



Pennsylvania  
**Department of  
Environmental Protection**

**COMMENT AND RESPONSE  
DOCUMENT**

**Legal Authority for Delegation of Federal Plans  
in 40 CFR Part 62**

25 Pa. Code Chapter 122

55 Pa.B. 4188 (June 21, 2025)

Environmental Quality Board Regulation #7-585  
(Independent Regulatory Review Commission #3439)

## INTRODUCTION

The Environmental Quality Board (EQB) adopted the Legal Authority for Delegation of Federal Plans in 40 CFR Part 62 proposed regulation at its meeting on April 8, 2025. The proposed rulemaking would provide the express legal authority for the Department of Environmental Protection (Department or DEP) to request delegation of authority from the United States Environmental Protection Agency (EPA) to implement and enforce the requirements of an applicable Federal Plan established by the EPA in 40 CFR Part 62 (relating to approval and promulgation of state plans for designated facilities and pollutants). This delegation of authority by the EPA would allow DEP to directly implement and enforce the Federal standards of performance applicable to the owners and operators of existing stationary sources (designated facilities) of an air pollutant (designated pollutant) located in Pennsylvania and under DEP's jurisdiction in the absence of an EPA-approved State Plan.

On May 22, 2025, DEP submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Environmental Resources and Energy Committee and House Environmental and Natural Resource Protection Committee for review and comment in accordance with section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)).

## PUBLIC COMMENT PERIOD

On June 21, 2025, the EQB published the proposed rulemaking in the *Pennsylvania Bulletin*, (55 Pa.B. 4188) for a 69-day comment period. The EQB held three public hearings on this proposed rulemaking on July 22, 2025, at 10:00 a.m. at the Southwest Regional Office; July 24, 2025, at 2:00 p.m. at the Rachel Carson State Office Building; and July 29, 2025, at 10:00 a.m. at the Southeast Regional Office. The public comment period closed on August 29, 2025. During the public comment period, the EQB received 21 comments, including testimony from one witness at the public hearings. IRRC also provided comments on the proposed rulemaking.

This document summarizes the written comments received during the public comment period and the testimony received at the public hearings. The comments received from IRRC are generally copied verbatim with minor clarifying edits as necessary. Responses are provided for all comments. For the purposes of this document, comments of similar subject matter are grouped together and responded to accordingly.

A list of the commentators including name, affiliation (if any), and location can be found on page four. The comment identification list also includes identification numbers for each comment submission, which are referenced in parentheses following each comment in this document.

## COPIES OF COMMENTS

All comments received by the EQB during the public comment period are posted on the Department's eComment website at the following link:

<https://www.ahs.dep.pa.gov/eComment/ViewComments.aspx?enc=DN064MT8R38NKyiRv2iU7N6mIDXCGJ6ZPWSdxPvvrwE%3d>

Additionally, copies of all comments received by the EQB on this rulemaking are posted on IRRC's website at the following link:

<https://irrc.state.pa.us/regulations/RegSrchRslts.cfm?ID=3454>

## COMMENT IDENTIFICATION LIST

<b>ID</b>	<b>Name</b>	<b>Affiliation (if any)</b>	<b>City</b>	<b>State</b>
1	David Sumner	Independent Regulatory Review Commission	Harrisburg	PA
2	Todd Pappasergi	Pennsylvania Independent Oil & Gas Association	Warrendale	PA
3	Kirstin Brug		Philadelphia	PA
4	Ashley Shartle		Doylestown	PA
5	Nicole Quenelle		Philadelphia	PA
6	Susan Edwards		Swarthmore	PA
7	Margaret Kern		Blue Bell	PA
8	Frances Coco		Pittsburgh	PA
9	Benjamin John Chiszar, MPA, MS		Pittsburgh	PA
10	Beth Hartzel		New Cumberland	PA
11	David Eldridge		Wynnewood	PA
12	Diane Armstrong		Willow Grove	PA
13	Meg Nasky		Mt Pleasant	PA
14	Marie Norman		Pittsburgh	PA
15	Rebecca Krug		Saint Marys	PA
16	Maryann Trinkle		York	PA
17	Christine Belden		Yardley	PA
18	Deanna Malinosky		Harrisburg	PA
19	Christel Badey		Media	PA
20	Christine Van drie		Sewickley	PA
21	Kelly VandenBosche		Pittsburgh	PA
22	Jan Spano		Finleyville	PA

No commentators requested a copy of the final-form rulemaking.

