

PENNSYLVANIA
AIR QUALITY PERMIT STREAMLINING
25 Pa. Code Chapter 127, Subchapter B
37 Pa.B. 1317 (March 24, 2007)
Environmental Quality Board Regulation #7-408
(IRRC #2598)

Comment/Response Document

Pennsylvania Air Quality Permit Streamlining

On March 24, 2007, the Environmental Quality Board published a notice of public hearing and comment period on a proposed rulemaking concerning revisions to 25 Pa. Code Chapter 127 to streamline the air quality permitting process. The public comment period closed on May 25, 2007.

Three public hearings were held on the proposed rulemaking as follow:

April 24, 2007 Department of Environmental Protection
Southwest Regional Office
Waterfront A & B Conference Room
400 Waterfront Drive
Pittsburgh, PA 15222

April 24, 2007 Department of Environmental Protection
Rachel Carson State Office Building
Room 105
400 Market Street
Harrisburg, PA 17105

April 24, 2007 Department of Environmental Protection
Southeast Regional Office
Delaware Room
2 East Main Street
Norristown, PA 19401

This document summarizes the testimony received at the public hearings and the written comments received from the public during the public comment period. Each public comment is provided with the identifying commentator number for each commentator that made that comment. A list of the commentators including name, affiliation (if any), and location can be found at the beginning of this document. In addition, the comments received from the Senate Environmental Resources and Energy Committee and the Independent Regulatory Review Commission are summarized and responses provided.

The Environmental Quality Board invited each commentator to prepare a one-page summary of his or her comments. One one-page summary was submitted for this rulemaking.

Table of Commentators for the Environmental Quality Board
Air Quality Permit Streamlining Rulemaking #7-408
(IRRC #2598)

ID	Name/Address	Submitted one page Summary for distribution to EQB	Provided Testimony	Requested Copy of Final Rulemaking following EQB Action
1.	Michael Goldman Watsonstown, PA 17777			
2.	Pamela F. Faggert Dominion Resources Services Inc Glen Allen, VA 23060			
3.	Jeff A. McNelly ARIPPA Camp Hill, PA 17011	√		
4.	Elizabeth H. McMeekin PPG Industries Inc Allison Park, PA 15101-2009			
5.	Charles McPhedran Citizens for Pennsylvania's Future Philadelphia, PA 19102			√
6.	Kevin M. Stewart American Lung Association of Pennsylvania Lancaster, PA 17603			
7.	Michael A. Parker Group Against Smog and Pollution, Inc. Pittsburgh, PA 15217			
8.	Joseph Otis Miott Clean Air Council Philadelphia, PA 19103			
9.	Nathan Willcox PennEnvironment Philadelphia, PA 19102			
10.	Michael Fiorentino Mid-Atlantic Environmental Law Center Wilmington, DE 19803			

ID	Name/Address	Submitted one page Summary for distribution to EQB	Provided Testimony	Requested Copy of Final Rulemaking following EQB Action
11.	Nancy F. Parks Sierra Club Pennsylvania Chapter Aaronsburg, PA 16820-0120			
12.	Myron Arnowitt Clean Water Action Pittsburgh, PA 15222			
13.	Senator Mary Jo White Senator Raphael J. Musto Senate Environmental Resources and Energy Committee Harrisburg, PA 17120-3021			
14.	Independent Regulatory Review Commission Harrisburg, PA 17101			

General Support

1. Comment:

The commentator supports the Department’s efforts to streamline the air quality permitting process. (2)

The commentator supports the proposed revisions to §§ 127.44, 127.45, and 127.48. (4)

We are writing to express our support for the proposed Air Quality Permit Streamlining rulemaking. These draft revisions were approved for public comment at the Environmental Quality Board’s January 2007 meeting. We commend the Department for exploring opportunities to streamline permit review and approvals while ensuring that the public’s ability to submit substantive comments on permit applications is not negatively impacted. The proposed revisions will reduce costs to the regulated community, enhance coordination between the Department and permit applicants and ensure the timely review of minor source permit actions. The regulation will continue to ensure that the public receives timely notice and information regarding major plan approvals or permits. (13)

Response: The Department appreciates the commentators’ support of this rulemaking. The Department 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.

