



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2009-0882; FRL-9656-9]

**Approval and Promulgation of Air Quality Implementation Plans;
Pennsylvania; Streamlining Amendments to the Plan Approval Regulations**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to grant limited approval to a State Implementation Plan (SIP) revision submitted by the Pennsylvania Department of Environmental Protection (PADEP) on April 14, 2009. The revision pertains to PADEP's plan approval requirements for the construction, modification, and operation of sources, and is primarily intended to streamline the process for minor permitting actions. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2009-0882** by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. E-mail: cox.kathleen@epa.gov.
- C. Mail: EPA-R03-OAR-2009-0882, Kathleen Cox, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only

accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2009-0882**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: David Talley, (215) 814-2117, or by e-mail at talley.david@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On April 14, 2009, PADEP submitted revisions to its State Implementation Plan (SIP). The proposed revisions consist of amendments to the plan approval requirements for the construction, modification, reactivation, and operation of sources.

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I. Background

Generally speaking, anyone constructing or operating a source in Pennsylvania that emits pollutants into the air must comply with the general requirement to obtain a “plan approval” prior to construction as outlined in 25 Pa. Code 127, Subchapters A and B. These subchapters

are generally considered the state's minor New Source Review (NSR) program covering minor sources as well as minor changes at major sources. Major sources are subject to the additional requirements of subchapters D Prevention Significant Deterioration (PSD) and E (nonattainment NSR). Subchapter E also includes additional provisions relating to minor changes at major sources for ozone precursors Nitrogen Oxides and Volatile Organic Compounds (NO_x and VOCs). A plan approval is a permit that authorizes construction, installation, or modification of any air pollution source. In evaluating the plan approval application, PADEP checks to see that both the operation of the source and the control equipment installed to reduce air pollution meet the applicable technical and engineering requirements. The public is given an opportunity to comment on the plan approval application. In addition to being a permit to construct, the plan approval provides temporary authorization for the source to operate to assure that the equipment functions properly. This temporary authorization is known as the "shakedown" period.

The plan approval regulations that are the subject of this proposed action are codified at 25 Pa. Code 127, Subchapter B (relating to general requirements for all plan approvals). EPA last took action on these provisions on July 30, 1996. Pennsylvania adopted the amendments being proposed in this action, and published notice of final rulemaking in the *Pennsylvania Bulletin* on May 24, 2008. The primary purpose of the amendments is to streamline the permitting process by eliminating some of the administrative burden and costs associated with processing minor permitting actions, while preserving the right of the public to review and comment on those proposed actions. The proposed amendments generally affect five regulations: section 127.12b, pertaining to "shakedown" periods for new or modified sources; section 127.12d, pertaining to completeness determinations; sections 127.44 and 127.45, pertaining to public notice requirements; and section 127.48, pertaining to conferences and hearings. The specific revisions

are discussed in detail below.

II. Summary of SIP Revision

A. 25 Pa. Code 127.12b: Plan Approval Terms and Conditions

Section 127.12b(d), as approved by EPA on July 30, 1996, authorizes a temporary “shakedown” period for new and modified sources and air cleaning equipment for a period of 180 days pending issuance of a state operating permit or a Title V permit, “...to permit the evaluation of the air contamination aspects of the source” (see section 127.12b(d)). The regulation as currently approved in Pennsylvania’s SIP also allows for limited extensions of this period, with each extension limited to 120 days. The proposed revision increases the permissible duration of the extensions to 180 days.

B. 25 Pa. Code 127.12d: Completeness Determination

The proposed revisions incorporate new requirements into the Pennsylvania SIP that outline PADEP’s obligations with respect to determining whether an applicant has submitted an administratively complete application, and notifying the applicant of that decision. These requirements are codified at section 127.12d(a) thru (c). Section 127.12d(a) requires PADEP to make a completeness determination and provide notice to the applicant within 30 days of receipt of the application. Section 127.12d(b) establishes guidelines for what constitutes an administratively complete application. In the event an application is deemed to be incomplete, section 127.12d(c) requires PADEP to notify the applicant of the specific deficiency, and to return the application and fees to the applicant if the requested information is not submitted within ten (10) working days of being notified by PADEP that the application is incomplete. These regulations as proposed by PADEP are consistent with CAA requirements, and are in fact

more prescriptive than their Federal counterparts at 40 CFR 51.166(q)(1).

C. 25 Pa. Code 127.44: Public Notice and 25 Pa. Code 127.45: Contents of Notice

The public notice requirements of section 127.44 as currently approved in the Pennsylvania SIP make no distinction between major and minor permitting actions – the requirements are the same. Pennsylvania adopted the proposed revisions to the public notice requirements of section 127.44 (and 127.45, below) in an effort to streamline the process for minor permitting actions and allow PADEP to focus its limited resources on major permitting actions.

