APPENDIX E:

PA Air Pollution Control Act, and Applicable Permitting Regulations

APPENDIX E:

Appendix E-1: Pennsylvania's Air Pollution Control Act
Appendix E-2: Applicable Permitting Regulations

Appendix E-1: PA Air Pollution Control Act

CHAPTER 23

AIR POLLUTION

For Title 35 Pa.C.S.A., see Appendix following this Title

Cross References

Smoke control, diesel powered motor vehicles, see 75 Pa.C.S.A. § 4532.
Solid waste-resource recovery development, see 35 P.S. § 755.1 et seq.
Tax exemption, see 72 P.S. § 7602.1.
Transfer of powers and duties of Air Pollution Commission to Department of Environmental Resources, see 71 P.S. § 510–1.

Pennsylvania Code References

Air resources, see 25 Pa. Code § 121.1 et seq.
Disbursements from the clean air fund, see 25 Pa. Code § 143.1 et seq.
General provisions, see 25 Pa. Code § 121.1 et seq.
Standards for contaminants, see 25 Pa. Code § 123.1 et seq.

§ 4001. Short title

This act shall be known and may be cited as the "Air Pollution Control Act."

1960, Jan. 8, P.L. (1959) 2119, § 1.

Historical and Statutory Notes

Title of Act:

An Act to provide for the better protection of the health, general welfare and property of the people of the Commonwealth by the control, abatement, reduction and prevention of the pollution of the air by smokes, dusts, fumes, gases, odors, mists, vapors, pollens and similar matter, or any combination thereof; imposing certain powers and duties on the Department of Environmental Resources, the Environmental Quality Board and the Environmental Hearing Board; establishing procedures for the protection of health and public safety during emergency conditions; creating a stationary air contamination source permit system; providing additional remedies for abating air pollution; reserving powers to local political subdivisions, and defining the relationship between this act and the ordinances, resolutions and regulations of counties, cities, boroughs, towns and townships; imposing penalties for violation of this act; and providing for the power to enjoin violations of this act; and conferring upon persons aggrieved certain rights and remedies. 1960, Jan. 8 P.L. (1959) 2119. Amended 1972, Oct. 26, P.L. 989, No. 245, § 1.

Cross References

Solid waste management, see 35 P.S. § 6018.101 et seq.

Law Review and Journal Commentaries

Air pollution control in Allegheny County—Will it be smothered by appellate procedure? 8 Duq.L.Rev. 395 (1970).

Ecology and environment developments. Douglas R. Blazey, 49 Pa.B.A.Q. 93 (1977).

Environmental regulation and the Bankruptcy Act. Howard J. Wein, 17 Duq.L.Rev. 133 (1978–79).

Imposition of civil penalties on electric utility for violation of "technologically infeasible" sulfur dioxide emission standard. 54 Temp.L.Q. 597 (1981).

Legal aspects of interstate air pollution problems. Kenneth L. Hirsch and Steven Abramovitz, 18 Duq.L.Rev. 53 (1979).

Pollution—right of private enforcement. Henry T. Reath, 43 Pa.B.A.Q. 238 (1972).

Notes of Decisions

Purpose of law 2
Validity 1

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1. Validity

Air Pollution Control Act does not constitute unlawful delegation of legislative authority to Air Pollution Commission and state Department of Health. Bortz Coal Co. v. Air Pollution Commission, 279 A.2d 388, 2 Pa.Cmwlth. 441, Cmwlth. 1971.

Exclusion of governmental bodies from penalty section of Air Pollution Control Act does not constitute unlawful discrimination in violation of State and Federal constitutions. Bortz Coal Co. v. Air Pollution Commission, 279 A.2d 388, 2 Pa. Cmwlth. 441, Cmwlth.1971.

Regulation of Air Pollution Commission establishing limits for particulate matter emissions was reasonably understandable and adequately specific and therefore legally sufficient. Bortz Coal Co. v. Air Pollution Commission, 279 A.2d 388, 2 Pa.Cmwlth. 441, Cmwlth.1971.

2. Purpose of law

Purpose behind Air Pollution Control Act and provisions contained therein is to provide people of the Commonwealth with air which is of a higher quality than that required by Federal law. Com., Dept. of Environmental Protection v. Pennsylvania Power Co., 384 A.2d 273, 34 Pa.Cmwlth. 546, Cmwlth.1978.

§ 4002. Declaration of policy

(a) It is hereby declared to be the policy of the Commonwealth of Pennsylvania to protect the air resources of the Commonwealth to the degree necessary for the (i) protection of public health, safety and well-being of its citizens; (ii) prevention of injury to plant and animal life and to property; (iii) protection of the comfort and convenience of the public and the protection of the recreational resources of the Commonwealth; (iv) development, attraction and expansion of industry, commerce and agriculture; and (v) implementation of the provisions of the Clean Air Act in the Commonwealth.

(b) It is further declared that:

(1) Interstate pollution transport commissions established under the Clean Air Act should develop pollution control strategies via a process which involves public review and opportunity for comment.

(2) The public should be involved in developing and committing the Commonwealth to the adoption of particular pollution control strategies through review of State implementation plans required to be submitted by the Clean Air Act.

(3) The department should have adequate staff and technical resources needed to comply with the Clean Air Act. The department shall be required to explore the role private industry can play in developing and implementing the clean air programs as a mechanism to insure the Commonwealth meets Clean Air Act deadlines.

(4) States should not be penalized for missing Clean Air Act deadlines when the delay is the result of the Federal Government not finalizing guidance to states on implementing the act. The Commonwealth and other states must be given a reasonable opportunity to meet Clean Air Act deadlines.

1960, Jan. 8, P.L. (1959) 2119, § 2. Amended 1968, June 12, P.L. 163, No. 92, § 1; 1992, July 9, P.L. 460, No. 95, § 1, imd. effective.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment designated the former text as subsec. (a), added cl. (v), and added subsec. (b).

Library References

Environmental Law ⇐241.
States ⇐6.

Westlaw Topic Nos. 149E, 360.
C.J.S. States §§ 31 to 32, 143.

Notes of Decisions

1. Legislative intent

Purpose behind Air Pollution Control Act and provisions contained therein is to provide people of the Commonwealth with air which is of a higher quality than that required by Federal law. Com., Dept. of Environmental Protection v. Pennsylvania Power Co., 384 A.2d 273, 34 Pa.Cmwlth. 546, Cmwlth.1978.

Legislative intent, in enacting Air Pollution Control Act and creating Air Pollution Commission under the Department of Health with directions to establish rules, regulations and standards for enforcement of the Act, is to clean the air insofar as is reasonably possible under police powers granted to the Commonwealth in both State and Federal Constitutions. Bortz Coal Co. v. Air Pollution Commission, 279 A.2d 388, 2 Pa.Cmwlth. 441, Cmwlth.1971.

2. State interests

Establishment of sulfur dioxide emission levels, by seeking to reduce air pollution, serves legitimate state interest of maintaining health of citizenry of the state. Com., Dept. of Environmental Resources v. Pennsylvania Power Co., 416 A.2d 995, 490 Pa. 399, Sup.1980.

Protection of air resources is matter of highest priority in the Commonwealth. Com., Dept. of Environmental Resources v. Locust Point Quarries, Inc., 396 A.2d 1205, 483 Pa. 350, Sup.1979.

3. Regulations

In order to challenge reasonableness of air quality regulation, quarry operator would have to allege that regulation was not rationally related to legislative objectives set forth in the Air Pollution Control Act and mandated by the Clean Air Act Amendments, and would have to present evidence to establish that regulation, per se or as applied, would not aid in reaching mandated national ambient air quality standards and that proscribed activity was insignificant as cause of air pollution. Com., Dept. of Environmental Resources v. Locust Point Quarries, Inc., 396 A.2d 1205, 483 Pa. 350, Sup.1979.

4. Economic impact

Where language of Air Pollution Control Act is mandatory, department of environmental resources must enforce mandatory provisions regardless of economic consequences, but if Act gives DER discretionary authority to act, i.e., setting up timetables, levying fines, granting waivers, etc., DER must consider economic impact of its actions. Rochez Bros., Inc. v. Com., Dept. of Environmental Resources, 334 A.2d 790, 18 Pa.Cmwlth. 137, Cmwlth.1975.

Department of environmental resources and environmental hearing board may not waive a mandatory provision of Air Pollution Control Act because of adverse economic consequences. Rochez Bros., Inc. v. Com., Dept. of Environmental Resources, 334 A.2d 790, 18 Pa. Cmwlth. 137, Cmwlth.1975.

§ 4003. Definitions

The following words and phrases, when used in this act, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this section:

"Administrator." The Administrator of the United States Environmental Protection Agency.

"Air contaminant." Smoke, dust, fume, gas, odor, mist, radioactive substance, vapor, pollen or any combination thereof.

"Air contamination." The presence in the outdoor atmosphere of an air contaminant which contributes to any condition of air pollution.

"Air contamination source." Any place, facility or equipment, stationary or mobile, at, from or by reason of which there is emitted into the outdoor atmosphere any air contaminant.

"Air pollution." The presence in the outdoor atmosphere of any form of contaminant, including, but not limited to, the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic, hazardous or radioactive substances, waste or

any other matter in such place, manner or concentration inimical or which may be inimical to the public health, safety or welfare or which is or may be injurious to human, plant or animal life or to property or which unreasonably interferes with the comfortable enjoyment of life or property.

"Approved air pollution control agency." An air pollution control agency of any political subdivision of the Commonwealth which has been granted approval by the Environmental Quality Board.

"Board" or **"EQB."** The Environmental Quality Board.

"Clean Air Act." Public Law 95–95 as amended, 42 U.S.C. § 7401 et seq.

"Department." The Department of Environmental Resources of the Commonwealth.

"Environmental Protection Agency" or **"EPA."** The United States Environmental Protection Agency or the Administrator of the United States Environmental Protection Agency.

"Gasoline-dispensing facility." A facility from which gasoline is transferred to motor vehicle fuel tanks.

"Hearing board." The Environmental Hearing Board.

"Person." Any individual, public or private corporation for profit or not for profit, association, partnership, firm, trust, estate, department, board, bureau or agency of the Commonwealth or the Federal Government, political subdivision, municipality, district, authority or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

"Plan approval." The written approval from the Department of Environmental Resources which authorizes a person to construct, assemble, install or modify any stationary air contamination source or install thereon any air pollution control equipment or device.

"Region." Any geographical subdivision of the Commonwealth whose boundaries shall be determined by the Environmental Quality Board.

"Small business stationary source." A stationary source that:

(1) is owned or operated by a person that employs one hundred (100) or fewer individuals;

(2) is a small business as defined in the Small Business Act (Public Law 85–536, 15 U.S.C. § 78a et seq.);

(3) is not a major stationary source;

(4) does not emit fifty (50) tons per year of any regulated pollutant; and

(5) emits less than seventy-five (75) tons per year of all regulated pollutants.

"State implementation plan." The plan or plan revision that a state is authorized and required to submit under section 110 of the Clean Air Act (Public Law 95–95 as amended, 42 U.S.C. § 7410) to provide for attainment of the national ambient air quality standards.

"Stationary air contamination source." Any air contamination source other than that which, when operated, moves in a given direction under its own power.

1960, Jan. 8, P.L. (1959) 2119, § 3. Amended 1968, June 12, P.L. 163, No. 92, §§ 2, 3; 1972, Oct. 26, P.L. 989, No. 245, § 2, imd. effective; 1992, July 9, P.L. 460, No. 95, § 2, imd. effective.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment rewrote the section, which prior thereto read:

"The following words and phrases, when used in this act, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this section:

"(1) 'Department.' Department of Environmental Resources of the Commonwealth of Pennsylvania.

"(2) 'Board.' The Environmental Quality Board established in the department by the act of December 3, 1970 (P.L. 834).

"(2.1) 'Hearing board.' The Environmental Hearing Board established in the department by the act of December 3, 1970 (P.L. 834).

"(3) 'Person.' Any individual, public or private corporation for profit or not for profit, association, partnership, firm, trust, estate, department, board, bureau or agency of the Commonwealth, political subdivision, municipality, district, authority or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

"(4) 'Air contaminant.' Smoke, dust, fumes, gas, odor, mist, vapor, pollen, or any combination thereof.

"(5) 'Air pollution.' The presence in the outdoor atmosphere of any form of contaminant including but not limited to the discharging from stacks, chimneys, openings, buildings, structures, open fires, vehicles, processes, or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic or radioactive substances, waste, or any other matter in such place, manner, or concentration inimical or which may be inimical to the public health, safety, or welfare or which is, or may be injurious to human, plant or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life or property.

"(6) 'Air contamination.' The presence in the outdoor atmosphere of an air contaminant which contributes to any condition of air pollution.

"(7) 'Air contamination source.' Any place, facility or equipment, stationary or mobile, at, from or by reason of which there is emitted into the outdoor atmosphere any air contaminant.

"(8) 'Stationary air contamination source.' Any air contamination source other than that which, when operated, moves in a given direction under its own power.

"(9) 'Region.' Any geographical subdivision of the Commonwealth whose boundaries shall be determined by the board.

(10) 'Approved air pollution control agency.' An air pollution control agency of any political subdivision of the Commonwealth which has been granted approval by the board."

Notes of Decisions

1. Validity

Where vagueness challenge to definition of "air pollution" contained in this section did not involve the assertion of a fundamental right such as freedom of expression, the court was required to measure the challenged statute not against hypothetical conduct that the statute could possibly embrace but against the specific conduct of the defendant charged under the statute. Midway Coal Co. v. Com., Dept. of Environmental Resources, 413 A.2d 1139, 50 Pa.Cmwlth. 326, Cmwlth.1980.

Definition of "air pollution" found in the Air Pollution Control Act was not unconstitutionally vague as applied to operator of strip mine where the statute enumerated various contaminants and thus gave sufficient notice that actions causing such contaminants are illegal if the contaminants were or might be injurious to human, plant or animal life or to property or if they unreasonably interfered with the comfortable enjoyment of life or property and where the amount of particulate matter released by the strip mine operator was such as to unreasonably interfere with the comfortable enjoyment of the life and property of a substantial segment of the neighboring community. Midway Coal Co. v. Com., Dept. of Environmental Resources, 413 A.2d 1139, 50 Pa.Cmwlth. 326, Cmwlth. 1980.

2. Air pollution

Since this section defines "air pollution" as the presence in the atmosphere of a contaminant which may be inimical to health, safety or welfare or injurious to property, a regulation of the department of environmental resources which prohibits the emission of "any fugitive air contaminants from any source" (with certain exceptions not applicable to this case) must be construed to prohibit only such emissions as may be in a concentration inimical to health, safety, welfare or property, since to construe the regulation to prohibit more minute quantities would make the regulation unreasonable. Com. v. Locust Point Quarries, Inc., 26 Cumb. L.J. 20, 72 Pa. D. & C.2d 700 (1975).

3. Air contamination source

Service plaza located on turnpike was potentially an "air contamination source" for purposes of Air Pollution Control Act, and thus Turnpike Commission's preliminary objection to residents' action to prevent expansion of plaza could not be sustained. Kee v. Pennsylvania Turnpike Com'n, 685 A.2d 1054, Cmwlth.1996, affirmed 699 A.2d 721, 548 Pa. 550.

§ 4004. Powers and duties of the Department of Environmental Resources

The department shall have power and its duty shall be to—

(1) Implement the provisions of the Clean Air Act in the Commonwealth.

(2) Enter any building, property, premises or place and inspect any air contamination source for the purpose of investigating an actual or a suspected source of air pollution or for the purpose of ascertaining the compliance or non-compliance with this act, any rule or regulation promulgated under this act or any plan approval, permit or order of the department. In connection with such inspection or investigation, samples of air, air contaminants, fuel, process material or other matter may be taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing such air pollution or air contamination.

(3) Have access to, and require the production of, books, papers and records, including, but not limited to, computerized information in a format as the department may reasonably prescribe pertinent to any matter under investigation.

(4) Require the owner or operator of any air contamination source to establish and maintain such records and make such reports and furnish such information, including computerized information in a format as the department may reasonably prescribe.

(5) Require the owner or operator of any air contamination source to install, use and maintain such air contaminant monitoring equipment or methods as the department may reasonably prescribe.

(6) Require the owner or operator of any air contamination source to sample the emissions thereof in accordance with such methods and procedures and at such locations and intervals of time as the department may reasonably prescribe and to provide the department with the results thereof.

(7) Enter upon any property on which an air contamination source may be located and make such tests upon the source as are necessary to determine whether the air contaminants being emitted from such air contamination source are being emitted at a rate in excess of a rate provided for by this act, any rule or regulations promulgated under this act or any plan approval, permit or order of the department or otherwise causing air pollution. Whenever the department determines that a source test is necessary, it shall give reasonable written or oral notice to the person owning, operating, or otherwise in control of such source, that the department will conduct a test on such source. Thereafter, the person to whom such notice is given shall provide such reasonably safe access to the testing area, and such sampling ports, facilities, electrical power and water as the department shall specify in its notice.

(8) Receive, initiate and investigate complaints, institute and conduct surveys and testing programs, conduct general atmospheric sampling programs, make observations of conditions which may or do cause air pollution, make tests or other determinations at air contamination sources, and assess the degree of abatement required.

(9) (i) Issue orders to any person owning or operating an air contamination source, or owning or possessing land on which such

source is located, if such source is introducing or is likely to introduce air contaminants into the outdoor atmosphere in excess of any rate provided for by this act, any rule or regulation promulgated under this act or any plan approval or permit applicable to such source, or at such a level so as to cause air pollution. Any such order may require the cessation of any operation or activity which is introducing air contaminants into the outdoor atmosphere so as to cause air pollution, the reduction of emissions from such air contamination source, modification or repair of such source or air pollution control device or equipment or certain operating and maintenance procedures with respect to such source or air pollution control device or equipment, institution of a reasonable process change, installation of air pollution control devices or equipment, or any or all of said requirements as the department deems necessary. Such orders may specify a time for compliance, require submission of a proposed plan for compliance, and require submission of periodic reports concerning compliance. If a time for compliance is given, the department may, in its discretion, require the posting of a bond in the amount of twice the money to be expended in reaching compliance.