2. Comment:

The commentator would like to express its general support for the proposed amendments to Chapter 127. These revisions, with the incorporation of our recommended changes, will provide some additional operational flexibility to industry and will help ensure the timeliness of permit application processing. (4)

We encourage the Department to carefully consider the comments it receives from the public and regulated community on these revisions. Several comments shared with the Senate Environmental Resources and Energy Committee on this proposed rulemaking have offered constructive suggestions on how to further refine the plan notice and review process, and we are hopeful that these revisions will be included in the final rulemaking. (13)

Response: The Department appreciates the commentators' support of this rulemaking. The Department 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. The Department has carefully reviewed all of the comments and suggestions that were submitted. Each recommended change was considered for its impact on the program and incorporated when appropriate.

§ 127.12b. Plan approval terms and conditions.

3. Comment: The 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. This will provide affected entities more time to ensure that equipment can be operated in accordance with the terms and conditions of a permit. (2, 3, 4)

Response: The Department appreciates the commentators' support of this revision. Current stack test requirements are more complicated than in the past, requiring more time both for the applicant to conduct the stack test and for the Department to review the test protocols. The Department 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. This streamlines the plan approval application process by eliminating the time that would be used to apply for an extension when the original 120 days has expired.

§ 127.12d. Completeness determination.

4. Comments on § 127.12d(a):

The commentator states that industrial facilities seeking Plan Approvals for their operations develop detailed plans and timelines for implementing these operations. In order to facilitate this planning, companies schedule engineering, permitting, equipment

procurement, contractor mobilization, construction and many other activities months, even years, in advance. The commentator states that it would therefore greatly enhance this scheduling process if there were certainty in the amount of time it takes to process a Plan Approval. The commentator recommends that the Department adopt a deadline for issuance of the Completeness determination under § 127.12d. This could easily be accomplished by adding the language that follows in bold to § 127.12d(a): *"The Department will determine if an application for plan approval is administratively complete and will provide written notice of the completeness determination to the applicant **within 15 calendar days of receipt.**"* (2)

The commentator generally supports the proposed addition of § 127.12d as a means to formalize the permit application review process. However, the commentator recommends that a deadline for the Department to make the completeness determination be specified in the regulation. Specifying a timeframe by which the Department must issue the completeness determination will ensure that plan approval application processing times are kept to a minimum. For example, the Texas Commission on Environmental Quality (TCEQ), at 30 TAC 116.114(a)(1) [Subchapter B, New Source Review Permits], specifies:

“The executive director shall mail written notification informing the applicant that the application is complete or that it is deficient within 90 days of receipt of the application for a new permit, or amendment to a permit or special permit.

- (A) If the application is deficient, the notification must state:
 - (i) the additional information required; and
 - (ii) the intent of the executive director to void the application if the information for a complete application is not submitted.”

The TCEQ completeness review is for both administrative and technical completeness of the application. Since the completeness review proposed in § 127.12d is for administrative completeness only, the commentator recommends that a 30-day deadline for the Department to issue its completeness determination be adopted into the final rule language. (4)

Adequate, Streamlined and Reasonable Procedures: In its Preamble, the EQB cites 35 P.S. § 4006.1(b.3), which states:

The board shall by regulation establish **adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete** and for expeditious review of applications....
(Emphasis added.)

The procedures in Subsection (a) of the regulation require the Department to evaluate applications for completeness, but do not address when the Department must take action. To be consistent with 35 P.S. § 4006.1(b.3), the EQB should consider adding a time limit for Department action to Subsection (a). (14)

Response: Subsection (a) of § 127.12d of the final-form rulemaking will be revised to state that the Department will provide written notice of the completeness determination to the applicant within 30 days of receipt of an application.

