



pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Bureau of Air Quality

Draft Proposed Rulemaking to Amend 25 Pa. Code Chapter 122 National Standards of Performance for New Stationary Sources

Air Quality Technical Advisory Committee
April 4, 2024

Josh Shapiro, Governor

Jessica Shirley, Acting interim Secretary

Background

- Section 111 of the Clean Air Act (CAA) requires the EPA to establish mechanisms for the control of emissions of air pollutants from designated categories of stationary sources.
- Section 111(d) of the CAA requires the EPA to establish standards of performance for the control of an air pollutant from an existing stationary source in a designated source category.
- Under section 111(d), the EPA issues standards of performance, known as “emission guidelines,” for the control of emissions of any air pollutant from an existing source in the designated category.

Background

- The applicable emission guidelines are implemented and enforced by State, Local, and Tribal (SLT) jurisdictions with existing sources through plans timely submitted to and approved by the EPA.
- Section 111(d) also provides the EPA the authority to prescribe a plan [*Federal Plan*] for a State, Local, or Tribal Agency that has failed to timely submit a satisfactory plan [*State, Local, or Tribal Plan*] to implement and enforce the standards of performance (emission guidelines) for subject existing stationary sources.

Background

- A State with existing sources in the covered category is required to implement and enforce the standards of performance issued in the applicable emission guidelines through a State Plan approved by the EPA or through a Federal Plan issued by the EPA and delegated to the State.
- If a State has not timely submitted an approvable State Plan to the EPA to implement the applicable emission guidelines for a category of sources prior to the EPA issuing a Federal Plan for the category of sources, there are two mechanisms for transferring implementation authority of the applicable emission guidelines to the State Agency.

Background

- The first mechanism is the EPA reviews and approves a State Plan implementing the emission guidelines that the State submits to the EPA for approval after the Federal Plan is in effect.
- The second mechanism provides for the EPA to delegate authority to implement and enforce the applicable Federal Plan to a State if the State does not submit and obtain approval of its own plan.
- The State must formally request delegation of a Federal Plan from the EPA.

Reason for the Proposed Rulemaking

- Historically, the Department has submitted State Plans and requests for delegation of Federal Plans to the EPA citing 25 Pa. Code § 122.3 (relating to adoption of standards) for the express legal authority to do so.
- These State Plans and requests for delegation were approved by the EPA and codified in 40 CFR Part 62, Subpart NN.
- The EPA, however, recently indicated to the Department that the Department's request submitted on February 3, 2022, for delegation of the Federal Plan established in 40 CFR Part 62, Subpart OOO, for Municipal Solid Waste Landfills cannot be approved because § 122.3 does not explicitly include the adoption and incorporation by reference of Federal Plans established in 40 CFR Part 62.

Reason for the Proposed Rulemaking

Therefore, the Department is proposing a rulemaking to amend 25 Pa. Code Chapter 122 to provide the express legal authority for the Department to do either of the following, as appropriate:

- 1) Adopt and submit to the EPA for approval a State Plan developed in accordance with 40 CFR Part 60, Subparts B and Ba.
- 2) Request delegation from the EPA to implement and enforce the requirements of an applicable Federal Plan established by the EPA under 40 CFR Part 62.

Proposed Rulemaking Outcomes

- This proposed rulemaking is designed to provide the express legal authority for the Department to submit a State Plan or to request delegation of a Federal Plan to implement and enforce applicable emission guidelines.
- If promulgated as a final-form rulemaking, this amendment will allow the Department to implement and enforce the emission guidelines applicable to the owners and operators of existing stationary sources located in this Commonwealth.

Entities Subject to Proposed Rulemaking

Emission guidelines implemented and enforced as a State Plan or as a delegated Federal Plan would apply to the owner and operator of an existing facility in the covered source category.

Draft Proposed Rulemaking

The Department proposes to amend 25 Pa. Code Chapter 122 (relating to National standards of performance for new stationary sources) by adding §§ 122.4 and 122.5.

- § 122.4. Adoption of Federal Plans for existing sources.
- § 122.5. Implementation and enforcement of emission guidelines and Federal Plans for existing sources.

Additional Information

The proposed rulemaking package, including the executive summary, preamble, proposed Annex A, and regulatory analysis form will be made available online when the proposed rulemaking is added to a meeting agenda for consideration by the Environmental Quality Board.

Anticipated Rulemaking Schedule

- Air Quality Technical Advisory Committee – April 4, 2024
- Small Business Compliance Advisory Committee – April 17, 2024
- Citizens Advisory Council Policy and Regulatory Oversight Committee – May 2024
- Citizens Advisory Council – May/June 2024
- Environmental Quality Board – Third Quarter 2024
- Proposed Rulemaking Published in the *Pennsylvania Bulletin* – Fourth Quarter 2024



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