(ii) All department orders shall be in writing, contain therein a statement of the reasons for their issuance, and be served either personally or by certified mail. Within thirty (30) days after service of any such order the person to whom the order is issued or any other person aggrieved by such order may file with the hearing board an appeal setting forth with particularity the grounds relied upon. An appeal to the hearing board of the department's order shall not act as a supersedeas: Provided, however, That upon application and for cause shown, the hearing board may issue such a supersedeas.

(10) Institute, in a court of competent jurisdiction, proceedings to compel compliance with this act, any rule or regulation promulgated under this act or any plan approval, permit or order of the department.

(11) Act as the agent for the board in holding public hearings when so directed by the board.

(12) Institute prosecutions under this act.

(13) Recommend the minimum job qualifications of personnel employed by county and municipal air pollution control agencies hereafter created.

(14) Require the submission of, and consider for approval, plans and specifications of air pollution control equipment, devices or

process changes, and inspect such installations or modifications to insure compliance with the plans which have been approved.

(15) Conduct or cause to be conducted studies and research with respect to air contaminants, their nature, causes and effects, and with respect to the control, prevention, abatement and reduction of air pollution and air contamination.

(16) Evaluate motor vehicle emission control programs, including vehicle emission standards, clean alternative fuels, oxygenated fuels, reformulated fuels, vehicle miles of travel, congestion levels, transportation control measures and other transportation control strategies with respect to their effect upon air pollution and determine the need for modifications of such programs.

(17) Determine by means of field studies and sampling the degree of air pollution existing in any part of the Commonwealth.

(18) Prepare and develop a general comprehensive plan for the control and abatement of existing air pollution and air contamination and for the abatement, control and prevention of any new air pollution and air contamination, recognizing varying requirements for the different areas of the Commonwealth, and to submit a comprehensive plan to the board for its consideration and approval.

(19) Encourage the formulation and execution of plans in conjunction with air pollution control agencies or civil associations of counties, cities, boroughs, towns and townships of the Commonwealth wherein any sources of air pollution or air contamination may be located, and enlist the cooperation of those who may be in control of such sources for the control, prevention and abatement of such air pollution and air contamination.

(20) Encourage voluntary efforts and cooperation by all persons concerned in controlling, preventing, abating and reducing air pollution and air contamination.

(21) Conduct and supervise educational programs with respect to the control, prevention, abatement and reduction of air pollution and air contamination, including the preparation and distribution of information relating to the means of controlling and preventing such air pollution and air contamination.

(22) Develop and conduct in cooperation with local communities demonstration programs relating to air contaminants, air pollution and air contamination and the control, prevention, abatement and reduction of air pollution and air contamination.

(23) Provide advisory technical consultative services to local communities for the control, prevention, abatement and reduction of air pollution and air contamination.

(24) Cooperate with the appropriate agencies of the United States or of other states or any interstate agencies with respect to the control, prevention, abatement and reduction of air pollution, and where appropriate formulate interstate air pollution control compacts or agreements for the submission thereof to the General Assembly.

(25) Serve as the agency of the Commonwealth for the receipt of moneys from the Federal government or other public or private agencies, and expend such moneys for studies and research with respect to air contaminants, air pollution and the control, prevention, abatement and reduction of air pollution.

(26) Develop and submit to the Environmental Protection Agency a procedure to implement and enforce the regulations which the Environmental Protection Agency adopts under section 183(e) of the Clean Air Act to reduce emissions from consumer and commercial products, provided the department will receive credits for the reductions attributed to the Federal consumer and commercial products regulations under section 182 of the Clean Air Act regulations, and the department has the resources to implement and enforce the program.

(27) Do any and all other acts and things not inconsistent with any provision of this act, which it may deem necessary or proper for the effective enforcement of this act and the rules or regulations promulgated under this act.

1960, Jan. 8, P.L. (1959) 2119, § 4. Amended 1968, June 12, P.L. 163, No. 92, § 4; 1970, July 23, P.L. 606, No. 201, § 1; 1972, Oct. 26, P.L. 989, No. 245, § 3, imd. effective. Affected 1978, April 28, P.L. 202, No. 53, § 2(a)[1340], effective June 27, 1978. Amended 1992, July 9, P.L. 460, No. 95, § 3, imd. effective.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment rewrote the section, which prior thereto read:

"The department shall have power and its duty shall be to—

"(1) Enter any building, property, premises or place and inspect any air contamination source for the purpose of investigating an actual or a suspected source of air pollution or for the purpose of ascertaining the compliance or noncompliance with any rule or regulation which may have been adopted and promulgated by the board hereunder. In connection with such inspection or investigation, samples of air, air contaminants, fuel, process material or other matter may be taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing such air pollution or air contamination.

"(2) Have access to, and require the production of, books and papers pertinent to any matter under investigation.

"(2.1) Require the owner or operator of any air contamination source to establish and maintain such records and make such reports and furnish such information as the department may reasonably prescribe.

"(2.2) Require the owner or operator of any air contamination source to install, use and maintain such air contaminant monitoring equipment or methods as the department may reasonably prescribe.

"(2.3) Require the owner or operator of any air contamination source to sample the emissions thereof in accordance with such methods and procedures and at such locations and intervals of time as the department may reasonably prescribe and to provide and department with the results thereof.

"(3) Enter upon any property on which an air contamination source may be located and make such tests upon the source as are necessary to determine whether the air contaminants being emitted from such air contamination source are being emitted at a rate in excess of a rate provided for by board rule or regulation or otherwise causing air pollution. Whenever the department determines that a source test is necessary, it shall give reasonable written notice to the person owning, operating, or otherwise in control of such source, that it will conduct a test on such source. Thereafter, the person to whom such notice is given shall provide such reasonably safe access to the testing area, and such sampling holes, facilities, electrical power and water as the department shall specify in its notice.

"(4) Receive, initiate and investigate complaints, institute and conduct surveys and testing programs, conduct general atmospheric sampling programs, make observations of conditions which may or do cause air pollution, make tests or other determinations at air contamination sources, and assess the degree of abatement required.

"(4.1) Issue orders to any person owning or operating an air contamination source, or owning or possessing land on which such source is located, if such source is introducing or is likely to introduce air contaminants into the outdoor atmosphere in excess of any board rule or regulation, or any permit requirement applicable to such source, or at such a level so as to cause air pollution. Any such order may require the cessation of any operation or activity which is introducing air contaminants into the outdoor atmosphere so as to cause air pollution, the reduction of emissions from such air contamination source, modification or repair of such source or air pollution control device or equipment or certain operating and maintenance procedures with respect to such source or air pollution control device or equipment, institution of a process change, installation of air pollution control devices or equipment, or any or all of said requirements as the department deems necessary. Such orders may specify a time for compliance, require submission of a proposed plan for compliance, and require submission of periodic reports concerning compliance. If a time for compliance is given, the department may, in its discretion, require the posting of a bond in the amount of twice the money to be expended in reaching compliance.

"All department orders shall be in writing, contain therein a statement of the reasons for their issuance, and be served either personally or by certified mail. Within thirty (30) days after service of any such order the person to whom the order is issued or any other person aggrieved by such order may file with the hearing board an appeal setting forth with particularity the grounds relied upon. An appeal to the hearing board of the department's order shall not act as a supersedeas: Provided, however, That upon application and for cause shown, The Hearing Board may issue such a supersedeas.

"(5) Institute, in a court of competent jurisdiction proceedings to compel compliance with any order of the department from which there has been no appeal or which has been sustained on appeal.

"(6) Act as the agent for the board in holding public hearings when so directed by the board.

"(7) Institute prosecutions under this act.

"(8) Recommend the minimum job qualifications of personnel employed by county and municipal air pollution control agencies hereafter created.

"(9) Require the submission of, and consider for approval, plans and specifications of air pollution control equipment, devices or process changes, and inspect such installations or modifications to insure compliance with the plans which have been approved.

"(10) Conduct or cause to be conducted studies and research with respect to air contaminants, their nature, causes and effects, and with respect to the control, prevention, abatement and reduction of air pollution and air contamination.

"(10.1) Evaluate motor vehicle emission control programs with respect to their effect upon air pollution and determine the need for modifications of such programs.

"(11) Determine by means of field studies and sampling the degree of air pollution existing in any part of the Commonwealth.

"(12) Prepare and develop a general comprehensive plan for the control and abatement of existing air pollution and air contamination and for the abatement, control and prevention of any new air pollution and air contamination, recognizing varying requirements for the different areas of the Commonwealth, and to submit a comprehensive plan to the board for its consideration and approval.

"(13) Encourage the formulation and execution of plans in conjunction with air pollution control agencies or civil associations of counties, cities, boroughs, towns and townships of the Commonwealth wherein any sources of air, pollution or air contamination may be located, and enlist the cooperation of those who may be in control of such sources for the control, prevention and abatement of such air pollution and air contamination.

"(14) Encourage voluntary efforts and cooperation by all persons concerned in controlling, preventing, abating and reducing air pollution and air contamination.

"(15) Conduct and supervise educational programs with respect to the control, prevention, abatement and reduction of air pollution and air contamination, including the preparation and distribution of information relating to the means of controlling and preventing such air pollution and air contamination.

"(16) Develop and conduct in cooperation with local communities demonstration programs relating to air contaminants, air pollution and air contamination and the control, prevention, abatement and reduction of air pollution and air contamination.

"(17) Provide advisory technical consultative services to local communities for the control, prevention, abatement and reduction of air pollution and air contamination.

"(18) Cooperate with the appropriate agencies of the United States or of other states or any interstate agencies with respect to the control, prevention, abatement and reduction of air pollution, and where appropriate formulate interstate air pollution control compacts or agreements for the submission thereof to the General Assembly.

"(19) Serve as the agency of the Commonwealth for the receipt of moneys from the Federal government or other public or private agencies, and expend such moneys for studies and research with respect to air contaminants, air pollution and the control, prevention, abatement and reduction of air pollution.

"(20) Do any and all other acts and things not inconsistent with any provision of this act, which it may deem necessary or proper for the effective enforcement of this act and the rules or regulations which have been promulgated thereunder."

Law Review and Journal Commentaries

New environmental rights and amendment and the Gettysburg Tower Case. 78 Dick.L.Rev. 331 (1973).

Pollution—right of private enforcement. Henry T. Reath, 43 Pa.B.A.Q. 238 (1972).

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Westlaw Topic No. 149E.

United States Supreme Court

Entry on property, air pollution control, see Air Pollution Variance Bd. of Colorado v. Western Alfalfa Corp., 1974, 94 S.Ct. 2114, 416 U.S. 861, 40 L.Ed.2d 607, on remand 534 P.2d 796, 35 Colo.App. 207.

Notes of Decisions

1. In general

The Supreme Court is most hesitant to construe any agreement as a limitation on the department of environmental resources' enforcement powers, and, in absence of clear and specific language to contrary, will not do so. Com., Dept. of Environmental Resources v. Bethlehem Steel Corp., 367 A.2d 222, 469 Pa. 578, Sup.1976, certiorari denied 97 S.Ct. 1600, 430 U.S. 955, 51 L.Ed.2d 804.

Department of environmental resources and environmental hearing board were required to deny application to reactivate beehive coke ovens, regardless of economic consequences, where there had been no test operation or any evaluation conducted which would indicate that applicant's reactivated coke ovens would meet regulations established by environmental quality board, no provision was made for facilities to conduct source testing and department of environmental resources possessed data which indicated that beehive coke ovens could not comply with applicable regulations. Rochez Bros., Inc. v. Com., Dept. of Environmental Resources, 334 A.2d 790, 18 Pa.Cmwlth. 137, Cmwlth.1975.

On application for permission to reactivate beehive coke ovens, department of environmental resources acted properly in attempting to determine adverse effects, if any, of beehive coke ovens on surrounding community, but propriety of administrative agency allowing an investigation to become an active attempt to rally public support for its position was questionable. Rochez Bros., Inc. v. Com., Dept. of Environmental Resources, 334 A.2d 790, 18 Pa.Cmwlth. 137, Cmwlth.1975.

2. Regulations

Because regulations implementing the Air Pollution Control Act are promulgated pursuant to grant of legislative power, they enjoy presumption of reasonableness. Com., Dept. of Environmental Resources v. Locust Point Quarries, Inc., 396 A.2d 1205, 483 Pa. 350, Sup.1979.

A proper challenge to reasonableness of air pollution regulations must be based upon a claim that they are unnecessarily stringent and unnecessary for protection of public health, safety and welfare. Rochez Bros., Inc. v. Com., Dept. of Environmental Resources, 334 A.2d 790, 18 Pa.Cmwlth. 137, Cmwlth.1975.

3. Economic impact

Where application to reactivate beehive coke ovens, on its face, failed to comply with provisions of Air Pollution Control Act and applicable regulations, department of environmental resources in rendering decision was not required to consider economic impact. Rochez Bros., Inc. v. Com., Dept. of Environmental Resources, 334 A.2d 790, 18 Pa.Cmwlth. 137, Cmwlth.1975.

4. Waivers

Department of environmental resources and environmental hearing board may not waive a mandatory provision of

Air Pollution Control Act because of adverse economic consequences. Rochez Bros., Inc. v. Com., Dept. of Environmental Resources, 334 A.2d 790, 18 Pa. Cmwlth. 137, Cmwlth.1975.

5. Enforcement

Department of environmental resources, given a choice of means to act, does not have right to proceed against alleged particular violations of environmental statutes by multiple proceedings in such number and in such times it deems advisable or necessary. Com., Dept. of Environmental Resources v. Leechburg Mining Co., 305 A.2d 764, 9 Pa.Cmwlth. 297, Cmwlth.1973.

Where legislature had by § 4001 et seq. of this title provided statutory method for resolution of problem set forth in Commonwealth's complaint alleging that burning refuse piles maintained by defendants released noxious gases to detriment of health and well being of surrounding residents, statutory remedy had to be strictly pursued. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup. 1965.

When a statute enforced by the department of environmental resources provides for summary criminal penalties, the department's field investigators possess sufficient police power to bring them within the definition of "police officers" as contained in Pa.R.Crim.P., Rule 51, and agents of the department are required to institute such summary proceedings by citation pursuant to said rule. 1976 Op.Atty.Gen. No. 15.

6. Hearing

Although persons aggrieved by orders of the department of environmental resources are entitled to notice of hearing and an opportunity to be heard, hearing is not required where events occur which render it impossible for a reviewing body to grant any relief. Silver Spring Tp. v. Com., Dept. of Environmental Resources, 368 A.2d 866, 28 Pa.Cmwlth. 302, Cmwlth.1977.

Where alleged polluter did not appeal original abatement order with 30 days of issuance, alleged polluter could not thereafter question order; however, if alleged polluter desired to thereafter question compliance, a new issue would be raised, which issue could only be determined through a legal procedure via a hearing on that issue, either before administrative adjudicatory functionary or the courts. Standard Lime & Refractories Co. v. Department of Environmental Resources, 279 A.2d 383, 2 Pa.Cmwlth. 434, Cmwlth. 1971.

7. Judicial proceedings

Federal district court had no jurisdiction to compel state officials to promulgate variances from state plan for implementation of ambient air quality standards and to refrain from enforcing plan which prevented public utility from using tall stack to comply with air quality standards, despite contention that plan had been approved without proper authority by federal administrator. West Penn Power Co. v. Train, W.D.Pa. 1974, 378 F.Supp. 941, affirmed 522 F.2d 302, certiorari denied 96 S.Ct. 3165, 426 U.S. 947, 49 L.Ed.2d 1183, rehearing denied 97 S.Ct. 192, 429 U.S. 873, 50 L.Ed.2d 155.

Where zinc smelter operator's appeal from order of department of environmental resources granting only a limited variance from air quality standards was pending before environmental hearing board, Commonwealth court had no equity jurisdiction to entertain operator's complaint challenging validity of the standards. St. Joe Minerals Corp. v. Goddard, 324 A.2d 800, 14 Pa.Cmwlth. 624, Cmwlth.1974.

Assertion that enforcement of air quality standards would produce immediate or looming irreparable harm violative of due process rights of operator of zinc smelter did not warrant assumption by equity of jurisdiction over operator's action challenging validity of the standards while operator's appeal from order of department of environmental resources granting only a limited variance was pending before the environmental hearing board, as operator had right to seek of the environmental hearing board or judiciary a supersedeas of the appealed from order pending adjudication by the Board. St. Joe Minerals Corp. v. Goddard, 324 A.2d 800, 14 Pa.Cmwlth. 624, Cmwlth.1974.

Where department of environmental resources initially elected to proceed against alleged violations, both of law

and of its own rules and regulations, through issuance of an administrative order. court of law, in equity or otherwise, was without jurisdiction over department's complaint in equity against the violator, excepting only that portion of complaint asserting violator's failure to abide by consent adjudication entered by environmental hearing board, even though department had been granted multiple administrative and judicial remedies in enforcement of the environmental statutes. Com., Dept. of Environmental Resources v. Leechburg Mining Co., 305 A.2d 764, 9 Pa.Cmwlth. 297, Cmwlth. 1973.

Air Pollution Control Act which provided framework for resolution of problem involved in complaint seeking an order requiring defendants to extinguish or remove burning coal refuse piles would bar equity from inquiring into dispute, notwithstanding fact the complaint stated cause of action in public nuisance, traditionally cognizable in equity. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.1965.

Fact that statutory procedures relating to air pollution control were cumbersome and time consuming would be relevant only in event that difference between time required by equity processes to resolve dispute and alleviate problem and time required by statutory framework makes pursuit of latter irreparably damaging in particular case. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup. 1965.