Once the plan approval application is deemed administratively complete, the application must undergo a thorough technical review. More information may be required from the applicant during the technical review period. If a regulatory time limit is placed on the technical review phase, the Department may be forced to deny or reject a plan approval application if requested information is not made available to the Department in a timely manner. Furthermore, the Department has a money back guarantee program for certain classes of sources to mitigate the costs to the applicant of not receiving a plan approval application determination in a timely manner.

5. Comments on § 127.12d(b):

The commentator requests that the term "*other documents*" in § 127.12d(b) be expanded to be more specific. The commentator requests that the Department establish minimum guidelines on what needs to be submitted in a permit application. For example, other documents could be defined to be all required application forms, compliance history, application fee, maps, proof of permit notification to local/township, emissions inventory and Best Available Technology (BAT) review (if needed). Increasing the specificity of requirements allows affected facilities to submit complete applications that can then be reviewed for substance rather than completeness. (2)

Vague Language: Subsection (b) includes vague requirements for "necessary information" and "other documents." These subjective phrases do not give the regulated community the specific information needed to file a complete application. For clarity, we recommend that the phrases "necessary information" and "other documents" be replaced with the specific information needed to file an administratively complete application. (14)

Response: Subsection (b) of § 127.12d of the final-form rulemaking will be 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." Each plan approval application is unique, however, and it is not possible to stipulate, as part of this rulemaking, all of the information that will be required to conduct a thorough technical review for each plan approval application that may be submitted to the Department.

6. Comment on § 127.12d(c) - Adequate, Streamlined and Reasonable Procedures: In its Preamble, the EQB cites 35 P.S. § 4006.1(b.3), which states:

The board shall by regulation establish **adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete** and for expeditious review of applications....
(Emphasis added.)

The procedures in Subsection (c) of the regulation require the Department to evaluate applications for completeness, but do not address when the Department must take action. To be consistent with 35 P.S. § 4006.1(b.3), the EQB should consider adding a time limit for Department action to Subsection (c). (14)

Response: Subsection (a) of § 127.12d of the final-form rulemaking will be revised to state that the Department will provide written notice of the completeness determination to the applicant within 30 days of receipt of a plan approval application. Subsection (c) of § 127.12d will be revised to clarify that if the Department determines that the application is not administratively complete, the Department will send the applicant a written statement of the specific information, maps, fees and documents that are required to make the application administratively complete. If the applicant does not provide the requested information to the Department within 10 working days of receipt of the request, the Department will return the application and fees to the applicant.

7. Comments on § 127.12d(c):

The commentator requests that the language that follows in bold be added to § 127.12d(c): "*if the Department determines that the application is not administratively complete, the Department will **submit a written request to the Permittee to provide the required documents before deeming the application complete.***" Addition of this language can reduce the time needed to process an application if only a few minor documents are missing from the application package. The applicant can quickly provide those documents to the Department without needing to resubmit the whole application package. The commentator does not support language allowing for the return of the application and fees to the applicant, along with a written statement of the specific information, maps, fees and documents that are required to make the application administratively complete. (2)

Administratively Incomplete Applications: Under Subsection (c), if the Department finds that an application is incomplete, the Department will "return the application and fees to the applicant, along with a written statement of the specific information...required to make the application administratively complete." This commentator agrees with another commentator that the procedure would be less burdensome by allowing the opportunity to rectify the deficiency rather than essentially restarting the process by returning the application and fees. Why is it necessary to return the application and fees? (14)

Response: Subsection (a) of § 127.12d of the final-form rulemaking will be revised to state that the Department will provide written notice of the completeness determination to the applicant within 30 days of receipt of a plan approval application. Subsection (c) of § 127.12d will be revised to clarify that if the Department determines that the application is not administratively complete, the Department will send the applicant a written statement of the specific information, maps, fees and documents that are required to make the application administratively complete. If the applicant does not provide the requested information to the Department within 10 working days of receipt of the request, the Department will return the application and fees to the applicant.