In the current SIP, section 127.44 sections (a)(1) thru (6) list the types of plan approvals for which the public notice requirements apply. These include section (a)(5): “Other sources required to obtain plan approval,” which has the effect of applying the notice requirements to all plan approval actions equally. Pennsylvania has a robust minor New Source Review (NSR) program. Very few sources escape the requirement to obtain a plan approval, and every plan approval is subject to public notice requirements. Prior to these revisions, significant time and resources were being spent on relatively minor permitting actions. The proposed revisions involve the bifurcation of the notice requirements into a new section 127.44(a) which applies to minor actions, and a new section 127.44(b) which applies to major actions as well as any action for which PADEP determines that significant public interest exists. The remaining unchanged sections were re-ordered sequentially to allow for the bifurcation.

Pursuant to the proposed amendments, under the revised section 127.44(a) PADEP will publish a “notice of receipt and intent to issue” in the *Pa. Bulletin* for each plan approval application relating to a minor permitting action. PADEP has, as a policy, generally published two notices for all plan approval actions: one upon receipt of an application, and one of intent to issue a

proposed plan approval. Under the proposed revisions, proposed plan approval actions that are subject to section 127.44(a) will be issued at the end of the public comment period without further notice, unless significant public comments are received. The notice requirements for major actions, now at section 127.44(b), were not substantively amended. We read the requirements of section 127.44(f) to apply to all plan approvals that are subject to section 127.44. These include the requirement that the application materials be made available for review in the region affected by the project, and that a 30-day public comment period be established (127.44(f)(1) and (f)(2) respectively).

In the proposed revisions, section 127.45 was similarly bifurcated to incorporate separate requirements for minor and major actions. As with the notice requirements of section 127.44, the content requirements of section 127.45 for permitting actions considered by PADEP to be major, (now at 127.45(b)), were not substantively modified. For minor actions, section 127.45(a) outlines what must be included in each “notice of receipt and intent to issue.” These requirements include: the name and address of the applicant and the location of the source, a brief discussion of the proposed action including a description of the source, the control technology, the conditions being placed in the permit, and the type and quantity of air contaminants being emitted, as well as a point of contact at PADEP, and the statement that a person may oppose the proposed plan approval by filing a written protest with the appropriate regional office (see proposed section 127.45(a)). The requirements for minor permitting actions under this section do not vary significantly from the requirements for major actions. The primary differences are that section 127.45(b) requires a description of increment consumption (where applicable), and a description of the procedures for reaching a final decision on the proposed plan approval, including the end date for receipt of written protests, procedures for

requesting a hearing, and other procedures for public involvement in the final decision (see proposed section 127.45(b)(6)). The result of the proposed revisions to sections 127.44 and 127.45 is that for minor permitting actions, public notice of the proposed action will be less detailed than for major actions, will be provided once, and only in the *Pa. Bulletin* (which publishes online and in print).

The Federal requirements with regard to public availability of information are codified at 40 CFR 51.161. Specifically, 40 CFR 51.161(a) requires that “[t]he public information must include the agency’s analysis of the effect of construction or modification on ambient air quality, including the agency’s proposed approval or disapproval.” EPA believes that to some extent, the intent of section 51.161(a) was met in sections 127.45(a)(3) and (4) of Pennsylvania’s proposed SIP revision, which discuss the content of the public notice. These sections require a description of the proposed construction or modification, the control technology being installed, the conditions in the proposed permit (with reference to applicable federal requirements), and the type and quantity of air contaminants being emitted. Nevertheless, the agency analysis required by 40 CFR 51.161(a) is not explicitly required in the proposed SIP revision, nor do the regulations of sections 127.44 and 127.45 require that the agency’s analysis be made available for public inspection in at least one location, in accordance with 40 CFR 51.161(b)(1). Section 127.44(f)(1) requires only that the application be made available. Therefore, EPA is proposing to grant limited approval to PADEP’s proposed revision. To receive full approval, PADEP must adopt the explicit requirement that the agency’s analysis be included in the information provided to the public for comment pursuant to 40 CFR 51.161(a), as well as the requirement that the analysis be made available for public inspection pursuant to 40 CFR 51.161(b)(1), and submit those changes to EPA as a formal SIP revision.

D. 25 Pa. Code 127.48: Conferences and Hearings

The regulations at section 127.48 contain the requirements regarding public hearings or fact finding conferences on proposed plan approvals. The PADEP may, at its discretion, hold such a hearing when it is deemed necessary due to sufficient public impact or interest. The proposed amendments to section 127.48(b) include some clarifying language regarding hearing notices. More substantively, the amendments include the requirement to publish notice "...in a newspaper of general circulation in the county in which the source is to be located...". The current SIP only requires that the notice be published in the *Pa. Bulletin* or a newspaper. The regulations as amended in the proposed SIP revision require both, and as such represent a strengthening of the SIP.

III. Proposed Action

EPA's review of this material indicates that with the one noted exception, the proposed revisions to 25 Pa. Code 127, Subchapter B meet or exceed Federal requirements. EPA is proposing to grant limited approval to the Pennsylvania SIP revision, which was submitted on April 14, 2009. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those

imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action regarding streamlining amendments to Pennsylvania's plan approval process does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: March 28, 2012

W. C. Early, Acting
Regional Administrator,
Region III.

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