Statutory procedures in air pollution control case must be followed where Commonwealth made no showing of any reason for bypassing such procedures in favor of equity proceedings. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.1965.

Absence in Air Pollution Control Act of provision allowing suits in equity was indication that legislature did not desire that system of dealing with air pollution. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.1965.

Where Commonwealth failed to allege any reason to bypass statutory method provided by legislature for resolving air pollution controversy, equity court should have entered a decree dismissing complaint. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.1965.

8. Findings

Testimony that all sulfur dioxide emission control equipment either was of a wrong size, used a fuel unavailable to power company, did not work, or was experimental supported finding that power company's refusal to comply with court ordered pollution program, which was identical to department of environmental resources order, was not willful but rather due to impossibility. Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 316 A.2d 96, 12 Pa.Cmwlth. 212, Cmwlth.1974, affirmed 337 A.2d 823, 461 Pa. 675.

9. Declaratory judgment

Uniform Declaratory Judgments Act (42 Pa.C.S.A. § 7531 et seq.) is unavailable to respondent in proceedings brought by department of environmental resources to enforce its administrative order. Com., Dept. of Environmental Resources v. Wheeling-Pittsburgh Steel Corp., 348 A.2d 765, 22 Pa.Cmwlth. 280, Cmwlth.1975, affirmed in part, remanded in part 375 A.2d 320, 473 Pa. 432, certiorari denied 98 S.Ct. 514, 434 U.S. 969, 54 L.Ed.2d 456.

10. Appeals

An aggrieved party has no duty to appeal from order of department of environmental resources but, upon failure to do so, party so aggrieved may not preserve to some indefinite future time in some indefinite future proceedings the right to contest an unappealed order. Com., Dept. of Environmental Resources v. Wheeling-Pittsburgh Steel Corp., 348 A.2d 765, 22 Pa.Cmwlth. 280, Cmwlth. 1975, affirmed in part, remanded in part 375 A.2d 320, 473 Pa. 432, certiorari denied 98 S.Ct. 514, 434 U.S. 969, 54 L.Ed.2d 456.

As result of order of department of environmental resources which granted steel manufacturer variance from required standards, for particulate matter emissions, until April 30, 1973, with respect to its sintering plant, steel manufacturer was "aggrieved" for purposes of appeal from such order. Com., Dept. of Environmental Resources v. Wheeling-Pittsburgh Steel Corp., 348 A.2d 765, 22

Note 10

Pa.Cmwlth. 280, Cmwlth.1975, affirmed in part, remanded in part 375 A.2d 320, 473 Pa. 432, certiorari denied 98 S.Ct. 514, 434 U.S. 969, 54 L.Ed.2d 456.

Steel manufacturer which failed to appeal from compliance order of department of environmental resources could not, in subsequent proceedings brought for enforcement of order, attack the order nor the validity of the regulations upon which it was predicated. Com., Dept. of Environmental Resources v. Wheeling-Pittsburgh Steel Corp., 348 A.2d 765, 22 Pa.Cmwlth. 280, Cmwlth.1975, affirmed in part, remanded in part 375 A.2d 320, 473 Pa. 432, certiorari denied 98 S.Ct. 514, 434 U.S. 969, 54 L.Ed.2d 456.

11. Offensive odors

Department of Environmental Resources (DER), rather than Public Utility Commission (PUC), had jurisdiction over offensive odors allegedly emanating from sewage treatment plant and, thus, PUC lacked jurisdiction over vacation homeowners' administrative complaint against sewage treatment company respecting such odors. Country Place Waste Treatment Co., Inc. v. Pennsylvania Public Utility Com'n, 654 A.2d 72, Cmwlth.1995.

§ 4004.1. Agricultural regulations prohibited

(a) Except as may be required by the Clean Air Act or the regulations promulgated under the Clean Air Act, this act shall not apply to the production of agricultural commodities and the Environmental Quality Board shall not have the power nor the authority to adopt rules and regulations relating to air contaminants and air pollution arising from the production of agricultural commodities.

(b) As used in this section, the term "production of agricultural commodities" shall include, but is not limited to:

(1) The commercial propagation, production, harvesting or drying on the premises of the farm operation or the disposal of residual materials resulting from the commercial propagation, production, harvesting or drying on the premises of the farm operation of the following:

(i) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans.

(ii) Fruits, including apples, peaches, grapes, cherries and berries.

(iii) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, sweet corn and green peas.

(iv) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers.

(v) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs.

(vi) Timber, wood and other wood products derived from trees.

(vii) Aquatic plants and animals and their by-products.

(2) The processing of agricultural commodities propagated, produced, harvested or dried under clause (1) or the disposal of residual materials resulting from such processing.

(3) The commercial production, processing or storage of compost, except for compost including, all or in part, biosolids originating at a municipal sewage treatment facility, to be predominantly used in the commercial propagation or production of any agricultural commodity identified under clause (1), regardless of whether the compost is being produced, processed or stored on a different premises than the premises in which the compost is being used.

(4) The use of any material whose production, processing or storage is exempt from this act under clause (3) in the commercial propagation or production of any agricultural commodity identified under clause (1), or any odor or malodor or fugitive air emission resulting from the production, processing or storage of any material so exempted.

(c) The exemptions applied under subsection (b)(2) shall only apply to agricultural commodities propagated, produced, harvested or dried on the premises of the farm operation.

1960, Jan. 8, P.L. (1959) 2119, No. 787, § 4.1, added 1976, Dec. 2, P.L. 1263, No. 279, § 1, imd. effective. Amended 1992, July 9, P.L. 460, No. 95, § 4, imd. effective; 1996, Dec. 18, P.L. 1150, No. 174, § 1, imd. effective.

Historical and Statutory Notes

Act 1996-174 legislation

The 1996 amendment designated subsec. (a) as such; in subsec. (a), following "under the Clean Air Act", inserted "this act shall not apply to the production of agricultural commodities and"; following "production of agricultural commodities" deleted "in their unmanufactured state but this prohibition shall not include the use of materials produced or manufactured off the premises of the farm operation"; and added subsecs. (b) and (c).

Section 2 of Act 1996, Dec. 18, P.L. 1150, No. 174 provides that this act shall be retroactively applied to January 1, 1991, in dismissing any pending legal or administrative action by the Department of Environmental Protection arising from any activity which, by enactment of this amendatory act, is not subject to the provisions of the act.

Library References

Environmental Law ⇐244.
Westlaw Topic No. 149E.

§ 4004.2. Permissible actions

(a) In implementing the requirements of section 109 of the Clean Air Act,[1] the board may adopt, by regulation, only those control measures or other requirements which are reasonably required, in accordance with the Clean Air Act deadlines, to achieve and maintain the ambient air quality standards or to satisfy related Clean Air Act requirements, unless otherwise specifically authorized or required by this act or specifically required by the Clean Air Act.

(b) Control measures or other requirements adopted under subsection (a) of this section shall be no more stringent than those required by the Clean Air Act unless authorized or required by this act or specifically required by the Clean Air Act. This requirement shall not apply if the board determines that it is reasonably necessary for a control measure or other requirement to exceed minimum Clean Air Act requirements in order for the Commonwealth:

(1) To achieve or maintain ambient air quality standards;

(2) To satisfy related Clean Air Act requirements as they specifically relate to the Commonwealth;

(3) To prevent an assessment or imposition of Clean Air Act sanctions; or

(4) To comply with a final decree of a Federal court.

(c) The board may not by regulation adopt an ambient air quality standard for a specific pollutant which is more stringent than the air quality standard which the EPA has adopted for the specific pollutant pursuant to section 109 of the Clean Air Act.

(d) In any challenge to the enforcement of regulations adopted to achieve and maintain the ambient air quality standards or to satisfy related Clean Air Act requirements, the person challenging the regulation shall have the burden to demonstrate that the control measure or other requirement or the stringency of the control measure or requirement is not reasonably required to achieve or maintain the standard or to satisfy related Clean Air Act requirements.

(e) No person may file a preenforcement review challenge under this section based in any manner upon the standards set forth in subsection (b) of this section.

(f) This section shall not apply to rules and regulations approved as a final rulemaking by the board prior to the effective date of this section or to any ambient air quality standards adopted by the board where no such standard has been adopted by the EPA.

(g) This section shall not be construed to weaken or otherwise affect site-specific standards or other requirements for individual sources or facilities in place prior to the effective date of this section.

1960, Jan. 8, P.L. (1959) 2119, No. 787, § 4.2, added 1992, July 9, P.L. 460, No. 95, § 5, effective in 60 days.

[1] 42 U.S.C.A. § 7409.

Library References

Environmental Law ⇐257, 291 to 295.
Westlaw Topic No. 149E.

§ 4004.3. Evaluation

Beginning five (5) years after the effective date of this section and every five (5) years thereafter, the department shall conduct and submit to the General Assembly an evaluation of the effectiveness of the programs adopted to implement the Clean Air Act. The evaluation shall include:

(1) A determination of whether the limitation imposed in section 4.2 [1] has hindered in any way the Commonwealth's efforts to comply with the Clean Air Act and a recommendation on whether that provision should be changed.

(2) The specific steps taken to implement the Clean Air Act and progress made toward meeting the emission reductions required by the act and recommendations on any additional steps which must be taken.

(3) An evaluation of the funding available to implement the Clean Air Act programs and whether that funding is sufficient or inadequate and recommendations on where adjustments should be made.

(4) An analysis of the costs imposed on mobile and stationary air contamination sources to implement the requirements of the Clean Air Act, including on individuals and companies. The analysis of costs shall also consider the benefits of compliance with the Clean Air Act requirements and the public health, environmental and economic costs to the Commonwealth for failing to meet the requirements, including the impact of sanctions.

(5) An evaluation, in consultation with the Department of Commerce and the Office of Small Business Ombudsman, of the adequacy of measures taken by the Commonwealth to assist small businesses in complying with the Clean Air Act.

(6) A summary of the activities undertaken by the Citizens Advisory Council and the air technical advisory committee under section 7.6.[2]

(7) An evaluation of the effectiveness of the Northeast Ozone Transport Commission in meeting the mandates of the Clean Air Act and recommendations on any changes that could make the commission more effective.

(8) An assessment of the impact of missing Federal deadlines identified under section 7.12 [3] has had or will have on the State implementation of the Clean Air Act programs.

1960, Jan. 8, P.L. (1959) 2119, No. 787, § 4.3, added 1992, July 9, P.L. 460, No. 95, § 5, imd. effective.

[1] 35 P.S. § 4004.2.
[2] 35 P.S. § 4007.6.
[3] 35 P.S. § 4007.12.

Library References

Environmental Law ⇐290.
Westlaw Topic No. 149E.

§ 4005. Environmental quality board

(a) The board shall have the power and its duty shall be to—

(1) Adopt rules and regulations, for the prevention, control, reduction and abatement of air pollution, applicable throughout the Commonwealth or to such parts or regions or subregions thereof specifically designated in such regulation which shall be applicable to all air contamination sources regardless of whether such source is required to be under permit by this act. Such rules and regulations may establish maximum allowable emission rates of air contaminants from such sources, prohibit or regulate the combustion of certain fuels, prohibit or regulate open burning, prohibit or regulate any process or source or class of processes or sources, require the installation of specified control devices or equipment, or designate the control efficiency of air pollution control devices or equipment required in specific processes or sources or classes of processes or sources. Such rules and regulations shall be adopted pursuant to the provisions of the act of July 31, 1968 (P.L.769), known as the "Commonwealth Documents Law,"[1] upon such notice and after such public hearings as the board deems appropriate. In exercising its authority to adopt rules and regulations, the board may, and to the extent deemed desirable by it shall, consult with a council of technical advisers, properly qualified by education or experience in air pollution matters, appointed by the board and to serve at the pleasure of the board, to consist of such number of advisers as the board may appoint, but such technical advisers shall receive no compensation, other than their actual and necessary expenses, for their services to the board.

(2) Establish and publish maximum quantities of air contaminants that may be permitted under various conditions at the point of use

from any air contaminant source in various areas of the Commonwealth so as to control air pollution.

(3) By rule or regulation, classify air contaminant sources, according to levels and types of emissions and other characteristics which relate to air pollution. Classifications made pursuant to this subsection shall apply to the entire Commonwealth or any part thereof. Any person who owns or operates an air contaminant source of any class to which the rules and regulations of the board under this subsection apply, shall make reports containing information as may be required by the board concerning location, size and height of air contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(4) Recommend to the Secretary of Transportation performance or specification standards, or both, for emission control systems and devices on motor vehicles.

(5) Adopt rules and regulations for the protection of public health and safety for periods when the accumulation of air contaminants in any area is attaining or has attained levels which, if sustained or exceeded, could lead to an acute threat to the health of the public. Such rules and regulations shall contain appropriate procedures to protect public health and safety during such periods.

(6) Adopt rules and regulations for the approval and the recision and suspension of approval of local air pollution control agencies.

(7) Adopt rules and regulations designed to reduce emissions from motor vehicles, including centrally clean-fueled fleets, clean alternative fuels, oxygenated fuels, reformulated fuels, vehicle miles of travel, transportation control measures and other transportation control strategies. Such rules and regulations shall be developed in consultation with the Department of Transportation. The board shall not adopt regulations mandating the sale or use of any set of specifications for motor fuel prescribed by the State of California under 42 U.S.C. § 7545(c)(4)(B) unless the set of specifications is required under the Clean Air Act or the regulations promulgated thereunder.

(8) Adopt rules and regulations to implement the provisions of the Clean Air Act. The rules and regulations adopted to implement the provisions of the Clean Air Act shall be consistent with the requirements of the Clean Air Act and the regulations adopted thereunder.

(9) Adopt rules and regulations to exempt sources or categories of sources of minor significance from the provisions of section 6.1.[2]

(10) Adopt rules and regulations establishing provisions to allow changes within a permitted facility or one operating pursuant to clause (3) of subsection (b) of section 6.1 without requiring a permit revision if the changes are not modifications under any provision of 42 U.S.C. Ch. 85 Subch. I (relating to programs and activities) and the changes do not exceed the emissions allowable under the permit whether expressed therein as a rate of emissions or in terms of total emissions, provided that the facility provides the department and the administrator with written notification in advance of the proposed changes which shall be a minimum of seven (7) days, unless the board provides in its regulations a different time frame for emergencies.

(11) In its discretion, by regulation require revisions to permits for major sources to incorporate applicable standards and regulations promulgated pursuant to the Clean Air Act and adopted by the board after the issuance of such permit as required by section 502(b)(9) of the Clean Air Act.[3]

(12) In its discretion, by regulation adopt rules containing reasonable procedures consistent with the need for expeditious action by the department on plan approvals and operating permit applications to make available to the public any plan approval or operating permit application, compliance plan, plan approval, operating permit and monitoring or compliance report as required by section 502(b)(8) of the Clean Air Act.[4]

(13) Adopt by regulation alternative volatile organic compound emission limitations for aerospace coatings and solvents, including extreme performance coatings, which are required to be used by the United States Department of Defense, the United States Department of Transportation and the National Aeronautic and Space Administration or to meet military and aerospace specifications, provided such alternative limitations are authorized by the Clean Air Act.

(b) In adopting regulations containing transportation control measures, the board shall not have the authority to adopt any regulation limiting or expanding any municipalities' authority under the Municipal Planning Code to regulate land development, subdivision approval, zoning revision, building permit or any other development activity unless specifically required by the Clean Air Act.

1960, Jan. 8, P.L. (1959) 2119, § 5. Amended 1968, June 12, P.L. 163, No. 92, § 5. Affected 1968, July 31, P.L. 769, No. 240, art. VI, § 609(19). Amended 1970, July 23, P.L. 606, No. 201, § 2; 1972, Oct. 26, P.L. 989, No. 245, § 4, imd. effective; 1992, July 9, P.L. 460, No. 95, § 6, imd. effective.

[1] 45 P.S. § 1101 et seq.
[2] 35 P.S. § 4006.1.
[3] 42 U.S.C.A. § 7661a(b)(9).
[4] 42 U.S.C.A. § 7661a(b)(8).

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment designated the former text as subsec. (a); in cl. (2), following "By", deleted "the"; and adds cl. (7) to (13).

Pennsylvania Code References

Air resources, see 25 Pa. Code § 121.1 et seq.

Library References

Environmental Law ⇐265, 290, 291.
Westlaw Topic No. 149E.

Notes of Decisions

1. In general

Rules and regulations of Environmental Quality Board when formally adopted by board become rules and regulations of the department of environmental resources. Rushton Min. Co. v. Com., 328 A.2d 185, 16 Pa.Cmwlth. 135, Cmwlth. 1974.

2. Due process

Enforcement of rules and regulations of Air Pollution Commission against operators of beehive coke ovens did not constitute confiscation of property without due process, notwithstanding that operation of such ovens could not practically or feasibly meet minimum air pollution standards set in such rules and regulations. Bortz Coal Co. v. Air Pollution Commission, 279 A.2d 388, 2 Pa.Cmwlth. 441, Cmwlth.1971.

3. Standards

Establishment of sulfur dioxide emission levels, by seeking to reduce air pollution, serves legitimate state interest of maintaining health of citizenry of the state. Com., Dept. of Environmental Resources v. Pennsylvania Power Co., 416 A.2d 995, 490 Pa. 399, Sup.1980.

Standard, in abatement proceeding, to determine whether smoke and particulate matter emissions are in violation of Air Pollution Commission's regulations is not what any single employee of regulatory agency might deem to be violation of what legislature intended in enacting Air Pollution Control Act; rather, what is relevant is proof that standards set forth by the Commission have been met or violated in accordance with such specific standards, and visual tests and observations are not adequate evidence of a violation where recognized scientific tests are available. Bortz Coal Co. v. Air Pollution Commission, 279 A.2d 388, 2 Pa.Cmwlth. 441, Cmwlth.1971.