§ 127.44. Public notice and § 127.45. Contents of notice.

8. **Comment:** Regarding existing Subsection (a). Why not simplify this whole section and merely retain items (5) and (6), since item (5) could be rewritten to state “Sources required to obtain plan approval”? This would include items (1— 4). (1)

Response: The proposed rulemaking revised subsection (a) of § 127.44 to new subsection (b) of § 127.44 and added a new subsection (a). The public notice requirements of new subsection (a) apply to all plan approval applications except plan approval applications subject to the notice requirements of subsection (b).

The notice of proposed plan approval issuance for plan approval applications subject to the notice requirements of subsection (b) of § 127.44 shall include the information listed in new subsection (b) of § 127.45. The sources subject to final-form rulemaking paragraphs (b)(1)-(4) of § 127.44 are major sources. The sources subject to final-form rulemaking subsection (a) and paragraph (b)(5) of § 127.44 are minor sources.

Plan approval applications for the major sources subject to paragraphs (b)(1)-(4) of § 127.44 are subject to public notice requirements beyond those required for the plan approval applications for minor sources. These additional notice requirements are specified in final-form subsection (c) of § 127.44 and include that the notice will be completed and sent by the Department to the applicant, the EPA, any state within 50 miles of the facility and any state whose air quality may be affected and that is contiguous to this Commonwealth. Additionally, the applicant shall, within 10 days of receipt of notice from the Department, publish the notice on at least 3 separate days in a prominent place and size in a newspaper of general circulation in the county in which the source is to be located. Proof of the publication of this newspaper notice shall be filed with the Department within 1 week thereafter.

Minor sources are not included in final-form paragraphs (b)(1)-(4) of § 127.44. Plan approval applications for minor sources are subject to the public notice requirements of either subsection (a) or paragraph (b)(5) of § 127.44. Minor sources subject to the notice requirements of paragraph (b)(5) of § 127.44 are sources for which the Department has determined there is substantial public interest. The notices for these minor sources shall include the information listed in new subsection (b) of § 127.45.

Plan approval applications for certain minor sources for which there is typically little public interest and for which the Department usually does not receive comment will be subject to the public notice requirements of new subsection (a) of § 127.44. The notice of receipt and intent to issue for these plan approvals shall be prepared in accordance with the requirements of new subsection (a) of § 127.45.

Combining major sources with minor sources would require that plan approval applications from owners or operators of certain minor sources would be subject to the additional newspaper notice requirements of final-form paragraph (c) of § 127.44. This would place an unnecessary burden on the owners and operators of these minor sources

with no environmental benefit. Issuing a notice of receipt and intent to issue for certain minor sources allows the Department to streamline the permitting process and focus scarce resources on those plan approval applications for which there is great public interest and environmental impact.

9. **Comment:** The 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 commentators state that under the new proposal, many sources required to obtain a plan approval will no longer be published in the *Pennsylvania Bulletin*. See proposed 25 *Pa. Code* § 127.44. This is a fundamental change that will make it harder for citizens to find out when sources are seeking permission for plant changes or even new construction. A new plant or an air emission change need not be subject to new source review to be a matter of concern to its neighbors, and the *Pennsylvania Bulletin* is the primary source for citizens to find out about such matters. The requirement to publish a notice in a newspaper in the county where the source is located does little to notify citizens of a neighboring county that will also be affected by pollution from the source. The Board should reject the Department's attempt to remove plan approvals from the *Bulletin* and thereby restrict citizen access to information.

