. In accordance with the December 2002 rulemaking states were required to submit an equivalency demonstration or revision to their State Implementation Plans to EPA for approval by January 2, 2006. The SIP revision must include the minimum program elements of the federal NSR program or an equivalent but different program that is at least as stringent as the federal program.

The Pennsylvania Department of Environmental Protection (Department) recommends final amendments to 25 Pa. Code Chapter 121 (relating to general provisions) and Chapter 127 (relating to construction, modification, reactivation and operation of sources) for consideration by the Environmental Quality Board (Board or EQB). Pennsylvania's final-form regulation will be submitted to the EPA as an equivalency demonstration and SIP revision.

Summary of the Final Rulemaking

The final amendments make both significant and other revisions to certain sections of the existing NSR program in 25 Pa. Code Chapter 127, Subchapter E (relating to New Source Review), which place preconstruction review and permitting requirements on new and modified major air contamination facilities in order to protect public health and the environment. The final rulemaking also includes revisions to § 121.1 (relating to definitions), revising and deleting existing terms and definitions and adding 34 new terms and definitions. In addition, the final rulemaking amends certain criteria for the creation, registration, transfer and use of emission reduction credits (ERCs) used to offset emission increases from major new sources or modifications to existing major sources.

An amendment to Chapter 127, Subchapter B (relating to plan approval requirements), Section 127.13 (relating to extensions), is included in the final-form regulation to allow the Department to extend the original 18-month time period for the

commencement of construction of new or modified sources issued plan approvals. The 18-month timeframe for the commencement of construction would be granted by the Department upon a satisfactory showing that an extension is justified. This amendment, which is designed to provide additional flexibility for the Department and regulated community, is consistent with existing federal PSD requirements

Amendments to Chapter 127, Subchapter E, Section 127.201 (relating to general requirements), clarify NSR applicability for an owner or operator of a facility at which a “significant” emissions increase occurs. This section also includes amendments which require that facilities located in Bucks, Chester, Delaware, Montgomery or Philadelphia counties that emit or have the potential to emit at least 25 tons per year of volatile organic compounds or nitrogen oxides will continue to be considered “major” facilities subject to the requirements applicable to a major facility located in a “severe” ozone nonattainment area. Section 127.201a describes measurements and acronyms in the final-form regulation.

Section 127.202 (relating to effective date) amendments specify that the requirements in the final rulemaking apply to an owner or operator of a facility to which a plan approval will be issued by the Department after the publication of the final rulemaking in the *Pennsylvania Bulletin*.

Section 127.203 (relating to facilities subject to special permit requirements) includes amendments pertaining to the thresholds that apply to the construction of a new major facility, or modification at an existing facility, located in a nonattainment area or located in an attainment or unclassified area.

Section 127.203a (relating to applicability determination) includes the provisions that the Department will use to conduct an applicability or “netting” determination during its review of a plan approval application for the construction of a new major facility or a modification at an existing major facility. Both Sections 123.203 and Section 123.203a contain amendments that change the time period for aggregation of emission increases that are less than significant from 15 years to 10 years.

Section 127.205 (relating to special permit requirements) includes amendments to clarify certain requirements pertaining to the lowest achievable emission rate and offsets.

Section 127.206 (relating to ERC general requirements) has been revised to add a provision to provide a one-year amnesty period for the owner or operator of a facility, which has generated emission reductions for all criteria pollutants after January 1, 2002, to submit ERC Registry applications to the Department for approval. Any facility owner or operator that missed the deadline to submit applications within one year of generating credible emission reductions will be given an opportunity to generate ERCs if the reductions are surplus, permanent, quantifiable and federally enforceable.

Section 127.207 (relating to ERC generation and creation) amendments include a provision that emission reductions necessary to meet allowance-based programs may not be used to generate ERCs. Section 127.207 also contains amendments that extend the ERC registry application deadline from 1 year to 2 years where the owner or operator either submits a maintenance plan or files a written notice to the Department within 1 year of deactivation of the source to request preservation of the emissions in the inventory. Sections 127.206-127.210 contain minor revisions and corrections to cross-references.

The existing § 127.211 (relating to applicability determination) is deleted and reserved. Sections 127.212 (relating to portable facilities) and 127.213 (relating to construction and demolition) contain minor clarifying amendments. The existing provisions in § 127.214 (relating to exemption) are being deleted and reserved.

Section 127.214a (relating to special provisions for advanced clean coal generation technology) pertaining to presumptive LAER requirements in the proposed rulemaking is omitted from the final-form regulation. EPA will not approve this provision.

Section 127.215 (relating to reactivation) contains minor revisions for the reactivation of deactivated sources.

A new § 127.218 (relating to plantwide applicability limits) allows an owner or operator to voluntarily operate under a plantwide applicability limit or “PAL” for an existing major facility, which is based on actual emissions. NSR would not be triggered if the emissions from the new or modified major source do not exceed the PAL.

Purpose of the Regulation

The purpose of this final rulemaking is to revise the existing NSR regulation to incorporate certain changes required by the U.S. Environmental Protection Agency and to revise the State Implementation Plan. The amendments are reasonably necessary to achieve and maintain the National Ambient Air Quality Standards including the 8-hour ozone and fine particulate standards and to avoid the imposition of discretionary and mandatory sanctions under the federal Clean Air Act.

Affected Parties

The amendments will affect owners and operators of major air contamination sources affected by the special permitting requirements of *25 Pa. Code* Chapter 127. There are approximately 700 major facility owner/operators.

Advisory Groups

The Department has been working closely with its Air Quality Technical Advisory Committee (AQTAC) in the development of these regulations. The AQTAC

reviewed the proposed regulatory revisions on August 9 and August 30, 2005. The Department's staff made NSR presentations during AQTAC and Citizens Advisory Council meetings on September 27 and October 17, 2006. These presentations provided a summary of the comments that were received from the EPA, industries, and environmental groups and concepts for the final-form regulation. Department staff met with the AQTAC on December 14, 2006 and on January 4, 2007, meeting to discuss the final-form regulation. The Department received concurrence from AQTAC on the final-form regulation with two recommendations for changes. These recommended changes involved extending the time period for submittal of an emission reduction credit (ERC) Registry application and reducing the aggregation period for de minimis emission increases that are not significant from 15 years to 10 years. The final-form regulation provides for the submission of applications within two years after the ERC-generating reductions are initiated. In addition, the aggregation of de minimis emission increases will be limited to 10 years.

Public Comments and EQB

On December 20, 2005, the Environmental Quality Board (EQB) approved the proposed amendments for publication in the *Pennsylvania Bulletin* and seeking public comments. The proposed amendments to Chapter 121 and Chapter 127, Subchapter E, New Source Review regulation were published in the *Pennsylvania Bulletin* on April 29, 2006. The EQB held three public hearings. Public hearings were held in Harrisburg on June 6, 2006, Pittsburgh on June 13, 2006, and Norristown on June 19, 2006. The public comment period for the proposed rulemaking was closed on July 31, 2006. The EQB received comments from 33 commentators.