4. Contracts

Where, when highway improvement contract was viewed as a whole and in conjunction with department of environmental resources regulations, it was apparent that bidders were on notice that their bids should conform with the type of burning and disposal permitted under the regulations and where the regulations clearly stated that it was a violation of the Air Pollution Control Act to conduct open-air burning inside an air basin, contract provision stating that temporary air pollution control measures were to be used whenever burning was prohibited as a result of a violation of the Air Pollution Control Act and that additional compensation would be available for such temporary project air pollution control was not inherently ambiguous by reason of its failure to specify that it did not apply to project areas inside an air basin. Hempt Bros., Inc. v. Com., Dept. of Transp., 388 A.2d 761, 36 Pa.Cmwlth. 516, Cmwlth. 1978.

Note 4

Where highway construction contract provided that "Temporary air pollution control measures will be used whenever burning is prohibited as a result of a violation of the Air Pollution Control Act" and also provided for additional compensation for such temporary project air pollution control, language of provision was not unclear as to whether an actual violation of the Act must have occurred before alternative methods of burning could be employed and compensated for under the contract; contract did require that the contractor actually be cited for a violation before alternative methods of burning were authorized. Hempt Bros., Inc. v. Com., Dept. of Transp., 388 A.2d 761, 36 Pa.Cmwlth. 516, Cmwlth.1978.

5. Challenge of regulations

A proper challenge to reasonableness of air pollution regulations must be based upon a claim that they are unnecessarily stringent and unnecessary for protection of public health, safety and welfare. Rochez Bros., Inc. v. Com., Dept. of Environmental Resources, 334 A.2d 790, 18 Pa.Cmwlth. 137, Cmwlth.1975.

6. Presumptions

Because regulations implementing the Air Pollution Control Act are promulgated pursuant to grant of legislative power, they enjoy presumption of reasonableness. Com., Dept. of Environmental Resources v. Locust Point Quarries, Inc., 396 A.2d 1205, 483 Pa. 350, Sup.1979.

7. Review

Where defendant after conviction by a district justice of the peace of violating this section filed an appeal, with due notice to the justice, followed by a motion to quash the complaint, which motion the court denied, but defendant thereafter filed a praecipe for judgment of nonpros. for failure of the justice to file his transcript within 20 days after service of the notice of appeal as required by 42 P.S. § 3003, the clerk will be directed to enter a judgment of non pros., since the act is mandatory. Com. v. B. Abrams & Sons, Inc., 54 Pa. D. & C.2d 169, 94 Dauph. 254 (1971).

§ 4006. Environmental Hearing Board

The hearing board shall have the power and its duty shall be to hear and determine all appeals from appealable actions of the department as defined in the act of July 13, 1988 (P.L. 530, No. 94), known as the "Environmental Hearing Board Act,"[1] in accordance with the provisions of this act. Any and all action taken by the hearing board with reference to any such appeal shall be in the form of an adjudication, and all such action shall be subject to the provisions of 2 Pa.C.S. (relating to administrative law and procedure).

1960, Jan. 8, P.L. (1959) 2119, § 6. Amended 1968, June 12, P.L. 163, No. 92, § 5; 1972, Oct. 26, P.L. 989, No. 245, § 5, imd. effective; 1992, July 9, P.L. 460, No. 95, § 6, imd. effective.

[1] 35 P.S. § 7511 et seq.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment substituted "appealable actions of the department as defined in the act of July 13, 1988 (P.L. 530, No. 94), known as the 'Environmental Hearing Board Act'," for "orders issued by the department", and substituted "2 Pa.C.S. (relating to administrative law and procedure" for "the act of June 4, 1945 (P.L. 1388), known as the 'Administrative Agency Law' ".

Library References

Environmental Law ⇐294, 295.
Westlaw Topic No. 149E.

Notes of Decisions

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1. Construction and application

Neither Air Pollution Control Act nor rules and regulations of air pollution commission violated any constitutional rights of company, which was ordered to operate its beehive coke ovens in such a manner that emissions did not exceed limits set forth in regulation. Bortz Coal Co. v. Department of Environmental Resources, 299 A.2d 670, 7 Pa.Cmwlth. 362, Cmwlth.1973.

Where legislature had by § 4001 et seq. of this title provided statutory method for resolution of problems set forth in Commonwealth's complaint alleging that burning refuse piles maintained by defendants released noxious gases to detriment of health and well being of surrounding residents, statutory remedy had to be strictly pursued. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.

2. Appealable decisions

Action of department of environmental resources in denying application seeking an exemption from Air Pollution Control Act regulations governing emissions from open furnaces operated at steel plant on ground that emissions were of minor significance was a "decision" appealable to the environmental hearing board. Bethlehem Steel Corp. v. Com., Dept. of Environmental Resources, 390 A.2d 1383, 37 Pa.Cmwlth. 479, Cmwlth.1978.

Although persons aggrieved by orders of the department of environmental resources are entitled to notice of hearing and an opportunity to be heard, hearing is not required where events occur which render it impossible for a reviewing body to grant any relief. Silver Spring Tp. v. Com., Dept. of Environmental Resources, 368 A.2d 866, 28 Pa.Cmwlth. 302, Cmwlth.1977.

Environmental hearing board had authority to review validity of air quality standards promulgated by environmental quality board and to reverse or modify order of department of environmental resources granting only a limited variance from the standards if the standards were improvidently promulgated or were arbitrary as to plaintiff's operation of zinc smelter. St. Joe Minerals Corp. v. Goddard, 324 A.2d 800, 14 Pa.Cmwlth. 624, Cmwlth.1974.

3. Waivers

Department of environmental resources and environmental hearing board may not waive a mandatory provision of Air Pollution Control Act because of adverse economic consequences. Rochez Bros., Inc. v. Com., Dept. of Environmental Resources, 334 A.2d 790, 18 Pa. Cmwlth. 137, Cmwlth.1975.

4. Equity

Where zinc smelter operator's appeal from order of department of environmental resources granting only a limited variance from air quality standards was pending before environmental hearing board, Commonwealth court had no equity jurisdiction to entertain operator's complaint challenging validity of the standards. St. Joe Minerals Corp. v. Goddard, 324 A.2d 800, 14 Pa.Cmwlth. 624, Cmwlth.1974.

Assertion that enforcement of air quality standards would produce immediate or looming irreparable harm violative of due process rights of operator of zinc smelter did not warrant assumption by equity of jurisdiction over operator's action challenging validity of the standards while operator's appeal from order of department of environmental resources granting only a limited variance was pending

before the environmental hearing board, as operator had right to seek of the environmental hearing board or judiciary a supersedeas of the appealed from order pending adjudication by the Board. St. Joe Minerals Corp. v. Goddard, 324 A.2d 800, 14 Pa.Cmwlth. 624, Cmwlth.1974.

Absence in Air Pollution Control Act of provision allowing suits in equity was indication that legislature did not desire dual system of dealing with air pollution. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.1965.

Air Pollution Control Act which provided framework for resolution of problem involved in complaint seeking an order requiring defendants to extinguish or remove burning coal refuse piles would bar equity from inquiring into dispute, notwithstanding fact that complaint stated cause of action in public nuisance, traditionally cognizable in equity. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.1965.

Fact that statutory procedures relating to air pollution control were cumbersome and time consuming would be relevant only in event that difference between time required by equity processes to resolve dispute and alleviate problem and time required by statutory framework makes pursuit of latter irreparably damaging in particular case. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup. 1965.

Statutory procedures in air pollution control case must be followed where Commonwealth made no showing of any necessity for bypassing such procedures in favor of equity proceedings. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.1965.

Where there is provided a self-contained administrative fact-finding and regulatory procedure with a provision for appeal under the Administrative Agency Law, such as that contained in the Air Pollution Control Act of 1960 (§ 4001 et seq. of this title), direct resort to equity is no longer appropriate in the absence of an express legislative authorization. Com. v. Glen Alden Corp., 81 Dauph. 355 (1963), vacated on other grounds 210 A.2d 256, 418 Pa. 57.

5. Notice

Action by the Air Pollution Commission must be in the form of an adjudication complying with the provisions of the Administrative Agency Law, 71 P.S. § 1710.01 et seq. requiring reasonable notice of a hearing and an opportunity to be heard. Com. v. Heindel, 80 York 209, 42 Pa. D. & C.2d 205 (1967).

Where it further appears defendant received no prior notice that a meeting of the Air Pollution Commission would be held, and that he was not present thereat, although certain witnesses were present and apparently testified to undisclosed facts, proof of defendant's violation of the act was lacking. Com. v. Heindel, 80 York 209, 42 Pa. D. & C.2d 205 (1967).

6. Presumptions and burden of proof

Regulation prohibiting emission into outdoor atmosphere of any fugitive air contaminant from any source and regulation setting forth maximum permissible emission rates for various processes must be read together so that to prove criminal violation of former regulation as modified by latter regulation, scientific evidence must be introduced proving beyond reasonable doubt that offense of fugitive emissions exceeded permissible maximum set forth in latter regulation. Com., Dept. of Environmental Resources v. Locust Point Quarries, Inc., 367 A.2d 392, 27 Pa.Cmwlth. 270, Cmwlth.1976, vacated 396 A.2d 1205, 483 Pa. 350.

In view of fact that state Department of Health was moving party seeking to abate emission of particulate matter by operator of beehive coke ovens under Air Pollution Control Act, Commonwealth had burden of proving that acts of such operator were in violation of the Act; in order to meet such burden, Air Pollution Commission had to prove that, under the Act and its rules, regulations and standards, such operator had violated the law necessitating the abatement order. Bortz Coal Co. v. Air Pollution Commission, 279 A.2d 388, 2 Pa.Cmwlth. 441, Cmwlth. 1971.

In proceeding before Air Pollution Commission to abate alleged emissions from coal mine owner's stacks which were part of operation of two air tables used in processing of coal, Commission did not have burden of proving that

owner's emissions through stacks were in excess of allowable limit specified in regulations of the Commission beyond a reasonable doubt; proof by a preponderance of evidence was all that was necessary. North Am. Coal Corp. v. Air Pollution Commission, 279 A.2d 356, 2 Pa. Cmwlth. 469, Cmwlth.1971.

If a regulatory agency desires to order abatement of a violation of its regulations, it must meet its burden to prove that violation by substantial evidence; nothing less will permit affirmance of agency action by reviewing court. North Am. Coal Corp. v. Air Pollution Commission, 279 A.2d 356, 2 Pa.Cmwlth. 469, Cmwlth.1971.

7. Evidence

Evidence presented through qualified expert in air pollution, who used available and recognized scientific equipment to test emission of smoke from company's coke ovens, and unrefuted conclusion that those tests indicated violation of regulation of air pollution commission pertaining to limits for particulate matter emission was sufficient to establish violation under Air Pollution Control Act. Bortz Coal Co. v. Department of Environmental Resources, 299 A.2d 670, 7 Pa. Cmwlth. 362, Cmwlth.1973.

Refusal, in abatement proceeding against operator of beehive coke ovens, of hearing examiner to permit testimony on economic factors involved was error, where the Commission had power to set time limits within which compliance with its orders might be met, and declared policy of Commonwealth was to protect its air resources to degree necessary for protection of citizens' well-being, properity and expansion of industry. Bortz Coal Co. v. Air Pollution Commission, 279 A.2d 388, 2 Pa.Cmwlth. 441, Cmwlth. 1971.

Evidence in abatement proceeding against operator of beehive coke ovens, in which expert testimony was given by air pollution control engineer who had failed to make any stack test and had not utilized any available instrumentation to measure amount of falling particulate, emitting particulate or smoke density, was not sufficient to establish violation of Air Pollution Control Act or Air Pollution Commission's rules and regulations. Bortz Coal Co. v. Air Pollution Commission, 279 A.2d 388, 2 Pa.Cmwlth. 441, Cmwlth.1971.

In proceedings to abate air pollution, visual tests of emissions constitute admissible evidence but, when recognized scientific tests are available and practical, courts must insist upon their use and presentation and if there are no scientific tests possible or available, these circumstances must be explained upon the record and extraordinary care should be taken to make certain that visual tests are made accurately and fairly and constitute sufficient proof to sustain opinions of experts. North Am. Coal Corp. v. Air Pollution Commission, 279 A.2d 356, 2 Pa. Cmwlth. 469, Cmwlth.1971.

Testimony of three housewives in vicinity of coal mine owner's air tables that coal dust and dirt were present in and about their homes was not substantial evidence that emissions from owner's stacks which were connected to the air tables were in excess of allowable limits of Air Pollution Commission's regulations. North Am. Coal Corp. v. Air Pollution Commission, 279 A.2d 356, 2 Pa. Cmwlth. 469, Cmwlth.1971.

Where Air Pollution Commission performed no scientific tests to determine either the kind or quantity of emissions coming from coal mine owner's stacks but relied entirely on visual observations, although tests were not shown to be unavailable or impractical and Commission's expert witness relied upon calculations made from a technical bulletin and certain assumptions, none of which were tied to owner's air tables which allegedly caused the emissions, Air Pollution Commission failed to meet its burden of proving that emissions coming from owner's stacks were in excess of allowable limits. North Am. Coal Corp. v. Air Pollution Commission, 279 A.2d 356, 2 Pa.Cmwlth. 469, Cmwlth.1971.

8. Findings

Where extent of environmental hearing board's treatment of application for renewal and extension of variance from Air Pollution Control Act regulations relating to emissions from draw furnaces was to quote regulation relating to contents of petition for variance and state that "this information was not provided," review of

record revealed that application appeared to provide required information but there were no findings of fact in adjudication denying application as to adequacy of such information, court reversed and remanded. Bethlehem Steel Corp. v. Com., Dept. of Environmental Resources, 390 A.2d 1383, 37 Pa.Cmwlth. 479, Cmwlth. 1978.

Department of environmental resources and environmental hearing board were required to deny application to reactivate beehive coke ovens, regardless of economic consequences, where there had been no test operation or any evaluation conducted which would indicate that applicant's reactivated coke ovens would meet regulations established by environmental quality board, no provision was made for facilities to conduct source testing and department of environmental resources possessed data which indicated that beehive coke ovens could not comply with applicable regulations. Rochez Bros., Inc. v. Com., Dept. of Environmental Resources, 334 A.2d 790, 18 Pa. Cmwlth. 137, Cmwlth.1975.

Department of environmental resources did not act in an arbitrary and capricious manner in failing to acquiesce to request of company, which was ordered to operate its beehive coke ovens in such a manner that emissions from the ovens did not exceed limits set forth in air pollution commission regulation pertaining to limits for particulate matter emission, that it be given an additional three years to phase out the coke ovens. Bortz Coal Co. v. Department of Environmental Resources, 299 A.2d 670, 7 Pa. Cmwlth. 362, Cmwlth.1973.

9. Res judicata and collateral estoppel

Where steel corporation sought variance from Air Pollution Control Act regulations relating to emissions from draw furnaces merely as grace period for compliance and subsequently filed application for exemption from regulations on basis of the data about emissions not previously available, res judicata was inapplicable to bar exemption application after steel corporation failed to appeal denial of variance. Bethlehem Steel Corp. v. Com., Dept. of Environmental Resources, 390 A.2d 1383, 37 Pa.Cmwlth. 479, Cmwlth. 1978.

Determination in contempt proceeding that it was impossible for public utility to comply with Commonwealth's current sulfur dioxide emission limitations due to inadequacy of current technology collaterally estopped environmental hearing board from reaching a different conclusion on question in civil proceeding seeking assessment of civil penalties against utility. Com., Dept. of Environmental Protection v. Pennsylvania Power Co., 384 A.2d 273, 34 Pa.Cmwlth. 546, Cmwlth.1978.

10. Appeals

Upon appeal from a summary conviction before a justice of the peace of violating an order of the Air Pollution Commission, finding that defendant was causing air pollution, and directing defendant to cease all open burning and extinguish all fires on his premises, defendant's demurrer will be sustained and he will be discharged, where the commission offered no proof of the entry of such order except a copy of the letter addressed by it to defendant stating that a meeting of the commission had been held and a finding against defendant had been entered, since the letter was a self-serving declaration, and since the only admissible evidence of the commission's finding and order would be a certified copy of the order from its records. Com. v. Heindel, 80 York 209, 42 Pa. D. & C.2d 205 (1967).

§ 4006.1. Plan approvals and permits

(a) No person shall construct, assemble, install or modify any stationary air contamination source, or install thereon any air pollution control equipment or device unless such person has applied to and received written plan approval from the department to do so: Provided, however, That no such written approval shall be necessary with respect to normal routine maintenance operations, nor to any

such source, equipment or device used solely for the supplying of heat or hot water to one structure intended as a one-family or two-family dwelling, nor where construction, assembly, installation or modification is specifically authorized by the rules or regulations of the department to be conducted without written approval. All applications for approval shall be made in writing and shall be on such forms and contain such information as the department shall prescribe and shall have appended thereto detailed plans and specifications related to the proposed installation.

(b) (1) No person shall operate any stationary air contamination source unless the department shall have issued to such person a permit to operate such source under the provisions of this section in response to a written application for a permit submitted on forms and containing such information as the department may prescribe or where construction, assembly, installation modification is specifically authorized by the rules or regulations of the department to be conducted without written approval. The department shall provide public notice and the right to comment on all permits prior to issuance or denial and may hold public hearings concerning any permit.

(2) A permit may be issued after the effective date of this amendment to any applicant for a stationary air contamination source requiring construction, assembly, installation or modification where the requirements of subsection (a) of this section have been met and there has been performed upon such source a test operation or evaluation which shall satisfy the department that the air contamination source will not discharge into the outdoor atmosphere any air contaminants at a rate in excess of that permitted by applicable regulation of the board, or in violation of any performance or emission standard or other requirement established by the Environmental Protection Agency or the department for such source, and which will not cause air pollution.

