

## New Pennsylvania Natural Gas Operations Air Permitting Program: What Operators Need to Know

By Todd Normane, Esq. and Laura Ragozzino, Esq.

As we previously [reported](#), Governor Tom Wolf and the Pennsylvania Department of Environmental Protection (“PADEP”) formally announced a new methane reduction strategy.<sup>1</sup> The 2016 strategy announcement came to fruition on June 8, 2018, when PADEP [released](#) its first general plan approval and/or general operating permit No. 5a for unconventional natural gas well site operations and remote pigging stations (“GP-5a permit”); a revised general plan approval and/or general operating permit No. 5 for natural gas compressor stations, processing plants, and transmission stations (“GP-5 permit”); and a revised Exemption 38 technical guidance document indicating which oil and gas production facilities are exempt or conditionally exempt from the general permitting process. The new permitting package takes effect on August 8, 2018.

The intent of the Governor and PADEP in implementing this strategy is to “reduce emissions from natural gas well sites, compressor stations and along pipelines, [. . .] protect the environment, reduce climate change, and help businesses reduce the waste of a valuable product.”<sup>2</sup> Methane regulation is at the center of this strategy.

Methane is regulated in this new permit package through the implementation of facility or source-specific methane thresholds of 200 tons per year (tpy). Since 2012, PADEP air emissions inventories have reported decreasing per million cubic feet of production methane emissions since 2012 (CH<sub>4</sub>/MMCF).<sup>3</sup> Through this permitting action, PADEP is regulating and establishing standardized practices and engineering design standards already utilized by many Pennsylvania unconventional operators to further accelerate methane reduction.

### What Operators Need to Know

It is important for operators and service providers to understand what this new permitting package does and does not do. The new permitting package takes effect on August 8, 2018, but

---

<sup>1</sup> PADEP, “Governor Wolf Announces New Methane Rules to Improve Air Quality, Reduce Industry Loss,” <https://www.governor.pa.gov/governor-wolf-announces-new-methane-rules-to-improve-air-quality-reduce-industry-loss/> (January 19, 2016).

<sup>2</sup> PADEP, “A Pennsylvania Framework of Actions for Methane Reductions from the Oil and Gas Sector,” <http://www.dep.pa.gov/Business/Air/Pages/Methane-Reduction-Strategy.aspx>.

<sup>3</sup> PADEP, Bureau of Air Quality, “Oil and Gas Air Emissions Report,” [http://www.depgreenport.state.pa.us/powerbiproxy/powerbi/Public/DEP/AQ/PBI/Air\\_Emissions\\_OG\\_Report](http://www.depgreenport.state.pa.us/powerbiproxy/powerbi/Public/DEP/AQ/PBI/Air_Emissions_OG_Report).

operators need to make adjustments to their processes now to ensure compliance and to minimize production schedule interruptions. This article summarizes critical impacts to Pennsylvania upstream and midstream operations. Because the permitting package contains highly technical and dense regulatory language, this summary cannot fully convey the full significance of the regulations.

### *Upstream*

Under the new Pennsylvania permitting program, operators with equipment or processes at unconventional natural gas well sites (*i.e.*, any production site with a well that was hydraulically fractured or technological-enhanced that produces natural gas from a shale formations below the Elk Sandstone or its geological equivalent stratigraphic interval (*i.e.*, an unconventional natural gas well) on or after August 8, 2018, must either (1) obtain a new GP-5a permit or (2) demonstrate compliance with Exemption 38.

Only unconventional natural gas production site operators need to apply under the GP-5a, where applicable, based on the site's projected emissions. Initial GP-5a permit application fees range from \$1,375 to \$2,075. The annual operating permit administrative fee is \$375. If an unconventional natural gas production site does not reach permitting emissions thresholds, it must still comply with new Exemption 38 criteria, which, in practice, function as permit-like operating conditions. If an operator is producing wells from multiple geological formations on one production site, drilling or fracturing new wells, or making certain changes to existing facilities, it must consider the compliance impacts of this new permitting program.

Existing unconventional production sites and associated equipment that are authorized to operate under conditional exemption criteria dated August 10, 2013 remain exempt from permitting unless a new well is drilled at the existing well site, an existing well is hydraulically refractured, new equipment is added, or existing equipment is reconstructed or modified. In these events, the owner or operator must meet the exemption criteria under Exemption 38, submit and obtain approval of a Request for Determination (RFD), or apply for and receive authorization to use GP-5a.

