

**FINAL RULEMAKING**  
**Environmental Quality Board**  
**Air Quality Permit Streamlining**  
**25 Pa. Code Chapter 127**

**Order**

The Environmental Quality Board (Board) amends Chapter 127 (relating to construction, modification, reactivation and operation of sources) to read as set forth in Annex A.

This notice is given under the Board's order at its meeting of \_\_\_\_\_.

**A. Effective Date**

These amendments will be effective upon final-form publication in the *Pennsylvania Bulletin*.

**B. Contact Persons**

For further information, contact Virendra Trivedi, Chief, New Source Review Section, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3979; 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, (717) 787-7060.

**C. Statutory Authority**

This final rulemaking is promulgated under the authority in 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(b.3) of the APCA (35 P. S. § 4006.1(b.3)), 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.

**D. Background and Summary**

As part of an effort to streamline the air quality permitting process, the Department of Environmental Protection (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 potential plan approval/permitting actions to enable timely comment on issues of public concern. The Department wanted 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 ensure that the permit streamlining effort benefited the Department, as well, by allowing it to focus scarce administrative resources on evaluating major source permit applications that have the potential to have more significant environmental impacts than minor sources. As part of this effort, the Board finalizes amendments 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 Board is finalizing provisions regarding completeness criteria for applications for plan approval. The Board believes that these final-form amendments will continue to protect air quality, allow business to respond to market changes and allow for adequate public participation.

The final-form regulations contain several amendments to the Department's air quality regulations. The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) during the development of this final rulemaking. At its July 26, 2007, meeting, the AQTAC concurred with the Department's recommendation that the Board consider the final amendments on October 16, 2007. The Department also consulted with the Citizens Advisory Council during the development of the final-form regulation.

#### **E. Summary of the Final-Form Rulemaking**

The final-form rulemaking amends § 127.12b (relating to plan approval terms and conditions) to extend from 120 days to 180 days the duration for temporary "shake-down" operation of new air contamination sources and air cleaning devices subject to the plan approval requirements. This section was not modified between proposed and final-form rulemaking.

Section 127.12d (relating to completeness determination) sets forth the criteria the Department will use to determine if an application for plan approval is complete. This section was modified between proposed and final-form rulemaking to provide that the Department would make an administrative completeness determination within 30 days of receipt of the application. This section was also modified to require an applicant to provide supplemental information to the Department within 10 working days of receipt of a written request for supplemental information. The supplemental information must be provided within 10 working days of receipt of the Department's written request for additional information for the administrative completeness determination. The Department will return an application if an applicant fails to provide the requested information. Other minor clarifying changes were made as well.

Section 127.44 (relating to public notice) has been amended 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. This section was modified between proposed and final-form rulemaking to provide that the Department will prepare a notice of receipt and intent to issue in accordance with the requirements of § 127.45 (relating to contents of notice). The information elements to be included in the public notice were deleted from this section and moved to § 127.45. In addition other minor clarifying changes were made as well.

Section 127.45 (relating to contents of notice) was amended between proposed and final-form rulemaking to include the information elements in the public notice of receipt and intent to issue that were originally under § 127.44. In addition, other clarifying changes were made as well.

Section 127.48 (relating to conferences and hearings) is amended to require, in certain instances, that the Department publish notice of hearings or conferences in a newspaper of general circulation and the *Pennsylvania Bulletin*. This section was not modified between proposed and final-form rulemaking.

The final rulemaking will be submitted to the United States Environmental Protection Agency as a revision to Pennsylvania's State Implementation Plan codified in 40 CFR Section 52.2020

## **F. Summary of Comments and Responses**

Twelve commentators submitted comments during the public comment period. In addition, the Independent Regulatory Review Commission and the Senate Environmental Resources and Energy Committee submitted comments during the extended comment periods authorized by the Regulatory Review Act. Below is a summary of the major comments that were received.

Several commentators support the Board's efforts to streamline the air quality permitting process. The Board agrees that the proposed changes will improve the overall permitting process by reducing both the plan approval application processing time and unnecessary costs to the applicants and the Department, while still providing timely notice to the public for comment on all complete plan approval applications submitted to the Department.

Several commentators support the proposed change to § 127.12b that extends the temporary shakedown period for a facility for additional limited periods from 120 days to 180 days. The Board believes that extending the temporary shakedown period from 120 days to 180 days will allow companies adequate time to test newly permitted sources in accordance with the more complicated stack test requirements, rather than reapply for another extension for "shakedown" purposes.

Several commentators recommend that the Board adopt a deadline for issuance of the "completeness determination" under § 127.12d. The Board agrees and has revised § 127.12d(a) to provide that the Department will provide written notice of the completeness determination to the applicant "within 30 days of receipt of an application."