The commentators further state that some plan approvals, including synthetic minor permit applications, will be published in the *Bulletin* only if the Department determines "there is substantial public interest" or "invites public comment." See proposed 25 *Pa. Code* § 127.44(b)(6) [sic]. With all due respect to the Department, it is hard to determine substantial public interest without publishing an action for public review. If the public is not aware of a proposal, the Department will hardly be able to determine whether it will provoke "substantial public interest." The Department should continue publishing all plan approvals in the *Bulletin*, and the Board should reject this proposal.

The commentators also state that the Department proposes to stop publishing the plan approval conditions in the *Bulletin*. See proposed 25 *Pa. Code* § 127.45(5). These conditions typically include emission limits, control technology, applicable standards, and other information essential to citizen evaluation of plan approvals. Removing this information from the *Bulletin* withdraws key information from public view and hampers citizen involvement. The alternative, making an appointment for a file review at a regional office, involves considerable resources that are not available to many citizens, and may not be possible in the time allowed for comment on a plan approval. The Board should reject this proposal and ensure that plan approval conditions continue to be published in the *Bulletin*.

The primary objective of the Air Pollution Control Act (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. (5, 6, 7, 8, 9, 10, 11, 12)

Response: The Department 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 the plan approval application notice requirements specify that the Department will continue to publish notice in the *Pennsylvania Bulletin* for all plan approval applications that it receives.

The proposed rulemaking revised the existing subsection (a) of § 127.44 (relating to public notice) to new subsection (b) of § 127.44. The proposed rulemaking added a new subsection (a) to § 127.44. Sources that were subject to existing paragraph (a)(5) of § 127.44 are now subject to new subsection (a) of § 127.44. These are sources for which there is typically little public interest and for which the Department does not usually receive comments.

The new subsection (a) specifies that the Department will publish in the *Pennsylvania Bulletin* a combined notice of receipt and intent to issue for each plan approval application that the Department receives, except plan approval applications subject to the notice of action requirements of new subsection (b).

The contents of the combined notice of receipt and intent to issue required for plan approval applications subject to the new subsection (a) of § 127.44 were specified in proposed paragraphs (a)(1)-(5) of § 127.44. Proposed paragraphs (a)(1)-(5) of § 127.44 will be deleted in the final-form rulemaking. The contents of the combined notice of receipt and intent to issue will be added at final in new subsection (a) of § 127.45 (relating to contents of notice). The notice of receipt and intent to issue must include the following:

- (1) The name and address of the applicant.
- (2) The location and name of the source or facility at which the construction, modification, reactivation or installation is proposed.
- (3) A brief description of the proposed action, including a brief description of the:
 - (i) Air contamination source to be constructed, modified, reactivated or installed.
 - (ii) Air cleaning device or control technology required including best available technology.
 - (iii) Type of conditions being placed in the plan approval with reference to applicable State and Federal requirements.
- (4) The type and quantity of air contaminants being emitted.

(5) The name and telephone number of a person to contact at the Department for additional information.

(6) A statement that a person may oppose the proposed plan approval by filing a written protest with the Department, at the appropriate regional office described in § 121.4 (relating to regional organization of the Department).

In addition to the requirements of new paragraphs (a)(1)-(6) of § 127.45, the notice of receipt and intent to issue will state, at a minimum, in accordance with the requirements of proposed subsection (f) of § 127.44, the following:

(1) The location at which the application may be reviewed. This location shall be in the region affected by the application.

(2) A 30-day comment period, from the date of publication, will exist for the submission of comments.

A plan approval application from the owner or operator of a source that is in the categories specified by new paragraphs (b)(1)-(5) of § 127.44 shall be subject to the public notice requirements of proposed new subsection (b) of § 127.45. The sources specified in new paragraphs (b)(1)-(5) of § 127.44 include:

(1) Sources subject to Subchapter D (relating to prevention of significant deterioration of air quality).

(2) Sources subject to Subchapter E (relating to new source review).

(3) Sources of VOCs that submit plan approval applications demonstrating compliance with Chapter 129 (relating to standards for sources) using § 129.51(a) (relating to general).

(4) Sources located within a Title V facility.