### *Midstream*

Changes to the GP-5 permit affect conventional and unconventional operators that manage compressor station facilities. Additionally, the new GP-5 permit regulates natural gas processing plants and transmission stations, which are not regulated under the current 2015 version of the GP-5 permit. Initial GP-5 permit application fees range from \$1,375 to \$2,075. The annual operating permit administrative fee is \$375.

Non-major source processing plants and transmissions station operators will be managing a PA air permit for the first time. Under the new GP-5 permit, select sources must comply with new Best Available Technology ("BAT") requirements, including the new methane threshold. Operational activities such as pigging venting will require additional reporting and operational considerations.

## ***Regulatory Background***

It is important to consider the operational impact of the new permitting package in the context of Pennsylvania's regulatory air permitting history. Before 2013, air contamination sources at oil and gas well sites—both conventional and unconventional well sites—were unconditionally exempt from Pennsylvania air permitting requirements because emissions were determined to be insignificant. As exploration and production technology advanced, the scale and duration of a well site's productive life increased, prompting a reevaluation of the significance of the source's actual emissions. Equipment types and configurations and process engineering also evolved to accommodate the enhanced production volumes, pressures, and hydrocarbon production streams from geological formations previously unavailable (e.g., Marcellus and Utica formations) without new advances in hydraulic fracturing and directional drilling.

After 2013, Exemption 38 functioned in practice as a permit because, while listed alongside many straightforward categories, Exemption 38 evolved to become significantly more stringent than other categories in the Exemptions List. The numerous conditions to qualify for Exemption 38, including the compliance demonstration, which later developed into a compliance demonstration report, led to PADEP's development of the new permit for unconventional natural gas well sites.

Other traditional oil and gas producing states maintain air general permitting programs for oil and gas operations. Comparing the new Pennsylvania program to those of neighboring states helps provide some context for the new program. Both Ohio's Environmental Protection Agency and West Virginia's Department of Environmental Protection have issued general permits for natural gas well site production facilities and compressor stations. However, in Ohio, emissions limits are established for individual pieces of equipment in what amounts to an individual source general permit for compressor stations. These individual general source permits are then aggregated into a facility general permit, creating a modular approach. West Virginia, on the other hand, follows a similar approach to that established by Pennsylvania with a single facility-wide general permit for all sources located within that facility.

The new Pennsylvania permitting package was also developed to bring the new general permits in line with the federal regulations finalized by the U.S. EPA at 40 CFR Part 60 Subpart OOOOa on June 3, 2016. Those regulations remain subject to ongoing administrative challenges related to the 2017 U.S. Presidential administration change and various legal challenges posed by environmental and industry groups. PADEP expects the language of its permit to automatically effectuate any subsequent revisions by the U.S. EPA to the applicable affected source(s).

## ***Next Steps***

If you operate potentially impacted facilities, or intend to acquire such Pennsylvania facilities, this new permitting package could affect your business. At a minimum, all Pennsylvania operators should perform an applicability determination to see how this new permitting package could impact your upstream and midstream operations.

For example, operators should evaluate:

- permitting applicability determinations;
- reporting, notifications, and recordkeeping;
- critical operational changes;
- impact to mergers and acquisitions in PA (*i.e.*, compliance due diligence);
- e-Permitting;
- managing a modification; and
- managing any operating malfunction.

To help its clients better understand the most efficient and cost-effective means of compliance, Cohen & Grigsby will address these issues in more depth in future articles related to the methane reduction strategy and the related new permitting package. In the interim, if you have any questions, please contact Todd Normane at (412) 297-4780 or [tnormane@cohenlaw.com](mailto:tnormane@cohenlaw.com) or Laura Ragozzino at (412) 297-4713 or [lragozzino@cohenlaw.com](mailto:lragozzino@cohenlaw.com). To receive future bulletins and news alerts, please sign up here.

Copyright © 2018 by Cohen & Grigsby, P.C. (No claim to original U.S. Governmental material.)

*All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of Cohen & Grigsby, P.C. and is intended to alert the recipients to new developments in the areas of energy and environmental law. The hiring of a lawyer is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about Cohen & Grigsby's qualifications and experience.*