The commentator requests that the term "other documents" in § 127.12d(b) be expanded to be more specific. The Board agrees. Subsection (b) of § 127.12d of the final-form regulation has been revised to clarify that the minimum requirements for documentation to be submitted with a plan approval application include the "other documents requested in the plan approval application."

Several commentators urge the Board to reject the proposed revisions because several aspects of the proposed rulemaking will severely curtail opportunities for effective citizen participation in air permitting. The primary objective of the APCA is the protection of public health, safety, and well-being of the citizens of Pennsylvania. 35 P.S. § 4002(a)(i). The commentators submit that this objective is furthered by continuing to provide Commonwealth citizens with information about all plan approvals, including all permit conditions, by publication in the *Pennsylvania Bulletin*. The commentators urge the Board to reject the Department's proposal in derogation of this fundamental objective of the APCA.

The Board disagrees with the commentators that public participation in the plan approval application process will be severely curtailed by the proposed changes to the plan approval requirements. Rather, the proposed changes to § 127.44 (relating to public notice) clarify the Department's current practice in publishing notices of receipt for plan approval applications for

sources for which there is little to no public interest or concern. As a result, all plan approval actions will have at least a 30-day public comment period. The amendatory provisions in the final-form regulation are consistent with Section 6.1(b.3) of the APCA, which requires the Board to establish adequate, streamlined and reasonable procedures by regulation for expeditiously determining when applications are complete and for expeditious review of applications. 35 P.S. § 4006.1(b.3). In addition, the changes to § 127.45 (relating to contents of notice) merely clarify the Department's general practice in publishing a brief description of the proposed action. Section 2 of the APCA provides, in part, that it is "... the policy of the Commonwealth of Pennsylvania to protect the air resources of this Commonwealth to the degree necessary for the (i) protection of public health, safety, and well-being of the citizens of Pennsylvania..." 35 P.S. § 4002(a)(i). The permit streamlining amendments set forth in the final-form regulation will not adversely impact the protection of public health and the environment nor curtail public involvement in the permitting process.

One commentator requests that the Board amend the regulations to allow for a reasonable time period for approval of trial burns of "opportunity fuels" of previously known characteristics. The Board disagrees. The Department is taking a number of steps to provide operational flexibilities for approval of trial burns of "opportunity fuels." Section 127.14 (relating to exemptions) provides an exemption from the permit requirements for approval of trial burns of "opportunity fuels." Exemptions can be determined from the existing list of sources or through the use of a request for determination.

A commentator noted that as amended, § 127.45(b)(5) would no longer require a "description of the reasons" for including conditions and is concerned with this change. The Board notes that while the requirements of existing paragraph (5) of § 127.45 could be interpreted as requiring that the entire plan approval conditions need to be published in the notice of action to be taken, to do so presents significant costs to the Department as well as the applicant. Consequently, new paragraph (b)(5) of § 127.45 has been clarified to require a brief description of the conditions being placed in the plan approval with reference to applicable State and Federal requirements. The entire plan approval will be available for review at the location specified in the notice and will also be provided upon request.

## **G. Benefits, Costs and Compliance**

### *Benefits*

Overall, the citizens of this Commonwealth will benefit from this final-form regulation because the Department's air quality program staff will be afforded additional time for evaluating major source permit applications that will likely have significant environmental impacts. In addition, the final-form amendments 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*

This final-form rulemaking will reduce compliance costs for industry by reducing the number of authorizations requested to extend the temporary operation period to facilitate the shakedown

of sources and air cleaning devices. In addition, the cost of complying with the notice provisions will be reduced substantially because publication of the plan approval will no longer be required.

### *Compliance Assistance*

The Department plans to educate and assist the public and regulated community with understanding the amendments to the plan approval requirements. This outreach effort will be accomplished through the Department's ongoing compliance assistance program.

### *Paperwork Requirements*

The final-form amendments will not increase the paperwork that is already generated during the normal course of business.

## **H. 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. This final-form rulemaking 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.

## **I. Sunset Review**

The final-form regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the intended goals.

## **J. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on xxx, xx, 2007, the Department submitted a copy of this final-form 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. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, the IRRC and the Committees were provided copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department considered the comments received from the IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. §745.a(d)), on xxx, xx, 2007, this final-form rulemaking was deemed approved by the House and Senate Committee. Under section 5.1(e) of the Regulatory Review Act, the IRRC met on xxx, xx, 2007, and approved the final-form rulemaking.

**K. Findings of the Board**

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§7.1 and 7.2.
- (2) At least a 60-day public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 37 *Pa.B.*1317 (March 24, 2006).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

**L. Order of the Board**

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

- (a) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapter 127 are amended by amending §§ 127.12b, 127.12d, 127.44, 127.45, and 127.48 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 the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) These final-form amendments will be submitted to the U.S. EPA as an amendment to the Pennsylvania State Implementation Plan.
- (e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

BY:

KATHLEEN A. MCGINTY  
Chairperson  
Environmental Quality Board