(5) Other sources for which the Department has determined there is substantial public interest or for which the Department invites public comment.

The public notice requirements for these sources are provided in new subsection (b) of § 127.45 and include the following:

(1) The name and address of applicant.

(2) The location and name of the source or facility at which construction, modification, reactivation or installation is proposed.

(3) The type and quantity of air contaminants being emitted.

(4) For sources subject to Subchapter D (relating to prevention of significant deterioration of air quality), the degree of increment consumption expected to result from the operation of the source or facility.

(5) A brief description of the conditions being placed in the plan approval with reference to applicable State and Federal requirements.

(6) A description of the procedures for reaching a final decision on the proposed plan approval action including:

- (i) The ending date for the receipt of written comments or written protests.
- (ii) Procedures for requesting a hearing and the nature of that hearing.
- (iii) Any other procedure by which the public may participate in the final decision.

(7) The name and telephone number of a person to contact at the Department for additional information.

(8) A statement that a person may oppose the proposed plan approval by filing a written protest with the Department, at the appropriate regional office described in § 121.4 (relating to regional organization of the Department).

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 complete plan approval conditions will be available for review at the location listed in the notice.

Furthermore, plan approval applications from the owners or operators of sources specified in paragraphs (b)(1)-(4) of § 127.44 have additional public notice requirements beyond those specified in proposed new subsection (b) of § 127.45. The additional notice requirements for plan approval applications for these sources are specified in revised subsection (c) of § 127.44 and include that the notice will be sent by the Department to the applicant, the EPA, any state within 50 miles of the facility and any state whose air quality may be affected and that is contiguous to this Commonwealth. Additionally, the applicant shall, within 10 days of receipt of notice from the Department, publish the notice on at least 3 separate days in a prominent place and size in a newspaper of general circulation in the county in which the source is to be located. Proof of the publication of this newspaper notice shall be filed with the Department within 1 week thereafter.

Therefore, contrary to the commentators' assertions, the Department is required to publish notice in the *Pennsylvania Bulletin* for all plan approval applications that are received. The addition of new subsection (a) of § 127.44 establishes procedures for the

Department to publish in the *Pennsylvania Bulletin* a combined notice of receipt and intent to issue for plan approval applications that are for sources not subject to new subsection (b) of § 127.44. The Department will continue to publish in the *Pennsylvania Bulletin* a notice of action to be taken for plan approval applications for sources subject to new subsection (b) of § 127.44, consistent with current and past practice. All notices will continue to provide a 30-day comment period for the public to comment on the plan approval applications.

In addition, the applicant submitting a plan approval application for certain sources is required to publish a notice of plan approval application on at least 3 separate days in a prominent place and size in a newspaper of general circulation in the county in which the source is to be located, consistent with the requirements of proposed subsection (c) of § 127.44.

10. Comment – Adequate Public Notice – Reasonableness; Need: The Preamble states that the Department of Environmental Protection (Department), as part of an effort to streamline the permitting process, 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.**" (Emphasis added.) We received two public comments in support of the amendments. However, a joint comment from eight organizations, dated May 25, 2007, was sent to the EQB urging rejection of the amendments. Specifically, the joint commentators cite concerns with the amendments in Sections 127.44, 127.44(b)(6) [sic] and 127.45(5), as they relate to public notice in the *Pennsylvania Bulletin*.

We recognize that, as amended, Section 127.45(5) would require "a brief description of the conditions being placed in the plan approval with reference to applicable State and Federal requirements." We also note that proposed Section 127.44(b)(5) is essentially the same as the existing requirement under Section 127.44(a)(6). Nonetheless, the EQB should explain further why these amendments are needed and how the amended regulation will provide adequate notice to the public. (14)

Response: The final-form rulemaking revises existing paragraphs (a)(5) and (6) of § 127.44 to paragraph (b)(5) of § 127.44 to read as follows:

“Other sources for which the Department has determined there is substantial public interest or for which the Department invites public comment.”