### ACRONYMS AND ABBREVIATIONS USED IN THIS DOCUMENT

DEP or Department – Pennsylvania Department of Environmental Protection  
 EPA – United States Environmental Protection Agency  
 IRRRC – Independent Regulatory Review Commission

## COMMENTS

- 1. Comment:** IRRC asks “How does the Department determine whether to submit State Plans or request delegation of authority to implement and enforce Federal Plans?” (1)

IRRC also asks “How does the Department evaluate the various impacts, including fiscal, of implementing Federal Plans on Pennsylvania’s industry?” (1)

An industry trade association is concerned that the proposed regulation enables “DEP to assume immediate enforcement of federal model rules or plans in situations where a state plan has not been approved” or where DEP did not prepare and submit a State Plan, which results in the use of data and rules “not fit for Pennsylvania.” (2)

**Response:** DEP typically does not request delegation of a Federal Plan under 40 CFR Part 60. The EPA develops and promulgates emissions guidelines under 40 CFR Part 60 to establish a minimum level of emission control for existing sources. In the history of the Clean Air Act, the EPA has only promulgated eleven emissions guidelines for any type of existing sources. The emissions guidelines are enforced through either a State Plan or Federal Plan. DEP has only elected to request delegation of authority to enforce a Federal Plan three times.

The decision to choose to request delegation of a Federal Plan is case-specific. When deciding whether to request delegation of authority for a Federal Plan in Pennsylvania or to develop its own State Plan, DEP evaluates several factors. DEP looks at the number and type of facilities and sources affected by the emissions guidelines, if and how those sources are currently being regulated, the complexity of the new federal requirements, possible emissions reductions, and whether existing mechanisms are sufficient to enforce the requirements in the guidelines, or if pursuing customization by developing a State Plan is appropriate for Pennsylvania. DEP identifies the most efficient and effective option to implement the emissions guidelines, balancing the effect on the regulated community with the resources required to develop a State Plan.

For example, in 2022, DEP requested delegation of a Federal Plan for the Emissions Guidelines for Municipal Solid Waste Landfills. In this instance, all affected facilities were already operating under a permit, so the only regulatory change was to incorporate the federal standards into the facilities’ permits. Because the Federal Plan mirrors the emissions guidelines of the federal regulation, there is no difference of effect on the regulated community. A State Plan would have been the same as the Federal Plan. While the impact on the regulated community was the same for either option, a request for delegation of a Federal Plan requires significantly less DEP staff resources than developing a State Plan. Therefore, DEP concluded that a Federal Plan was the most efficient and effective option to implement the emissions guidelines.

By requesting to enforce the regulatory requirements through delegated authority of a Federal Plan, DEP is not imposing any requirements on the owners and operators of regulated sources that are not already federally mandated.

2. **Comment:** IRRC asks “What opportunities exist for stakeholder input and consensus building when the Department requests delegation of authority to implement and enforce Federal Plans?” An industry trade association is also concerned that requesting delegated authority to implement a Federal Plan may eliminate stakeholders’ opportunity to provide input on proposed regulatory requirements. (1, 2)

**Response:** Stakeholders have the opportunity to provide input to DEP during the public comment period on the agency’s request for delegation of authority to implement and enforce a Federal Plan, as well as providing comments to the EPA in its development of the emissions guidelines and Federal Plan.

When DEP considers requesting delegation of authority of a Federal Plan from the EPA, the Department publishes the formal “Request for Delegation of Authority” in the *Pennsylvania Bulletin* and opens a 30-day public comment period. Stakeholders may submit public comments to the Department during this comment period. DEP reviews and considers public comments when finalizing the request for delegation of authority to the EPA. Should stakeholders provide additional information for consideration that is important to Pennsylvania’s ability to implement the federal requirements, DEP may elect to develop a State Plan in order to better serve needs of the regulated sources to achieve compliance.

As discussed in the response to Comment #1, a Federal Plan mirrors the requirements included in the emissions guidelines, which DEP would be required to include in a State Plan if choosing that option. DEP may not include requirements in a State Plan that do not meet the emissions guidelines. Stakeholders’ opportunity to provide input on regulatory requirements occurs at the federal level.

The EPA provides opportunities for stakeholders to provide input during public comment period for the proposed rulemaking to establish the emissions guidelines and, subsequently, during the public comment period for the Federal Plan to enforce the emissions guidelines requirements. The EPA publishes proposed rules and regulations for public comment in the Federal Register and online at Regulations.gov.

3. **Comment:** An industry trade association is concerned that the proposed regulation would be a significant expansion of DEP’s enforcement powers. The association states that “[by] accepting delegation of Federal Plans, DEP would likely become the primary enforcer of federal rules that historically were the responsibility of EPA. This shift risks duplicative inspections, higher penalties, and greater administrative burdens.” (2)

**Response:** DEP clarifies for the industry trade association that this rulemaking does not change the process or practice of implementing State Plans or Federal Plans in Pennsylvania or duplicate enforcement. It only seeks to explicitly codify in DEP’s regulations this authority already granted under Section 111 of the Clean Air Act (42 U.S.C. § 7411). The state is not expanding its enforcement powers. The regulation is only acknowledging a process already articulated in the federal Clean Air Act.

