

Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
25 Pa. Code Chapter 127

The Environmental Quality Board (Board) proposes to establish new and modified language under 25 Pa. Code Chapter 127, Subchapter B (related to plan approval requirements) as set forth in Annex A.

This notice is given under Board order at its meeting of _____, 2006.

A. Effective Date

These amendments will be final upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact John Slade, Chief, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, telephone: 717-783-9476 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, telephone: 717-787-7060.

Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Web site (<http://www.depweb.state.pa.us>).

C. Statutory Authority

This action is being taken under the authority of section 5(a)(1) of the Air Pollution Control Act (“APCA”) (35 P.S. §4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction, and abatement of air pollution, and Section 6.1 of the APCA, which requires the Board by regulation to establish adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete and for expeditious review of applications. (35 P.S. §4006.1(b.3).)

D. Background and Summary

As part of an effort to streamline the air quality permitting process, the Department investigated ways to reduce the plan approval application time, reduce

unnecessary costs to industry, and continue to ensure that citizens receive adequate notice of all potential plan approval/permitting actions to enable timely comment on issues of public concern. The Department wants to employ faster response times for minor permitting actions for needed product improvements, which allows industry to be responsive to free market changes, while at the same time ensuring that those changes do not degrade existing air quality. In addition, the Department wanted to assure that any permit streamlining effort benefited the Department, as well, by allowing it to focus scarce administrative resources on evaluating major source permit applications that will likely have significant environmental impacts. As part of this effort, the Department proposes regulatory revisions to extend the authorization of a source to temporarily operate to facilitate shake-down and to revise the public notice provisions which address receipt of applications for plan approval and intent to issue certain plan approvals. In addition, the Department is proposing provisions related to completeness criteria for applications for plan approval. The Department believes that these proposed changes will continue to protect air quality, allow business to respond to market changes, and allow for adequate public participation.

The Department worked with the Air Quality Advisory Board (AQTAC) in the development of these regulations. At its March 13, 2006, meeting AQTAC recommended that the Board consider the proposed amendments in the near future.

E. Summary of Regulatory Revisions

Section 127.12b (relating to plan approval terms and conditions), is proposed to be revised to extend from 120 to 180 days the duration for temporary “shake-down” operation of new equipment subject to the plan approval requirements.

New Section 127.12d (relating to completeness determination) is proposed to be added to set forth the criteria the Department will use to determine if an application for plan approval is complete.

Section 127.44 (related to public notice) is proposed to be revised to, among other things, require the Department to publish in the *Pennsylvania Bulletin* a notice of receipt and intent to issue certain minor plan approvals.

Section 127.45 (related to contents of notice) is proposed to be revised to make certain corrections to the text related to clarity.

Section 127.48 (related to conferences and hearings) is proposed to be revised to require, in certain instances, that the Department publish notice of hearings or conferences in a newspaper of general circulation and the *Pennsylvania Bulletin*.

F. Benefits, Costs and Compliance

Benefits

Overall, the citizens of this Commonwealth will benefit from these recommended changes because the Department will be able to focus scarce administrative resources on evaluating major source permit applications that will likely have significant environmental impacts. In addition, these changes will allow industry to be responsive to free market changes, while at the same time ensuring that those changes do not degrade existing air quality.

Compliance Costs

These regulations will reduce the operating costs of industry through enhanced operational flexibility.

Compliance Assistance

The Department plans to educate and assist the public and regulated community with understanding any newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing Regional Compliance Assistance Program.

Paperwork Requirements

The proposed regulatory revisions will not increase the paperwork that is already generated during the normal course of business.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. DEP 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. This regulation will allow industry to be responsive to free market changes, while at the same time ensuring that those changes do not degrade existing air quality.

H. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act, 71 P.S. § 745.5(a), on (blank), the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written Comments - Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be postmarked by (blank) (within __ days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be postmarked by (blank) (within __ days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments - Comments may be submitted electronically to the Board at RegComments@state.pa.us and must also be received by the Board by (date). A subject heading of the proposal and a return name and address must be included in each transmission.

K. Public Hearings

The Environmental Quality Board will hold __ public hearings for the purpose of accepting comments on this proposal. The hearings will be held at ___ p.m. on the following dates:

_____ (blank) _____

_____ (blank) _____

_____ (blank) _____

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Environmental Quality Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD) to discuss how the Department may accommodate their needs.

BY:

KATHLEEN A. McGINTY
Chairperson
Environmental Quality Board