The sources that are subject to new paragraph (b)(5) of § 127.44 are certain minor sources for which the Department has determined that there is substantial public interest in commenting or for which the Department invites public comment. The Department is required to publish in the *Pennsylvania Bulletin* a notice of action to be taken for these plan approval applications, in accordance with the requirements of new subsection (e) of § 127.44. The contents of this notice of action to be taken shall meet the requirements of

new subsection (f) of § 127.44 and subsection (b) of § 127.45. The applicants submitting these plan approval applications are not subject to the additional newspaper notice requirements of new subsection (c) of § 127.44. This reduces the costs of the plan approval application process for these applicants, without reducing the ability of the general public to be notified about and comment on the plan approval application for these sources.

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 complete plan approval conditions will be available for review at the location listed in the notice.

These changes to the public notice provisions will result in expedited permitting for new and modified stationary air contamination sources, especially those with minimal potential for adverse environmental impact, while assuring that the public has an opportunity to thoroughly review and comment on the proposals. This expedited permitting will enable manufacturers to respond more quickly to changing production demands and improve productivity and profitability.

11. Comment – Public Notice – Reasonableness; Need; Clarity - § 127.44(b): There are three concerns. First, the EQB should explain why it needs to delete existing Paragraph (5), which requires notice for "other sources required to obtain plan approval." What sources would this amendment affect? Second, as amended, new Paragraph (5) discusses "other sources, including synthetic minor permit applications." In conjunction with the deletion of the requirement for notice of "other sources required to obtain plan approval," the EQB should provide more detail on the "other sources" that would be included. Finally, it is not clear what the phrase "including synthetic minor permit applications" encompasses. The EQB should define this phrase. (14)

Response: Sources that were subject to existing paragraph (a)(5) of § 127.44 are now subject to new subsection (a) of § 127.44. These are sources for which there is typically little public interest and for which the Department does not receive comments. The final-form rulemaking revises existing paragraphs (a)(5) and (6) of § 127.44 to paragraph (b)(5) of § 127.44 to read as follows:

“Other sources for which the Department has determined there is substantial public interest or for which the Department invites public comment.”

The words “including synthetic minor permit applications,” are deleted in the final-form rulemaking. The sources that are subject to new paragraph (b)(5) of § 127.44 are certain minor sources for which the Department has determined that there is substantial public interest in commenting or for which the Department invites public comment.

12. **Comment - § 127.44(c):** The commentator states that it is sometimes very difficult to quickly place an advertisement in a publication and obtain proof of publication. The commentator suggests that the Department consider slightly increasing the amount of time given to applicants for these activities by adding the language that follows in bold to § 127.44(c): "*the notice required by subsection (b)(1)—(4) will be completed and sent by the Department to the applicant, the EPA, and any state within 50 miles of the facility and any state whose air quality may be affected and that is contiguous to this Commonwealth. The applicant shall, within 10 working days of receipt of notice, publish the notice on at least 3 separate days in a prominent place and size in a newspaper of general circulation in the county in which the source is to be located; proof of the publication shall be filed with the Department within [1 week] 10 working days thereafter. A plan approval will not be issued by the Department in the event of failure by the applicant to submit the proof of publication.*" (2)

Response: The Department has retained the existing requirements of 10 days and 1 week. These existing requirements have not been a problem in the past and the Department does not foresee these requirements to be a problem in the future.

13. **Comment - § 127.45 – Contents of notice – Reasonableness; Need:** As amended, Paragraph (5) would no longer require a "description of the reasons" for including conditions. Why is the description of the reasons no longer needed? (14)

Response: 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 complete plan approval conditions will be available for review at the location listed in the notice.