(3) A stationary air contamination source operating lawfully without a permit for which fees required by section 6.3 [1] of this act or the regulations promulgated under this act have been paid is authorized to continue to operate without a permit until one hundred twenty (120) days after the department provides notice to the source that a permit is required or until November 1, 1996, whichever occurs first. If the applicant submits a complete permit application within the time frames in this subsection and the department fails to issue a permit through no fault of the applicant, the source may continue to operate if the fees required by section 6.3 or the regulations promulgated under this act have been paid and the source is operated in

conformance with this act, the Clean Air Act and the regulations promulgated under both this act and the Clean Air Act. For any performance or emission standard or other requirement established by the Environmental Protection Agency or the department for the source subsequent to the effective date of this act but prior to the permit issuance date, the permit may contain a compliance schedule authorizing the source to operate out of compliance and requiring the source to achieve compliance as soon as possible but no later than the time required by this act, the Clean Air Act or the regulations promulgated under either this act or the Clean Air Act. For purposes of this subsection, a source is operating lawfully without a permit where it is a source for which no permit was previously required and the source is operating in compliance with applicable regulatory requirements.

(4) For repermitting of any stationary air contamination source which is operating under a valid permit on the effective date of this act or which has received a permit under the provisions of clauses (2) and (3) of this subsection and which is required to meet performance or emission standards or other requirements established subsequent to the issuance of the existing permit, the new permit may contain a compliance schedule authorizing the source to operate out of compliance and requiring the source to achieve compliance as soon as possible but no later than the time required by this act, the Clean Air Act or the regulations promulgated under either this act or the Clean Air Act.

(b.1) A permit or plan approval issued hereunder may contain such terms and conditions as the department deems necessary to assure the proper operation of the source.

The board shall by regulation establish a permit shield for permits issued under the authority delegated to the Commonwealth by the EPA under Title V of the Clean Air Act. The program shall be consistent with the requirements of section 504(f) of the Clean Air Act[2] and the regulations promulgated thereunder. Each permittee, on a schedule established by the department, shall submit reports to the department containing such information as the department may prescribe relative to the operation and maintenance of the source.

(b.2) A permit issued or reissued under subsection (b) of this section shall be issued for a five (5) year term unless a shorter term is required to comply with the Clean Air Act and regulations promulgated thereunder or the permittee requests a shorter term, except that a permit for acid deposition control shall be issued for a five (5) year term. A permit may be terminated, modified, suspended or revoked and reissued for cause. The terms and conditions of an

expired permit are automatically continued pending the issuance of a new permit where the permittee has submitted a timely and complete application for a new permit and paid the fees required by section 6.3 or the regulations promulgated under this act and the department is unable, through no fault of the permittee, to issue or deny a new permit before the expiration date of the previous permit. Failure of the department to issue or deny a new permit prior to the expiration date of the previous permit shall be an appealable action as described in section 10.2.[3] The hearing board may require that the department take action on an application without additional delay.

(b.3) The board shall by regulation establish adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete and for expeditious review of applications. The department shall approve or disapprove a complete application, consistent with the procedures established by the board for consideration of such applications, within eighteen (18) months after the date of receipt of the complete application except that the department shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of the Title V permit program established to implement the requirements of the Clean Air Act. The schedule shall assure that at least one-third of such permits shall be acted upon by the department annually over a period not to exceed three (3) years after such effective date. Failure of the department to issue or deny a permit by a deadline established by this subsection shall be an appealable action as described in section 10.2 of this act. The hearing board may require that the department take action on an application without additional delay.

(b.4) (1) During the term of a permit, a permittee may reactivate any source under the permit that has been out of operation or production for a period of one year or more, provided that the permittee has submitted a reactivation plan to and received written approval from the department. The reactivation plan shall describe the measures that will be taken to ensure the source will be reactivated in compliance with all applicable permit requirements. A reactivation plan may be submitted to and approved by the department at any time during the term of a permit. The department shall take action on the reactivation plan within thirty (30) days unless the department determines that additional time is needed based on the size or complexity of the reactivated source.

(2) A reactivation plan may also be submitted to and approved by the department as part of the plan approval or permit application process. An owner or operator who has an approved reactivation

plan shall notify the department prior to the reactivation of the source.

(b.5) The board shall adopt the regulations required by subsections (b.1), (b.3) and (i) as part of the regulatory package to implement the operating permit program required by Title V of the Clean Air Act.

(c) A plan approval or permit issued hereunder may be terminated, modified, suspended or revoked and reissued if the permittee constructs or operates the source subject to the plan approval or permit in such a manner as to be in violation of this act, the Clean Air Act, the regulations promulgated under either this act or the Clean Air Act, a plan approval or permit or in such a manner as to cause air pollution, if the permittee fails to properly or adequately maintain or repair any air pollution control device or equipment attached to or otherwise made a part of the source, if the permittee has failed to submit a report required by a plan approval or operating permit under this section or if the Environmental Protection Agency determines that the permit is not in compliance with the requirements of the Clean Air Act or the regulations promulgated under the Clean Air Act.

(d) The department may refuse to grant plan approval for any stationary air contamination source subject to the provisions of subsection (a) of this section or to issue a permit to any source that the department determines is likely to cause air pollution or to violate this act, the Clean Air Act or the regulations promulgated under either this act or the Clean Air Act applicable to such source or if, in the design of such source, no provision is made for adequate verification of compliance, including source testing or alternative means to verify compliance. The department may also refuse to issue a permit or may for cause terminate or revoke and reissue any permit to any person if the Environmental Protection Agency determines that the permit is not in compliance with the requirements of the Clean Air Act or the regulations promulgated under the Clean Air Act or if the applicant has constructed, installed, modified or operated any air contamination source or installed any air pollution control equipment or device on such source contrary to the plans and specifications approved by the department.

(e) Whenever the department shall refuse to grant an approval or to issue or reissue a permit hereunder or terminate, modify, suspend or revoke a plan approval or permit already issued, such action shall be in the form of a written notice to the person affected thereby informing him of the action taken by the department and setting forth, in such notice, a full and complete statement of the reasons for such action. Such notice shall be served upon the person affected,

either personally or by certified mail, and the action set forth in the notice shall be final and not subject to review unless, within thirty (30) days of the service of such notice, any person affected thereby shall appeal to the hearing board, setting forth with particularity the grounds relied upon. The hearing board shall hear the appeal pursuant to the provisions of the rules and regulations relating to practice and procedure before the hearing board, and thereafter, shall issue an adjudication affirming, modifying or overruling the action of the department.

(f) The department may by regulation establish a general plan approval and a general permit program. After the program is established, the department may grant general plan approval or a general permit for any category of stationary air contamination source if the department determines that the sources in such category are similar in nature and can be adequately regulated using standardized specifications and conditions. Any applicant proposing to use a general plan approval or general permit shall notify the department and receive written approval prior to the proposed use. The department shall take action on a notification within thirty (30) days.

(g) The department may by regulation establish a plan approval and permit program for stationary sources operated at multiple temporary locations. After the program is established, the department may grant a plan approval or issue a single permit to any stationary air contamination source that may be operated at multiple temporary locations. Such approval or permit shall require the owner or operator to notify the department and municipality where the operation shall take place in advance of each change in location and may require a separate application and permit or approval fee for operations at each location. Any applicant proposing to use the plan approval or permit authorized by this subsection shall notify the department and receive written approval prior to the proposed use. The department shall take action on a request within thirty (30) days.

(h) The department shall establish comprehensive plan approval and operating permit programs which meet the requirements of this act and the Clean Air Act.

(i) The board shall by regulation establish provisions to allow changes within a permitted facility or one operating pursuant to clause (3) of subsection (b) of section 6.1 [4] without requiring a permit revision, if the changes are not modifications under any provision of 42 U.S.C. Ch. 85 Subch. I (relating to programs and activities) and the changes do not exceed the emissions allowable under the permit whether expressed therein as a rate of emissions or in terms of total

emissions, provided that the facility provides the administrator and the department with written notification at least seven (7) days in advance of the proposed changes, unless the board provides in its regulations a different time frame for emergencies.

(j) The department shall make available to the public any permit application, compliance plan, permit and monitoring or compliance report required by this act.

(k) The department shall require revisions to any permit to incorporate applicable standards and regulations promulgated under the Clean Air Act after the issuance of such permit. Such revisions shall occur as expeditiously as practicable, but not later than eighteen (18) months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term or if less than three (3) years remain on the permit. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this act regarding renewals.

1960, Jan. 8, P.L. (1959) 2119, § 6.1, added 1972, Oct. 26, P.L. 989, No. 245, § 6, imd. effective. Affected 1978, April 28, P.L. 202, No. 53, § 2(a)[1340], effective June 27, 1978. Amended 1992, July 9, P.L. 460, No. 95, § 7, imd. effective.

[1] 35 P.S. § 4006.3.
[2] 42 U.S.C.A. § 7661c(f).
[3] 35 P.S. § 4010.2.
[4] 35 P.S. § 4006.1(b)(3).

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment rewrote the section, which prior thereto read:

"(a) On or after July 1, 1972, no person shall construct, assemble, install or modify any stationary air contamination source, or install thereon any air pollution control equipment or device or reactivate any air contamination source after said source has been out of operation or production for a period of one year or more unless such person has applied to and received from the department written approval so to do: Provided, however, That no such written approval shall be necessary with respect to normal routine maintenance operations, nor to any such source, equipment or device used solely for the supplying of heat or hot water to one structure intended as a one-family or two-family dwelling, or with respect to any other class of units as the board, by rule or regulation, may exempt from the requirements of this section. All applications for approval shall be made in writing and shall be on such forms and contain such information as the department shall prescribe and shall have appended thereto detailed plans and specifications related to the proposed installation.

"(b) No person shall operate any stationary air contamination source which is subject to the provisions of subsection (a) of this section unless the department shall have issued to such person a permit to operate such source in response to a written application for a permit submitted on forms and containing such information as the department may prescribe. No permit shall be issued to any applicant unless it appears that, with respect to the source, the requirements of subsection (a) of this section have been met and that there has been performed upon such source a test operation or evaluation which shall satisfy the department that the air contamination source will not discharge into the outdoor atmosphere any air contaminants at a rate in excess of that permitted by applicable regulation of the board, and which will not cause air pollution. Permits issued hereunder may contain such conditions as the department deems necessary to assure the proper operation of the source. Each permittee, on or before the anniversary date set forth in his permit, shall submit to the department an annual report containing such information as the department shall prescribe relative to the operation and maintenance of the installation under permit.

"(c) Any permit issued hereunder may be revoked or suspended if the permittee operates the source subject to the permit in such a manner as to be in violation of the conditions of any permit or rule or regulation of the board or in such a manner as to cause air pollution, if the permittee fails to properly or adequately maintain or repair any air pollution control device or equipment attached to or otherwise made a part of the source, or if the permittee has failed to submit any annual report as required under this section.

"(d) The department may refuse to grant approval for any stationary air contamination source subject to the provisions of subsection (a) of this section or to issue a permit to operate such source if it appears, from the data available to the department, that the proposed source, or proposed changes in such source, are likely either to cause air pollution or to violate any board rule or regulation applicable to such source, or if, in the design of such source, no provision is made for adequate facilities to conduct source testing. The department may also refuse to issue a permit to any person who has constructed, installed or modified any air contamination source, or installed any air pollution control equipment or device on such source contrary to the plans and specifications approved by the department.

"(e) Whenever the department shall refuse to grant an approval or to issue a permit hereunder or suspend or revoke a permit already issued, such action shall be in the form of a written notice to the person affected thereby informing him of the action taken by the department and setting forth, in such notice, a full and complete statement of the reasons for such action. Such notice shall be served upon the person affected, either personally or by certified mail, and the action set forth in the notice shall be final and not subject to review unless, within thirty (30) days of the service of such notice, any person affected thereby shall appeal to the hearing board, setting forth with particularity the grounds relied upon. The hearing board shall hear the appeal pursuant to the provisions of the rules and regulations relating to practice and procedure before the hearing board, and thereafter, shall issue an adjudication affirming, modifying or overruling the action of the department.

"(f) The board may, by rule, require the payment of a reasonable fee, not to exceed two hundred dollars ($200.00), for the processing of any application for plan approval or for an operating permit under the provisions of this section."

Library References

Environmental Law ⇐265, 266.
Westlaw Topic No. 149E.

Notes of Decisions

1. Tests for compliance

Department of environmental resources and environmental hearing board were required to deny application to reactivate beehive coke ovens, regardless of economic consequences, where there had been no test operation or any evaluation conducted which would indicate that applicant's reactivated coke ovens would meet regulations established by environ-

NOTE 1

mental quality board, no provision was made for facilities to conduct source testing and department of environmental resources possessed data which indicated that beehive coke ovens could not comply with applicable regulations. Rochez Bros., Inc. v. Com., Dept. of Environmental Resources, 334 A.2d 790, 18 Pa. Cmwlth. 137, Cmwlth.1975.

2. Stone quarries

Air quality permit was required prior to operation of open pit stone quarry absent showing that the quarry was a source of minor significance; operation of a quarry fell within meaning of "construct" as used in Air Pollution Control Act and since operation involved enlargement as it was opened and worked, each day on which the quarry operated it was being "modified" within meaning of APCA. Mignatti Const. Co., Inc. v. Com., Environmental Hearing Bd., 411 A.2d 860, 49 Pa.Cmwlth. 497, Cmwlth.1980.

Department of environmental resources did not fail to fulfill its constitutional obligations in connection with issuance of surface-mining permit to operate a stone quarry where apart from deficiencies in erosion and sedimentation control plan, the DER satisfied the requirements of Payne v. Kassab, 11 Pa.Cmwlth. 14, 312 A.2d 86 (1973), aff'd, 465 Pa. 226, 361 A.2d 263 (1976) and complied with applicable statutes including Clean Streams Law and Surface Mining Conservation and Reclamation Act and made reasonable effort to reduce immediate environmental incursion to a minimum and record established that benefits were substantial and outweighed environmental harm. Mignatti Const. Co., Inc. v. Com., Environmental Hearing Bd., 411 A.2d 860, 49 Pa.Cmwlth. 497, Cmwlth.1980.

Erosion and sedimentation control plan in connection with rock quarry contained sufficient information as to topographic features and soil characteristics where contractor submitted numerous drawings detailing topography and submitted results of test borings along with a soil description; however, runoff and upstream watershed information was insufficient where the 21.5-acre tract would require a base capacity of 150.50 cubic feet while proposed basin capacity was only 75,829 cubic feet. Mignatti Const. Co., Inc. v. Com., Environmental Hearing Bd., 411 A.2d 860, 49 Pa.Cmwlth. 497, Cmwlth.1980.

§ 4006.2. Emergency procedure

(a) Any other provision of law to the contrary notwithstanding, if the department finds, in accordance with the rules and regulations of the board adopted under the provisions of clause (5) of section 5 [1] of this act, that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department, with the concurrence of the Governor, shall order or direct persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants.

(b) In the absence of a generalized condition of air pollution, if the department finds that emissions from the operation of one or more air contamination sources are creating an imminent danger to human health or safety, the department may, without regard to the provisions of section 4 of this act,[2] order the persons responsible for the operation of the air contamination sources in question to immediately reduce or discontinue the emission of air contaminants.

(c) An order issued under subsection (a) or (b) of this section shall fix a place and time, not later than twenty-four hours thereafter, for a

hearing to be held before the hearing board. Within twenty-four hours after the commencement of such hearing, and without adjournment thereof, the hearing board shall affirm, modify or set aside the order of the department.

(d) This section shall not be construed to limit any power which the Governor or any other officer may have to declare an emergency and act on the basis of such declaration.

1960, Jan. 8, P.L. (1959) 2119, § 6.2, added 1972, Oct. 26, P.L. 989, No. 245, § 6, imd. effective. Amended 1992, July 9, P.L. 460, No. 95, § 8, imd. effective.

[1] 35 P.S. § 4005.
[2] 35 P.S. § 4004.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment, in subsec. (a), following "shall order", inserted "or direct".

Library References

Environmental Law ⇐290, 295.
Westlaw Topic No. 149E.

§ 4006.3. Fees

(a) This section authorizes the establishment of fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process, operating permit program required by Title V of the Clean Air Act, other requirements of the Clean Air Act and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the board by regulation to establish fees to support the air pollution control program authorized by this act and not covered by fees required by section 502(b) of the Clean Air Act.[1]

(b) An annual interim air emission fee of fourteen dollars ($14.00) per ton on emissions of sulfur dioxide, nitrogen oxides, particulate matter of ten (10) microns or less and volatile organic compounds is hereby established to cover the reasonable direct and indirect costs of developing and administering the air pollution control operating permit program required by Title V of the Clean Air Act, other requirements of the Clean Air Act and the reasonable indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Com-

pliance Advisory Committee and the Office of Small Business Ombudsman to be collected during fiscal year 1992–1993 covering actual emissions occurring in calendar year 1991, fiscal year 1993–1994 covering actual emissions occurring in calendar year 1992 and fiscal year 1994–1995 covering actual emissions occurring during calendar year 1993. The interim fee shall not apply to air emissions of less than one hundred (100) tons for any of the listed pollutants, provided that when emissions exceed one hundred (100) tons the entire amount of all air emissions for any of the listed pollutants up to five thousand five hundred (5,500) tons shall be chargeable emissions for interim fee purposes.

(c) The board shall establish by regulation a permanent annual air emission fee as required for regulated pollutants by section 502(b) of the Clean Air Act to cover the reasonable direct and indirect costs of administering the operating permit program required by Title V of the Clean Air Act, other related requirements of the Clean Air Act and the reasonable indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and the Office of Small Business Ombudsman to be collected starting in fiscal year 1995–1996 covering air emissions occurring during calendar year 1994. In no case shall the amount of the permanent fee be more than that which is necessary to comply with section 502(b) of the Clean Air Act. The permanent fee shall not apply to emissions of more than four thousand (4,000) tons for any regulated pollutant. In the event a final regulation containing the permanent annual air emission fee is not effective by July 1, 1995, the permanent annual air emission fee for sources subject to the Title V operating permit program shall be the adjusted minimum dollar amount set under section 502(b) of the Clean Air Act until such time as the final regulation is effective.