EPA develops and promulgates individual emissions guidelines under 40 CFR Part 60 to establish a minimum level of emission control for existing sources. The mandatory emissions

guidelines, enforced through a State Plan or Federal Plan, are the standard that must be achieved by the regulated industry and are listed in 40 CFR Part 60. States can decide whether the Federal Plan can seamlessly be applied to the state sources or if a customized approach is warranted. This is authority given under the Clean Air Act at 42 U.S.C. § 7411(d).

Each state may develop and submit to the EPA a procedure for implementing and enforcing the federal standards, which is a State Plan. If the EPA finds the state's procedure is adequate, the EPA will approve the State Plan. The state delegated agency is then responsible for implementation and enforcement of the standard. The emissions guidelines in the Federal Plans are the standard requirements for the regulated industry and are federally enforceable by the EPA.

Under the Clean Air Act, there are three options for enforcement of the emissions guidelines requirements: an EPA approved State Plan, a Federal Plan delegated to the state to implement and enforce, or a Federal Plan administered by the EPA if no State Plan or delegation is requested. Therefore, this regulation would not duplicate enforcement. Either the state or the EPA would enforce the emissions guidelines requirements, not both.

4. **Comment:** The commentators are generally supportive of the proposed rulemaking and state that the rulemaking is needed to ensure enforcement of federal rulemakings. (3–8)

The commentators are generally supportive of clean air, water and the environment. (10–22)

**Response:** DEP acknowledges the comments.

5. **Comment:** A commentator asks why the public hearings for the proposed rulemaking were “so poorly noticed.” (9)

**Response:** DEP follows the public participation requirements under Section 111 of the Clean Air Act at 42 U.S.C. § 7411, and the Pennsylvania Air Pollution Control Act (APCA) (35 P.S. §§ 4001—4015). The EPA's regulations regarding public participation, under 42 U.S.C. § 7411(b)(1)(B), provide that “The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations.” Section 7 of the APCA (35 P.S. §§ 4007) requires public hearings to be held in the area concerned and that “notice to the public of the time and place of any public hearing shall be given at least thirty days prior to the scheduled date of the hearing by public advertisement in a newspaper or newspapers of general circulation in the region of the Commonwealth affected.”

The notification for this proposed rulemaking, and the associated public hearings, was published in 11 newspapers throughout the state, specifically, the Erie Times, the Harrisburg Patriot News, Pittsburgh Post-Gazette, Reading Eagle, Scranton Times-Tribune, Wilkes-Barre Times Leader, Williamsport Sun Gazette, Allentown Morning Call, Altoona Mirror, Bucks County Courier Times, and Delaware County Daily Times.

Additionally, notification was published in the *Pennsylvania Bulletin* at 55 Pa.B. 4188 that this proposed rulemaking was open for public comment and hearings would be held. Notice of the proposed rulemaking's publication and public comment period, which includes details

on public hearings, is emailed to all members of the public who have signed up for “Air” or “Rulemaking” notices on DEP’s electronic notification system, [eNotice](#). DEP also posts information on all public hearings for proposed regulations on the [Environmental Quality Board’s website](#).

6. **Comment:** A commentator is concerned as to why this proposed rulemaking only applies to new sources and what happens to existing polluters. Additionally, the commentator asks if there are any legal impediments to expanding this proposed rulemaking to all polluters. (9)

**Response:** This rulemaking provides the express legal authority for DEP to request delegation from the EPA to implement and enforce the requirements of an applicable Federal Plan for existing sources (that is, controls for emissions of an air pollutant) established by the EPA under 40 CFR Part 62 (relating to approval and promulgation of state plans for designated facilities and pollutants). New sources are already regulated under DEP’s existing regulations. DEP has authority under 25 Pa. Code § 122.3 to implement and enforce the requirements of an applicable New Source Performance Standard for new sources promulgated by the EPA in 40 CFR Part 60 under section 111 of the Clean Air Act.

7. **Comment:** A commentator submitted comments on several topics that are not relevant to the proposed rulemaking. These topics ranged from the ownership of the Pittsburgh Pirates and of U.S. Steel, to funding for public schools, the condition of transportation infrastructure, vaccinations, and climate change impacts. (9)

**Response:** DEP acknowledges these comments; however, they are unrelated to the purpose and outside the scope of the rulemaking.