Other

14. **Comment:** Industrial facilities seeking Plan Approvals for their operations develop detailed plans and timelines for implementing these operations. In order to facilitate this planning, companies schedule engineering, permitting, equipment procurement, contractor mobilization, construction and many other activities months, even years, in advance. It would therefore greatly enhance this scheduling process if there were certainty in the amount of time it takes to process a Plan Approval. The commentator recommends that the Department adopt a deadline for issuance (or denial) of a Plan Approval once the Completeness Determination under § 127.12d has been established. This could easily be accomplished by adding a new section as follows in bold: "**§ 127.12e. Permit Issuance. The Department shall, within a reasonable amount of time not to exceed sixty calendar days after receipt of a complete application, issue or deny a Plan Approval for sources subject to these rules.**" (2)

Response: Once the plan approval application is deemed administratively complete, the application must undergo a thorough technical review. More information may be required from the applicant during the technical review period. If a regulatory time limit is placed on the technical review phase, the Department may be forced to deny or reject a plan approval application if the requested information is not available. This would then require the applicant to start the plan approval application process all over again. Furthermore, the Department has the money back guarantee program for certain classes of sources to mitigate the costs to the applicant of not receiving a plan approval application determination in a timely manner.

15. **Comment:** The commentator requests that the members of the Board consider the unique nature of circulating fluidized bed (CFB) technology employed by the commentator's facilities, and the environmental benefit that these companies provide to the Commonwealth by combusting waste coal, while considering the commentator's other comments. (3)

Response: The requirements of the proposed rulemaking will apply equally to all facilities and technologies without regard for the applicant's perceived level of environmental benefit to the Commonwealth.

16. **Comment:** The commentator requests that the Department amend the regulations to allow for a reasonable time period for approval of trial burns of "opportunity fuels" of previously known characteristics. A facility that experiences 'opportunity fuel' availability (like Bio-waste, a fuel that is not a steady ongoing stream of fuel or source) doesn't normally have a window of 120- or 180-days in length to take action on same. In many situations, previous combustion of such "opportunity fuel" has occurred at some other plant or facility, accordingly, combustion characteristics may be known by the Department, and review should be fairly simple. The commentator concurs that 'first time' efforts may require additional review, but previous approved alternate "opportunity fuels" should not be relegated to that category. Current Department administration of alternate fuel use requests, even under the proposed changes, may actually inhibit use of any fuel source not currently in a facility's Title V permit, and may not enhance energy efficiency or reduction of solid waste through common sense use in CFB combustors. Accordingly, the commentator asks the Department to consider modifying the proposed regulations to allow for a reasonable time period for approval of trial burns of "opportunity fuels" of previously known characteristics. Such 'inclusion' may be based on the results of other unit testing when available. (3)

Response: 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 certain trial burns of "opportunity fuels." Exemptions can be determined from the existing list of sources or through the use of a request for determination form. Many de minimis and trivial sources will be exempted through these provisions. If an exemption cannot be granted, then the Department has available, as described in § 127.611 (relating to general

plan approvals and general operating permits), a number of general plan approvals and operating permits which are issued within 30 days.

17. **Comment – *Miscellaneous Clarity:*** There is inconsistent language in the regulation. Paragraph 127.44(a)(2) refers to the plant or facility "at which the construction, modification, reactivation or installation is proposed," but Paragraph (a)(3) only mentions equipment "to be installed or modified." In addition, Paragraph 127.45(2) only refers to the plant or facility at which "construction, modification or installation is proposed." Why do the words "reactivation" and "construction" appear in some provisions, but not others? (14)

Response: New paragraphs (a)(2), (a)(3)(i) and (b)(2) of § 127.45 have been revised to include construction, modification, reactivation or installation to assure consistency throughout the regulation.

18. **Comment – *Miscellaneous Clarity:*** Paragraph 127.44(a)(4) requires "a person" to contact for additional information. This provision should specify whether the person to contact would be a representative of the applicant or would be someone from the Department's regional office. (14)

Response: New paragraphs (a)(5) and (b)(7) of § 127.45 have been revised to state that the person to contact is at the Department.