(d) Unless precluded by the Clean Air Act, the board shall establish a permanent air emission fee which considers the size of the air contamination source, the resources necessary to process the application for plan approval or an operating permit, the complexity of the plan approval or operating permit, the quantity and type of emissions from the sources, the amount of fees charged in neighboring states, the importance of not placing existing or prospective sources in this Commonwealth at a competitive disadvantage and other relevant factors.

(e) Until alternative fees are established by the board under subsection (c) of this section, stationary air contamination sources shall pay the following interim fees:

(1) Two hundred dollars ($200.00) for the processing of an application for an operating permit.

(2) Two hundred dollars ($200.00) for annual operating permit administration fee.

(f) No emissions fee established under subsection (b), (c) or (j) of this section shall be payable by any State entity, instrumentality or political subdivision in relation to any publicly owned or operated facility.

(g) Any fees imposed under this section in areas with approved local air pollution control programs shall be deposited in a restricted account established by the governing body authorizing the local program for use by that program to implement the provisions of this act for which they are responsible. The governing body shall annually submit to the department an audit of the account in order to insure the funds were properly spent.

(h) (1) Unless the board establishes a different payment schedule by regulation, each facility subject to the emission fees established in subsections (b) and (c) of this section shall report its emissions and pay the fee within one hundred twenty (120) days after receipt of a reporting form from the department or by September 1 of each year for the emission from the preceding year, whichever occurs first.

(2) An air contamination source that fails to pay the fees within the time frame established by this act or by regulation shall pay a penalty of fifty per centum (50%) of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (Public Law 99–514, 26 U.S.C. § 1 et seq.) from the date the fee was required to be paid. In addition, such source may have its permit terminated or suspended. The fee, penalty and interest may be collected following the process for assessment and collection of a civil penalty contained in section 9.1.[2]

(i) The permanent air emission fee imposed under subsection (c) shall be increased in each year after implementation of the fee by regulation by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this subsection:

(1) The Consumer Price Index for any calendar year is the average of the Consumer Price Index for All-Urban Consumers, published by the United States Department of Labor, as of the close of the twelve (12) month period ending on August 31 of each calendar year.

(2) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(j) The board may by regulation establish the following categories of fees not related to Title V of the Clean Air Act. Until such regulations are adopted, stationary air contamination sources shall pay the following fees:

(1) Two hundred dollars ($200.00) for the processing of any application for plan approval.

(2) Two hundred dollars ($200.00) for the processing of any application for an operating permit.

(3) Two hundred dollars ($200.00) for annual operating permit administration fee.

In regard to fees established under this subsection, individual sources required to be regulated by Title V of the Clean Air Act shall only be subject to plan approval fees authorized in this subsection.

(k) No administrative action shall prevent the deposit of the fees established pursuant to this section in the Clean Air Fund established in section 9.2 [3] during the fiscal year in which they are collected. The fees shall only be used for the purposes authorized in this section and section 9.2 and shall not be transferred or diverted to any other purpose by administrative action.

(*l*) Any fees, penalties and interest owed the Commonwealth for delinquent payment collected under this section shall be deposited in the Clean Air Fund.

(m) As used in this section, the term "regulated pollutant" shall mean a volatile organic compound, each pollutant regulated under sections 111 and 112 of the Clean Air Act and each pollutant for which a national primary ambient air quality standard has been promulgated, except that carbon monoxide shall be excluded from this reference.

1960, Jan. 8, P.L. (1959) 2119, § 6.3, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

[1] 42 U.S.C.A. § 7661a(b).
[2] 35 P.S. § 4009.1.
[3] 35 P.S. § 4009.2.

Library References

Environmental Law ⇐265, 296.
WestLaw Topic No. 149E.

§ 4006.4. Fee for certain ozone areas

(a) If an area identified in a State implementation plan or any revision as a severe or extreme ozone nonattainment area has failed to meet the national primary ambient air quality standard for ozone by the applicable attainment date, each major source of volatile organic compounds (VOC's), as defined in the Clean Air Act and the regulations promulgated under the Clean Air Act, located in the area shall, except with respect to emissions during any year treated as an extension year under section 181(a)(5) of the Clean Air Act,[1] pay a fee to the department as a penalty for such failure for each calendar year beginning after the attainment date until the area is redesignated as an attainment area for ozone. This fee shall be assessed and collected following the process for collection and assessment of a civil penalty contained in section 9.1.[2]

(b) (1) The fee shall equal five thousand dollars ($5,000.00), adjusted in accordance with clause (3) of this subsection, per ton of VOC emitted by the source during the calendar year in excess of eighty per centum (80%) of the baseline amount, computed under clause (2) of this subsection. The fee shall be in addition to all other fees required to be paid by the source.

(2) (i) For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the administrator may provide, as the lower of the amount of actual VOC emissions (referred to as actuals) or VOC emissions allowed under the permit applicable to the source or, if no such permit has been issued for the attainment year, the amount of VOC emissions allowed under the applicable implementation plan (referred to as allowables) during the attainment year.

(ii) Notwithstanding subclause (i) of this clause, the administrator may issue guidance authorizing the baseline amount to be determined in accordance with the lower of average actuals or average allowables determined over a period of more than one (1) calendar year. This guidance may provide that the average calculation for a specific source may be used if that source's emissions are irregular, cyclical or otherwise vary significantly from year to year.

(3) The fee amount under clause (1) of this subsection shall be adjusted annually, beginning 1991 in accordance with subsections (h) and (i) of section 6.3.[3]

(c) For areas with a total population under two hundred thousand (200,000) which fail to attain the standard by the applicable attain-

ment date, no sanction under this section or under any other provisions of this act shall apply if the area can demonstrate, consistent with guidance issued by the Environmental Protection Agency, that attainment in the area is prevented because of ozone or ozone precursors transported from other areas. The prohibition applies only in cases in which the area has met all requirements and implemented all measures applicable to the area under the Clean Air Act.

1960, Jan. 8, P.L. (1959) 2119, § 6.4, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

[1] 42 U.S.C.A. § 7511(a)(5).
[2] 35 P.S. § 4009.1.
[3] 35 P.S. § 4006.3(h), (i).

Library References

Environmental Law ⇐265, 295, 296.
Westlaw Topic No. 149E.

§ 4006.5. Acid deposition control

(a) The department is authorized to develop a permit program for acid deposition control in accordance with Titles IV and V of the Clean Air Act [1] and to submit it to the administrator for approval.

(b) For purposes of the permit program authorized under subsection (a) of this section, the definitions in sections 402 [2] and 501 [3] of the Clean Air Act are incorporated herein by reference.

(c) The owner or operator or the designated representative of each source affected under section 405 of the Clean Air Act [4] shall submit a permit application and compliance plan for the affected source to the department no later than January 1, 1996. In the case of affected sources for which application and plans are timely received, the permit application and the compliance plan, including amendments thereto, shall be binding on the owner or operator or the designated representative of the owners or operators and shall be enforceable as a permit for purposes of this section until a permit is issued by the department. Any permit issued by the department shall require the source to achieve compliance as soon as possible but no later than the date required by this act, the Clean Air Act or the regulations promulgated under either this act or the Clean Air Act for the source.

(d) At any time after the submission of a permit application and compliance plan, the applicant may submit a revised application and compliance plan. In considering any permit application and compliance plan under this section, the department shall coordinate with

the Pennsylvania Public Utility Commission consistent with requirements that may be established by the administrator.

(e) In addition to other provisions, permits issued by the department shall prohibit all of the following:

(1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator or designated representative hold for the unit.

(2) Exceedances of applicable emissions rates or standards, including ambient air quality standards.

(3) The use of any allowance prior to the year for which it is allocated.

(4) Contravention of any other provision of the permit.

1960, Jan. 8, P.L. (1959) 2119, § 6.5, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

[1] 42 U.S.C.A. §§ 7651 et seq., 7661 et seq.
[2] 42 U.S.C.A. § 7651a.
[3] 42 U.S.C.A. § 7661.
[4] 42 U.S.C.A. § 7651d.

Library References

Environmental Law ⇐265, 276.
Westlaw Topic No. 149E.

§ 4006.6. Hazardous air pollutants

(a) The regulations establishing performance or emission standards promulgated under section 112 of the Clean Air Act [1] are incorporated by reference into the department's permitting program. After the effective date of the performance or emission standard, new, reconstructed, modified and existing sources shall comply with the performance or emission standards pursuant to the compliance schedule established under section 112 of the Clean Air Act and the regulations promulgated under the Clean Air Act. The Environmental Quality Board may not establish a more stringent performance or emission standard for hazardous air pollutant emissions from existing sources, except as provided in subsection (d). This section shall not apply to rules and regulations adopted as final prior to the effective date of this act and shall not be construed to weaken standards for individual sources or facilities in effect prior to the effective date of this act. The board may establish performance or emission standards for sources or categories of sources which are not included on the list of source categories established under section 112(c) of the Clean Air Act. For purposes of this section, the term

"performance standard" includes design, equipment, work practice or operational standards or any combination thereof.

(b) In the event the administrator has not promulgated a standard to control the emissions of hazardous air pollutants for a category or subcategory of major sources under section 112 of the Clean Air Act, pursuant to a schedule established pursuant to section 112(c) of the Clean Air Act, the department shall have the authority to establish a performance or emission standard on a case-by-case basis for individual sources or a category of sources. The department shall have the authority to make the determinations required by section 112(g)(2) of the Clean Air Act regarding the construction, reconstruction and modification of sources. Any person challenging the performance or emission standards established by the department shall have the burden to demonstrate that the performance or emission standard does not meet the requirements of section 112 of the Clean Air Act. The department shall incorporate the standard to control the emissions of hazardous air pollutants into the plan approval or operating permit of any source within the category or subcategory. The performance or emission standard established on a case-by-case basis by the department shall be equivalent to the limitation that would apply to the source if a performance or emission standard had been promulgated by the administrator under section 112 of the Clean Air Act.

(c) The department is authorized to require that new sources demonstrate in the plan approval application that the source will reduce or control emissions of air pollutants, including hazardous air pollutants, by using the best available technology.

(d) (1) When needed to protect public health, welfare and the environment from emissions of hazardous air pollutants from new and existing sources, the department may impose health risk-based emission standards or operating practice requirements. In developing such health risk-based emission standards or operating practice requirements, the department shall provide an explanation and rationale for such standards or requirements and provide for public review and comments on plan approvals, operating permits, guidelines and regulations which contain health risk-based emission standards or operating practice requirements. Standards or requirements adopted pursuant to this subsection shall be developed using an analysis which, among other factors, considers, where appropriate for a source or source category, the criteria set forth in section 112(f)(1) of the Clean Air Act in assessing the proposed risk to the public health, welfare and the environment from the source.

(2) In the case of coke oven batteries, the department may not impose health risk-based emission standards more stringent than Federal requirements until eight (8) years after promulgation of maximum achievable control technology (MACT) standards and not until the year 2020 for coke oven batteries which satisfy the requirements of section 112(i)(8)(A) of the Clean Air Act.

(3) Notwithstanding the limitation in clause (2), where the operation of a coke oven battery would result in serious, substantial and demonstrable harm to public health, welfare and the environment, the department may impose health risk-based emission standards by regulation which utilize proven, commercially available and economically available methods of technology.

(i) The department shall not impose health risk-based emission standards until after January 1, 1998, for those coke oven batteries which satisfy the applicable MACT or lowest achievable emission rate (LAER) standards.

(ii) After January 1, 1998, the department shall only impose health risk-based emission standards adopted pursuant to section 112(f) of the Clean Air Act, and, if no such emission standards are adopted pursuant to section 112(f) of the Clean Air Act, the department may adopt such emission standards, provided that such standards are consistent with the criteria and the factors set forth in clause (1) and section 112(f) of the Clean Air Act and until such time as health risk-based standards are enacted by the Federal Government pursuant to section 112(f) of the Clean Air Act.

(e) The department shall have the authority to require, in the plan approval and operating permit, reasonable monitoring, recordkeeping and reporting requirements for sources which emit hazardous air pollutants.

(f) Nothing in this section shall preclude the department from taking an emergency action where there is an immediate or potential threat to public health, welfare and the environment from an air pollutant, including a hazardous air pollutant.

(g) The early emissions reduction program authorized under section 112(i)(5) of the Clean Air Act is incorporated by reference in the department's permitting program.

1960, Jan. 8, P.L. (1959) 2119, § 6.6, added 1992, July 9, P.L. 460, No. 95, § 2, imd. effective.

[1] 42 U.S.C.A. § 7412.

Law Review and Journal Commentaries

Limitations on state agency authority to adopt environmental standards more stringent than federal standards: Policy considerations and interpretive problems. Jerome M. Organ, 54 Md.L.Rev. 1373 (1995).

Library References

Environmental Law ⇐251, 265, 270.
Westlaw Topic No. 149E.

§ 4006.7. Control of volatile organic compounds from gasoline-dispensing facilities

(a) to (g) Repealed. 1997, Nov. 26, P.L. 177, No. 175, § 15, imd. effective.

(h) The department shall implement the functional testing and certification requirements specified in EPA's Stage II enforcement and technical guidance documents developed under section 182 of the Clean Air Act to meet the Clean Air Act requirements for areas classified as moderate, serious, severe or extreme ozone nonattainment.

1960, Jan. 8, P.L. (1959) 2119, § 6.7, added 1992, July 9, P.L. 460, No. 95, § 9, effective Nov. 15, 1992. Affected 1997, Nov. 26, P.L. 530, No. 57, § 15, imd. effective.

Historical and Statutory Notes

Act 1997–175 legislation

The 1997 act repealed subsecs. (a) to (g), which prior thereto read:

"(a) After the date specified in subsection (b) or (c) of this section, no owner or operator of a gasoline-dispensing facility subject to this section may transfer or allow the transfer of gasoline into a motor vehicle fuel tank unless the dispensing facility is equipped with a department-approved and properly operating Stage II vapor recovery or vapor collection system. Unless a higher percent reduction is required by EPA under section 182 of the Clean Air Act, approval by the department of a Stage II vapor collection system will be based on a determination that the system will collect at least ninety per centum (90%) by weight of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling and the captured vapors are returned to a vapor tight holding system or vapor control system.

"(b) (1) This subsection applies to gasoline-dispensing facilities located in areas classified as moderate, serious or severe ozone nonattainment areas under section 181 of the Clean Air Act, including the counties of Allegheny, Armstrong, Beaver, Berks, Bucks, Butler, Chester, Delaware, Fayette, Montgomery, Philadelphia, Washington and Westmoreland, with monthly throughputs greater than 10,000 gallons (37,850 liters). In the case of independent small business marketers of gasoline as defined in section 325 of the Clean Air Act, this section shall not apply if the monthly throughput is less than 50,000 gallons (189,250 liters).

"(2) Facilities for which construction was commenced after November 15, 1990, shall achieve compliance not later than six months after the effective date of this section.

"(3) Facilities which dispense greater than 100,000 gallons (378,500 liters) of gasoline per month, based on average monthly sales for the two (2) year period immediately preceding the effective date of this section, shall achieve compliance not later than one (1) year from the effective date of this section.

"(4) All other affected facilities shall achieve compliance not later than two (2) years from the effective date of this section.

"(c) Gasoline-dispensing facilities with annual throughputs greater than 10,000 gallons (37,850 liters) in the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia shall be subject to the requirements of this section immediately upon the addition or replacement of any underground gasoline storage tanks for which construction was commenced after the effective date of this section.

"(d) For purposes of this section, the term 'construction' shall include, but is not limited to, the addition or replacement of any underground storage tank.

"(e) Owners or operators, or both, of gasoline-dispensing facilities subject to the requirements of this section shall:

"(1) Install all necessary Stage II vapor collection and control systems, provide necessary maintenance and make any modifications necessary to comply with the requirements.

"(2) Provide adequate training and written instructions to the operator of the affected gasoline-dispensing facility to assure proper operation of the system.

"(3) Immediately remove from service and tag any defective nozzle or dispensing system until the defective component is replaced or repaired. A component removed from service shall not be returned to service until the defect is corrected. If the department finds that a defective nozzle or dispensing system is not properly tagged during an inspection, the component shall not be returned to service until the defect is corrected and the department approves its return to service.

"(4) Conspicuously post operating instructions for the system in the gasoline-dispensing area which, at a minimum, include the following:

"(i) A clear description of how to correctly dispense gasoline with the vapor recovery nozzles utilized at the site.

"(ii) A warning that continued attempts to dispense gasoline after the system indicates that the vehicle fuel tank is full may result in spillage or recirculation of the gasoline into the vapor collection system.

"(iii) A telephone number established by the department for the public to report problems experienced with the system.

"(5) Maintain records of monthly throughput, type and duration of any failures of the system and maintenance and repair records. The records shall be kept for at least two (2) years and shall be made available for inspection by the department.

"(f) In the event an area is reclassified from attainment or marginal nonattainment to serious, severe or moderate nonattainment under section 181 of the Clean Air Act, gasoline-dispensing facilities located in the reclassified area shall be subject to the requirements of subsection (b)(1). For purposes of establishing an effective date for the reclassified area, that date shall be the date of publication of final notice of reclassification in the Federal Register.

"(g) If at any time prior to November 15, 1993, the United States Environmental Protection Agency promulgates a requirement for alternative automobile refueling emissions control systems identified in section 7521 of the Clean Air Act, the requirements of this section shall not apply to gasoline-dispensing facilities located in areas classified as moderate ozone nonattainment areas under section 181 of the Clean Air Act, including the counties of Allegheny, Armstrong, Beaver, Berks, Butler, Fayette, Washington and Westmoreland."

Library References

Environmental Law ⇐282.
Westlaw Topic No. 149E.

Notes of Decisions

1. Scope of review

Commonwealth Court's review of Environmental Hearing Board's order approving assessment of penalty against owner of gasoline stations for failure to install Stage II vapor recovery technology at three stations by statutory deadline was limited to determining whether necessary findings of fact were supported by substantial evidence and whether Board committed constitutional violations or errors of law. American Auto Wash, Inc. v. Department of Environmental Protection, 729 A.2d 175, Cmwlth.1999, appeal denied 743 A.2d 923, 560 Pa. 711.

§ 4007. Public hearings

(a) Public hearings shall be held by the board or by the department, acting on behalf and at the direction or request of the board, in any region of the Commonwealth affected before any rules or regulations with regard to the control, abatement, prevention or reduction of air pollution are adopted for that region or subregion. When it becomes necessary to adopt rules and regulations for the control, abatement, prevention or reduction of air pollution for more than one region of the Commonwealth, the board may hold one hearing for any two contiguous regions to be affected by such rules and regulations. Such hearing may be held in either of the two contiguous regions. In the case where it becomes necessary to adopt rules and regulations for the control, abatement, prevention or reduction of air pollution for any area of the Commonwealth which encompasses more than one region or parts of more than one region, public hearings shall be held in the area concerned. Full stenographic transcripts shall be taken of all public hearings and shall be made available by the department to any party concerned with the subject matter of the hearing upon the payment of prevailing rates for such transcripts.

(b) In addition to the matters discussed at the public hearings, the board may, in its discretion, solicit the views, in writing, of persons who may be affected by, or interested in, proposed rules and regulations.

(c) Notice to the public of the time and place of any public hearing shall be given at least thirty (30) 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.

(d) The persons designated to conduct the hearing shall have the power to issue notices of hearings in the name of the board.

(e) Full opportunity to be heard with respect to the subject of the hearing shall be given to all persons in attendance, in addition to which persons, whether or not in attendance, may, within thirty (30) days, submit their views to the department, which the department shall transmit to the board with its report.

1960, Jan. 8, P.L. (1959) 2119, § 7. Amended 1966, Jan. 24, P.L. (1965) 1520, § 1; 1972, Oct. 26, P.L. 989, No. 245, § 7, imd. effective.

Historical and Statutory Notes

Act 1972–245 legislation

The 1972 amendment substituted "board" for "Commission" throughout this section.

Library References

Environmental Law ⇐293.
Westlaw Topic No. 149E.

Notes of Decisions

1. Construction and application

Where legislature had by § 4001 et seq. of this title provided statutory method for resolution of problems set forth in Commonwealth's complaint, alleging that burning refuse piles maintained by defendants released noxious gases to detriment of health and well being of surrounding residents, statutory remedy had to be strictly pursued. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup. 1965.

2. Equity

Fact that statutory procedures relating to air pollution control were cumbersome and time consuming would be relevant only in event that difference between time required by equity processes to resolve dispute and alleviate problem and time required by statutory framework makes pursuit of latter irreparably damaging in particular case. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup. 1965.

Statutory procedures in air pollution control case must be followed where Commonwealth made no showing of any necessity for bypassing such procedures in favor of equity proceedings. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.1965.

Absence in Air Pollution Control Act relating to air pollution control of provision allowing suits in equity was indication that legislature did not desire dual system of dealing with air pollution. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.1965.

Air Pollution Control Act which provided framework for resolution of problem involved in complaint seeking an order requiring defendants to extinguish or remove burning coal refuse piles would bar equity from inquiring into dispute, notwithstanding fact that complaint stated cause of action in public nuisance, traditionally cognizable in equity. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.1965.

§ 4007.1. Compliance review

(a) The department shall not issue, reissue or modify any plan approval or permit pursuant to this act or amend any plan approval or permit issued under this act and may suspend, terminate or revoke any permit or plan approval previously issued under this act if it finds that the applicant or permittee or a general partner, parent or

subsidiary corporation of the applicant or permittee is in violation of this act, or the rules and regulations promulgated under this act, any plan approval, permit or order of the department, as indicated by the department's compliance docket, unless the violation is being corrected to the satisfaction of the department.

(b) The department may refuse to issue any plan approval or permit pursuant to this act if it finds that the applicant or permittee or a partner, parent or subsidiary corporation of the applicant or permittee has shown a lack of intention or ability to comply with this act or the regulations promulgated under this act or any plan approval, permit or order of the department, as indicated by past or present violations, unless the lack of intention or ability to comply is being or has been corrected to the satisfaction of the department.

(c) In performing the compliance review required under this section, the department shall only consider violations arising under this act that occurred or are occurring in Pennsylvania.

(d) A permittee or applicant may appeal any violation arising under this act which the department places on the compliance docket.

1960, Jan. 8, P.L. (1959) 2119, § 7.1, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

Library References

Environmental Law ⇐265, 295.
Westlaw Topic No. 149E.

§ 4007.2. Permit compliance schedules

In addition to the other enforcement provisions of this act, the department may issue a permit under clauses (3) and (4) of subsection (b) of section 6.1 [1] to a source that is out of compliance with this act, the Clean Air Act or the regulations promulgated under either this act or the Clean Air Act. Any such permit must contain an enforceable schedule requiring the source to attain compliance. The compliance schedule may contain interim milestone dates for completing any phase of the required work, as well as a final compliance date, and may contain stipulated penalties for failure to meet the compliance schedule. If the permittee fails to achieve compliance by the final compliance date, the permit shall terminate. The permit shall be part of an overall resolution of the outstanding noncompliance and may include the payment of an appropriate civil penalty for past violations and shall contain such other terms and conditions as the department deems appropriate. A permit may incorporate by

reference a compliance schedule contained within a consent order and agreement, including all provisions related to implementation or enforcement of the compliance schedule or consent order and agreement.

1960, Jan. 8, P.L. (1959) 2119, § 7.2, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

[1] 35 P.S. § 4006.1(b)(3), (4).

Library References

Environmental Law ⇐265.
Westlaw Topic No. 149E.

§ 4007.3. Responsibilities of owners and operators

(a) Whenever the department finds that air pollution or danger of air pollution is or may be resulting from an air contamination source in the Commonwealth, the department may order the owner or operator to take corrective action in a manner satisfactory to the department, or it may order the owner or operator to allow access to the land by the department or a third party to take such action.

(b) For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing and investigation related to a corrective action, the department may collect the amount in the same manner as civil penalties are assessed and collected following the process for assessment and collection of a civil penalty contained in section 9.1.[1]

1960, Jan. 8, P.L. (1959) 2119, § 7.3, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

[1] 35 P.S. § 4009.1.

Library References

Environmental Law ⇐295.
Westlaw Topic No. 149E.

§ 4007.4. Interstate transport commission

(a) The Commonwealth, through its representatives on an interstate transport commission formed under the Clean Air Act, shall provide public review of recommendations for additional control measures prior to final commission action consistent with the commission's public review requirements under section 184(c)(1) of the Clean Air Act.[1] The opportunity for public review established under this section shall run concurrently with the commission's public

comment period established under section 184(c)(1) of the Clean Air Act.

(b) Control strategies approved by an interstate transport commission and by the Commonwealth's representatives and set forth in resolutions or memoranda of understanding shall be considered commitments by the executive to pursue subsequent legislative, regulatory or other administrative actions to implement the control strategies.

(c) The Commonwealth strongly recommends that an interstate transport commission adopt formal procedures which allow for an open public review and comment period prior to the adoption of resolutions or consideration of memoranda of understanding or other actions which recommend that states adopt control strategies. The Commonwealth's representatives shall take actions consistent with this recommendation.

(d) The General Assembly of Pennsylvania finds that the interstate transport of pollutants from the State of Ohio contributes significantly to the violation of national ambient air quality standards by the Commonwealth. Therefore, as set forth in section 176A of the Clean Air Act,[2] the Governor, on behalf of the Commonwealth, may petition the Federal EPA Administrator to include the State of Ohio in any interstate transport commission to which Pennsylvania is a member state.

1960, Jan. 8, P.L. (1959) 2119, § 7.4, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

[1] 42 U.S.C.A. § 7511c(c)(1).
[2] 42 U.S.C.A. § 7506a.

Library References

Environmental Law ⇐291. Westlaw Topic Nos. 149E, 360.
States ⇐6. C.J.S. States §§ 31 to 32, 143.

§ 4007.5. Public review of state implementation plans

(a) A State implementation plan required by the Clean Air Act which commits the Commonwealth to adopt air pollution control measures or procedures shall be the subject of a public comment period. The public comment period shall be no less than sixty (60) days, and the department may, at its discretion, hold public informational meetings or public hearings as part of the comment period.

(b) Notice of a proposed State implementation plan shall be published in the Pennsylvania Bulletin and in sufficient newspapers having general circulation in the area covered by the State implementation plan. If the State implementation plan covers the entire State, notice shall be published in at least six (6) newspapers of general circulation throughout the Commonwealth.

(c) A State implementation plan subject to this section shall include the following provisions:

(1) Statements clearly indicating the specific provisions of the Clean Air Act with which the State implementation plan is intended to comply.

(2) An analysis of the alternative control strategies considered if applicable in arriving at the recommended control strategies and the reasons the department or other agency selected the final strategy.

(3) An analysis of the economic impact of the alternative control strategies and the selected strategies on the regulated community and local governments.

(4) An analysis of the staff and technical resources needed by the department or other agency to implement the control strategy.

(d) After the public comment period and prior to the submission to EPA of any State implementation plan required by the Clean Air Act which commits the Commonwealth to adopt air pollution control measures or procedures, the department shall submit a final State implementation plan to the board for its review together with a document which responds to all comments made during the public comment period.

(e) These provisions shall also apply in the case of State implementation plans required by the Clean Air Act which are developed by State agencies other than the department which commit the Commonwealth to the adoption of air pollution control measures or procedures.

(f) Subsections (c) and (d) of this section shall not apply to State implementation plans or portions thereof comprised of permit, emission offset or reasonably available control technology requirements for individual sources; consent orders and agreements; or regulations.

(g) The requirements of this section shall not apply to state implementation plans submitted by a local air pollution control agency.

1960, Jan. 8, P.L. (1959) 2119, § 7.5, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

Library References

Environmental Law ⇐258, 292.
Westlaw Topic No. 149E.

§ 4007.6. Advice to department

(a) The department shall consult with the Citizens Advisory Council established under section 448 of the act of April 9, 1929 (P.L. 177, No. 175), known as "The Administrative Code of 1929,"[1] as appropriate, in the consideration of State implementation plans and regulations developed by the department and needed for the implementation of the Clean Air Act. Nothing in this section shall limit the council's ability to consider, study and review department policies and other activities related to the Clean Air Act implementation as provided under section 1922–A of "The Administrative Code of 1929."[2] This section shall not apply to State implementation plans or portions thereof comprised of permit, emission offset or reasonably available control technology requirements for individual sources; consent orders and agreements; or regulations. The requirements of this section shall not apply to State implementation plans submitted by a local air pollution control agency.

(b) (1) The Secretary of Environmental Resources, within thirty (30) days after the effective date of this act, shall designate an air technical advisory committee. The committee shall include at least eleven (11) members with technical backgrounds in the control of air pollution from stationary or mobile sources.

(2) The committee, at the request of the department, may be utilized to provide technical advice on department policies, guidance and regulations needed to implement the Clean Air Act. The committee may also request to review a department policy, guidance or regulation needed to implement the Clean Air Act.

1960, Jan. 8, P.L. (1959) 2119, § 7.6, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

[1] 71 P.S. § 158.
[2] 71 P.S. § 510–22.

Library References

Environmental Law ⇐290.
Westlaw Topic No. 149E.

§ 4007.7. Small Business Compliance Assistance Program

(a) The department shall develop and implement a Small Business Stationary Source Technical and Environmental Compliance Assistance Program which shall include the following:

(1) Adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources and programs to encourage lawful cooperation among such sources and other persons to further comply with this act and the Clean Air Act.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes and products and methods of operation that help reduce air pollution.

(3) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this act in a timely and efficient manner.

(4) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this act and the Clean Air Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final rulemaking plan, State implementation plan revision or program issued under this act and the Clean Air Act.

(5) Adequate mechanisms for informing small business stationary sources of their obligations under this act and the Clean Air Act, including mechanisms for referring these sources to qualified auditors or, at the department's option, for providing audits of the operations of such sources to determine compliance with this act.

(6) Procedures for consideration of requests from a small business stationary source for modification of:

(i) any work practice or technological method of compliance; or

(ii) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date based on the technological and financial capability of any small business stationary sources. No modification may be granted unless it is in compliance with the applicable requirements of this act and the Clean Air Act, including the requirements of the applicable implementation plan. Where applicable requirements are set forth in Federal regulations, only modifications authorized in such regulations may be allowed.

(7) Procedures for soliciting input from and exchanging information with the Office of Small Business Ombudsman regarding compliance requirements for small business stationary sources.

(8) Adequate mechanisms for the collection and dissemination of information to small business stationary sources, including, but not limited to:

(i) Developing of small business stationary sources guidance manuals indicating the categories of small businesses subject to the requirements of this act and the Clean Air Act, specific compliance requirements and options, a schedule of compliance deadlines and other pertinent information.

(ii) Establishment of a toll-free telephone number dedicated to questions involving small business stationary source compliance.

(9) Procedures for assuring the confidentiality of information received from small business stationary sources.

(10) Procedures for conducting confidential, on-site consultations with small business stationary sources regarding applicability of compliance requirements.

(b) The department shall evaluate the feasibility of contracting with consultants to administer all or part of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program. A third-party consultant will act as a source of confidential support for small business if one is selected by the department.

(c) The department shall consult with the Compliance Advisory Committee established in section 7.8 [1] and the Office of Small Business Ombudsman established in section 7.9 [2] in developing the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(d) The department shall provide a reasonable opportunity for public comment on the proposed Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(e) The department is authorized to expend funds from the Clean Air Fund collected pursuant to subsection (a), (b) or (c) of section 6.3 [3] to support the development and implementation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, the Office of Small Business Ombudsman and the Compliance Advisory Committee.

(f) Upon petition by a source, the department may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this act any stationary source which does not meet the definition of "small business stationary source" in section 3 [4] but which does not emit more than one hundred (100) tons per year of all regulated pollutants.

(g) The department, in consultation with the administrator and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, may exclude from the definition of "small business stationary source" in section 3 any category or subcategory of sources that the department determines to have sufficient technical and financial capabilities to meet the requirements of this act and the Clean Air Act without the application of this section.

(h) The department may reduce any fee required under this act and the Clean Air Act to take into account the financial resources of small business stationary sources as authorized by the Clean Air Act.

1960, Jan. 8, P.L. (1959) 2119, § 7.7, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective. Amended 1996, Dec. 18, P.L. 1150, No. 174, § 1, imd. effective.

[1] 35 P.S. § 4007.8.
[2] 35 P.S. § 4007.9.
[3] 35 P.S. § 4006.3(a), (b) or (c).
[4] 35 P.S. § 4003.

Historical and Statutory Notes

Act 1996–174 legislation

The 1996 amendment, in subsec. (b), deleted a former second sentence, which read: "The department shall submit a report to the Governor, the General Assembly, the Compliance Advisory Committee and the Office of Small Business Ombudsman summarizing the results of this evaluation and the department's recommendations."; and added the second sentence.

Section 2 of Act 1996, Dec. 18, P.L. 1150, No. 174 provides that this act shall be retroactively applied to January 1, 1991, in dismissing any pending legal or administrative action by the Department of Environmental Protection arising from any activity which, by enactment of this amendatory act, is not subject to the provisions of the act.

Library References

Environmental Law ⇐241, 290.
Westlaw Topic No. 149E.

§ 4007.8. Compliance Advisory Committee

(a) There is hereby established a Compliance Advisory Committee which shall perform all of the following:

(1) Provide guidance and recommendations to the department on the development of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(2) Render advisory opinions concerning the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered and degree and severity of enforcement.

(3) Make periodic reports to the administrator concerning the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(4) Review information for small business stationary sources to assure such information is understandable by the layperson.

(5) Have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(6) Review and advise the department on rulemakings, State implementation plans and programs under this act and the Clean Air Act which affect small business stationary sources.

(7) Make recommendations for the development of programs to assist compliance for small business stationary sources, including technical and financial assistance programs.

(b) The committee shall consist of eleven members as follows:

(1) Four members appointed by the Governor, three of whom shall not be owners or representatives of owners of small business stationary sources.

(2) Four members, each of whom shall be an owner or the representative of an owner of a small business stationary source. Of these four members, one shall be appointed by each of the following:

(i) The majority leader of the Senate.

(ii) The minority leader of the Senate.

(iii) The majority leader of the House of Representatives.

(iv) The minority leader of the House of Representatives.

(3) The Secretary of Commerce or his designee.

(4) The Secretary of Environmental Resources or his designee.

(5) The Small Business Ombudsman or his designee.

(c) The terms of appointed members shall be for four (4) years. Vacancies shall be filled by the original appointing member for the remainder of the unexpired term. Initial terms of appointed members shall be as follows:

(1) Of the members appointed by the Governor under clause (1) of subsection (b) of this section:

(i) Two members shall be appointed for two (2) years.

(ii) Two members shall be appointed for four (4) years.

(2) Of the members appointed under clause (2) of subsection (b) of this section:

(i) The majority leader of the Senate shall appoint one member for four (4) years.

(ii) The minority leader of the Senate shall appoint one member for two (2) years.

(iii) The majority leader of the House of Representatives shall appoint one member for three (3) years.

(iv) The minority leader of the House of Representatives shall appoint one member for one (1) year.

1960, Jan. 8, P.L. (1959) 2119, § 7.8, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

Library References

Environmental Law ⇐290.
Westlaw Topic No. 149E.

§ 4007.9. Small Business Ombudsman

(a) There is hereby established an Office of Small Business Ombudsman within the Department of Environmental Protection for the purpose of serving as the confidential primary point of contact for small business on issues relating to compliance with this act and the Clean Air Act.

(b) The Office of Small Business Ombudsman shall perform all functions necessary to implement the requirements of section 507(a)(3)[1] of the Clean Air Act. The Office of Small Business Ombudsman shall perform all of the following functions to the extent they are consistent with the guidelines developed by the Environmental Protection Agency:

(1) Solicit input from small businesses regarding compliance with this act and the Clean Air Act and interact with organizations representing small businesses, including Small Business Development Centers, the Small Business Administration, industry and trade associations and other entities.

(2) Provide guidance and recommendations to the department on the development of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(3) Make recommendations to the department regarding the content and operation of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(4) Collect and distribute information and materials on the requirements of this act and the Clean Air Act.

(5) Report to the Small Business Stationary Source Technical and Environmental Compliance Assistance Program on problems and

difficulties experienced by small businesses in complying with this act and the Clean Air Act.

(6) Serve on the Compliance Advisory Committee established by section 7.8.[2]

(7) Conduct independent evaluations of all aspects of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

(8) Review and provide comments and recommendations to the Environmental Protection Agency and department regarding the development and implementation of regulations that impact small businesses.

(9) Arrange for and assist in the preparation of guidance documents by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program to ensure that the language is readily understandable by the layperson.

(10) Assist small businesses in locating sources of funding for compliance with the requirements of this act and the Clean Air Act.

(c) The Office of Small Business Ombudsman shall report annually to the Governor and General Assembly on the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program and other issues relating to the impact of the Clean Air Act implementation on small businesses in the Commonwealth.

(d) For each proposed rulemaking significantly affecting small businesses, the Office of Small Business Ombudsman shall prepare a report which contains a detailed analysis of the economic impact of such proposed rulemaking on small businesses. The economic impact report shall be completed no later than ninety (90) days from the date that the board approves the proposed rulemaking and shall be submitted to the board for consideration prior to approval of the final rulemaking package, provided the report is available within the time period prescribed by this section. The department shall provide the ombudsman with a reasonable opportunity to revise the report to reflect any proposed substantial change in the rulemaking which affects the initial report.

(e) The report shall include, but not be limited to:

(1) An analysis of the economic impact of the selected control strategies on small business.

(2) Data on comparable regulatory programs or plans administered by other states.

(3) An assessment of the economic impact of alternative control strategies.

(4) All other information that the Office of Small Business Ombudsman considers necessary for the board's review.

(f) All equipment, files, records, contracts, agreements and all other materials and supplies which are used, employed or expended by the Office of Small Business Ombudsman shall be transferred to the Department of Environmental Protection.

1960, Jan. 8, P.L. (1959) 2119, § 7.9, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective. Amended 1996, Dec. 18, P.L. 1150, No. 174, § 1, imd. effective.

[1] 42 U.S.C.A. § 7661f.
[2] 35 P.S. § 4007.8.

Historical and Statutory Notes

1996–174 legislation

The 1996 amendment, in subsec. (a), substituted "Department of Environmental Protection" for "Department of Commerce" and inserted "confidential" preceding "primary"; and added subsec. (f).

Section 2 of Act 1996, Dec. 18, P.L. 1150, No. 174 provides that this act shall be retroactively applied to January 1, 1991, in dismissing any pending legal or administrative action by the Department of Environmental Protection arising from any activity which, by enactment of this amendatory act, is not subject to the provisions of the act.

Library References

Environmental Law ⇐290.
Westlaw Topic No. 149E.

§ 4007.10. Transportation management associations

(a) The department, in consultation with the Department of Transportation, may, after public notice and comment, designate one or more transportation management associations to serve specific regions of this Commonwealth to provide services to employers required by the Clean Air Act to reduce employe vehicle trips and encourage the use of carpooling, vanpooling and public transportation to reduce air pollution.

(b) For purposes of this section, transportation management associations shall consist of nonprofit corporations designated by the department to broker transportation services, including, but not limited to, public transportation, vanpools, carpools, bicycling and pedestrian modes, as well as strategies such as flextime, staggered work hours and compressed work weeks for corporations, employes, developers, individuals and other groups.

1960, Jan. 8, P.L. (1959) 2119, § 7.10, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

Library References

Environmental Law ⇐290.
Westlaw Topic No. 149E.

§ 4007.11. Notice of sanctions

(a) Whenever the Commonwealth is notified that the Environmental Protection Agency has made a final or proposed finding on a State implementation plan submitted by the Commonwealth or a local air pollution control agency, the department shall notify, within ten (10) working days of receipt of the notice, the Environmental Resources and Energy Committee of the Senate and the Conservation Committee of the House of Representatives of the agency's findings.

(b) Whenever the Commonwealth is formally notified that it is subject to discretionary or mandatory sanctions under section 179 of the Clean Air Act, the department shall, within ten (10) working days of the receipt of this notice, notify the Environmental Resources and Energy Committee of the Senate and the Conservation Committee of the House of Representatives.

1960, Jan. 8, P.L. (1959) 2119, § 7.11, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

[1] 42 U.S.C.A. § 7509.

Library References

Environmental Law ⇐290.
Westlaw Topic No. 149E.

§ 4007.12. Missed federal deadlines

Whenever the Environmental Protection Agency has missed a deadline for developing regulations or guidance on which states must rely to comply with deadlines in the Clean Air Act by more than ninety (90) days and, in the opinion of the department, the Environmental Protection Agency has failed to provide it with timely guidance needed to comply with the act in a timely manner, the department may bring a legal action against the Environmental Protection Agency in a court of competent jurisdiction seeking an injunction to restrain the Environmental Protection Agency from enforcing the applicable Clean Air Act deadline on the Commonwealth until and unless the Environmental Protection Agency develops the appropriate regulation or guidance which allows the Commonwealth a reasonable opportunity to comply with the Clean Air Act.

1960, Jan. 8, P.L. (1959) 2119, § 7.12, added 1992, July 9, P.L. 460, No. 95, § 9, imd. effective.

Library References

Environmental Law ⇐290.
Westlaw Topic No. 149E.

§ 4007.13. Repealed. 1998, Nov. 17, P.L. 788, No. 100, § 14, imd. effective

Historical and Statutory Notes

Former § 4007.13, which related to the air quality improvement fund, was derived from Act 1960, Jan. 8, P.L. (1959) 2119, § 7.13 and Act 1992, July 9, P.L. 460, No. 95, § 9.

§ 4008. Unlawful conduct

It shall be unlawful to fail to comply with or to cause or assist in the violation of any of the provisions of this act or the rules and regulations adopted under this act or to fail to comply with any order, plan approval, permit or other requirement of the department; or to cause a public nuisance; or to cause air pollution, soil or water pollution resulting from an air pollution incident; or to hinder, obstruct, prevent or interfere with the department or its personnel in their performance of any duty hereunder, including denying the department access to the source or facility; or to violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this act. The owner or operator of an air contamination source shall not allow pollution of the air, water or other natural resources of the Commonwealth resulting from the source. For any air pollutant for which the board has set an emissions standard or for any source for which a permit has been issued by the department, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this act.

1960, Jan. 8, P.L. (1959) 2119, § 8. Amended 1966, Jan. 24, P.L. (1965) 1520, § 1; 1968, June 12, P.L. 163, No. 92, § 6; 1972, Oct. 26, P.L. 989, No. 195, § 8, imd. effective; 1992, July 9, P.L. 460, No. 95, § 10, imd. effective.

Historical and Statutory Notes

1992-95 legislation

The 1992 amendment rewrote the section which prior thereto read:

"It shall be unlawful to fail to comply with any rule or regulation of the board or fail to comply with any order of the department, to violate or to assist in the violation of any of the provisions of this act or rules and regulations adopted hereunder, to cause air pollution, or to in any manner hinder, obstruct, delay, resist, prevent or in any way interfere or attempt to interfere with the department or its personnel in the performance of any duty hereunder."

Law Review and Journal Commentaries

Commonwealth Court's environmental decisions. 76 Dick.L.Rev. 668 (1972).

Library References

Environmental Law ⇐295, 744.
Westlaw Topic No. 149E.

Notes of Decisions

1. Notice

Notice provided stone quarry concerning alleged air pollution violations comported with principles of due process, where notice was provided to president of corporation operating quarry, who had signed application for plan approval, at address given in application. Eureka Stone Quarry, Inc. v. Com., 544 A.2d 1129, 118 Pa.Cmwlth. 300, Cmwlth.1988.

In prosecution for an alleged violation of an order of the department of environmental resources, contrary to this section and § 4009 it is necessary for the commonwealth to prove beyond a reasonable doubt that notice of said order had been given to defendant. Com. v. Snyder, 85 York 198, 56 Pa. D. & C.2d 729 (1972).

A certified copy of the order in the form of a carbon copy of a letter addressed to defendant, preceded by the words "certified mail," plus a receipt card signed by defendant for certified mail four days after the date of the order does not meet the required burden of proof, absent affirmative proof that the letter was actually mailed and that this is the item for which defendant receipted. Com. v. Snyder, 85 York 198, 56 Pa. D. & C.2d 729 (1972).

2. Presumptions and burden of proof

Environmental Quality Board's determination that fugitive emissions cause air pollution is presumed to be reasonable, and thus Commonwealth did not have to prove that quarry's fugitive dust, emissions caused or contributed to air pollution in order for quarry to be guilty of violating rules and regulations of the Department of Environmental Resources. Com., Dept. of Environmental Resources v. Locust Point Quarries, Inc., 396 A.2d 1205, 483 Pa. 350, Sup.1979.

In prosecution of owner of stone quarry for emission of dust, there must be evidence sufficient to show that it was in sufficient concentration off the quarry premises to be inimical to health, safety, welfare or property. Com. v. Locust Point Quarries, Inc., 26 Cumb. L.J. 20, 72 Pa. D. & C.2d 700 (1975).

3. Fugitive emissions

"Fugitive emission," within purview of regulation prohibiting emissions into outdoor atmosphere of any fugitive air contaminant with certain exceptions, is emission of any air contaminant in specific manner, and term is applicable not just to particulate matter, but also to sulphur compound, odor and visible emissions if emitted other than through a flue. Com., Dept. of Environmental Resources v. Locust Point Quarries, Inc., 396 A.2d 1205, 483 Pa. 350, Sup.1979.

4. Suppression technologies

Gasoline station owner's failure to comply with statutory deadline for installing Stage II vapor recovery technology at three stations and subsequent permitting of gasoline to be transferred to motor vehicle fuel tank using dispensers not equipped with Stage II technology constituted violations of Air Pollution Control Act, for which penalties could be imposed. American Auto Wash, Inc. v. Department of Environmental Protection, 729 A.2d 175, Cmwlth.1999, appeal denied 743 A.2d 923, 560 Pa. 711.

Owner of gasoline stations failed to adequately investigate available options in its choice of equipment and supplier, with respect to meeting statutory deadline for installing Stage II vapor recovery technology at three stations, where approved Stage II technology was available well in advance of deadline, owner chose to install particular vacuum-assist system that was not available until after deadline and to defer completion to coincide with availability of newly-available vacuum-assist system, and though owner presented evidence that its supplier gave delivery preference to large oil companies, owner could have obtained Stage II equipment from supplier in state in time to meet deadline. American Auto Wash, Inc. v. Department of Environmental Protection, 729 A.2d 175, Cmwlth.1999, appeal denied 743 A.2d 923, 560 Pa. 711.

Stone quarry had duty under Air Pollution Control Act to prevent particulate matter from visibly escaping into atmosphere onto others' property, which duty encompassed responsibility to provide adequate suppression system where and when it was necessary. Eureka Stone Quarry, Inc. v. Com., 544 A.2d 1129, 118 Pa.Cmwlth. 300, Cmwlth.1988.

Evidence supported determination that procedures used by stone quarry to prevent particulate matter from escaping into atmosphere were inadequate, in light of evidence that dust was escaping from quarry and that there were many methods available to prevent that problem. Eureka Stone Quarry, Inc. v. Com., 544 A.2d 1129, 118 Pa.Cmwlth. 300, Cmwlth. 1988.

5. Difficult or impossible suppression

Evidence, in proceeding to hold power company in contempt for failure to comply with court order requiring submission of pollution control plan complying with particulate matter and sulfur dioxide emission standards, showing, inter alia, that power company made complete investigation but did not discover any fuels that could be used to comply with standards, that desulfurization operations were experimental and had not been demonstrated as workable for company and that power company had submitted alternative application setting forth methods of complying with emission regulations supported trial court's finding that power company made good-faith attempt to comply with order but that full compliance was impossible. (Per Jones, C. J., with two Judges concurring and four Judges concurring in the result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

Testimony that all sulfur dioxide emission control equipment either was of a wrong size, used a fuel unavailable to power company, did not work, or was experimental supported finding that power company's refusal to comply with court ordered pollution program, which was identical to department of environmental resources order, was not willful but rather due to impossibility. Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 316 A.2d 96, 12 Pa.Cmwlth. 212, Cmwlth.1974, affirmed 337 A.2d 823, 461 Pa. 675.

A manufacturer of potato chips criminally charged by the Pennsylvania Department of Environmental Resources with violation of section 8 of the Air Pollution Control Act of January 8, 1960, P.L. (1959) 2119, as amended (35 P.S. § 4008), on the basis of odors emanating from potato rot, will be found not guilty where the evidence indicates that defendant has done everything possible to eliminate the odors, that there was no way of preventing potatoes from rotting and that the odors emanate primarily during the process of removing rotten potatoes, but defendant must continue to do everything possible to control the odors in the light of changing technology. Com. v. Wise Foods, 8 Pa. D. & C.3d 687 (1978).

6. Measurement tests

In view of testimony by the department of environmental resources that there was no accepted scientific test for measuring emissions from an open area source such a surface mine and that tests described in DER regulations for determining ambient air quality standards were not applicable for measuring open

source emissions such as dust from strip mine and where the DER indicated that it had not promulgated a regulation requiring use of the scientific test for the type of fugitive particulate matter which gave rise to charge that strip mine operator violated the Air Pollution Control Act by causing the discharge of airborne dust, circumstances warranted trial court in relying on the testimony of witnesses to prove a violation of the Act. Midway Coal Co. v. Com., Dept. of Environmental Resources, 413 A.2d 1139, 50 Pa.Cmwlth. 326, Cmwlth.1980.

On appeal from defendant's conviction of violating an abatement order of the Department of Health by permitting dust particles to emanate from its rock-crushing machine beyond its property line, contrary to this section where evidence was presented that dust particles were visually observed emanating from defendant's rock-crushing machine beyond its property line, but no measuring instrument was employed to measure the volume of the dust although measurements could readily have been made, and where the abatement order must be construed to mean defendant is in violation only if the dust from the machinery exceeds a stated concentration per cubic meter of air, defendant will be found not guilty, since the Commonwealth may not rest its case on visual evidence alone when scientific evidence is available. Com. v. Prince Mfg. Co., 56 Pa. D. & C.2d 69 (1971).

A summary conviction for air pollution by quarry dust would not be sustained where based upon testimony that dust was observed emanating from defendant's premises, with little or no attempt systematically to measure the volume, frequency, opacity, or density of the emissions, or to indicate their effects upon other persons or property. Com. v. Locust Point Quarries, Inc., 26 Cumb. L.J. 20, 72 Pa. D. & C.2d 700 (1975).

7. Single violation

Defendant coal company's dust-emitting conduct did not present such extenuations that its conduct could not be type prescribed by General Assembly in adopting the Air Pollution Act, so as to warrant dismissal charges for violation of Department of Environmental Resources (DER) regulation prohibiting emitting dust onto property of others as de minimis, even though the citation was issued based upon a single cloud of dust observed by DER air quality specialist, where specialist was on coal company's site in response to continuing complaints of neighboring residents and where testimony of resident established that dust emissions were an ongoing concern. Scurfield Coal, Inc. v. Com., 582 A.2d 694, 136 Pa.Cmwlth. 1, Cmwlth.1990.

Regulation of Department of Environmental Resources (DER) which prohibited emission of dust onto property of others could properly be applied to coal company, even though DER specialist only observed one cloud of black dust from coal company's property as a coal truck exited coal company's facility; no specific amount of emission was necessary to uphold conviction under the regulation and no special equipment was required to be used to measure amount of dust escaping from coal company's facility. Scurfield Coal, Inc. v. Com., 582 A.2d 694, 136 Pa.Cmwlth. 1, Cmwlth.1990.

8. Stockpiled materials

Pollution regulation providing that contaminants should not be permitted to enter outdoor atmosphere by reason of "stockpiling" of materials did not apply only to active operations and, therefore, stone quarry was not free of liability under regulation because emissions complained of were caused by strong winds picking up dust from inactive areas of its property. Eureka Stone Quarry, Inc. v. Com., 544 A.2d 1129, 118 Pa.Cmwlth. 300, Cmwlth.1988.

9. Evidence

Coal company's conduct was not within a customary license or tolerance, so as to preclude prosecution for emitting dust in violation of Department of Environmental Resources' regulation as de minimis, where numerous complaints by residents who lived near coal company's facility demonstrated that dust emissions interfered with residents' use of their properties and dust emissions were believed to have caused health problems for some nearby residents. Scurfield Coal, Inc. v. Com., 582 A.2d 694, 136 Pa.Cmwlth. 1, Cmwlth.1990.

Testimony of air quality expert that dust passed outside stone quarry, that dust was coming from actual stone crushing areas, and that use of equipment to measure amount of dust escaping was not required supported determination that quarry caused prohibited particulate emissions to be emitted into atmosphere outside its own property, in violation of Air Pollution Control Act, as charged in environmental citation. Eureka Stone Quarry, Inc. v. Com., 544 A.2d 1129, 118 Pa.Cmwlth. 300, Cmwlth.1988.

Evidence adduced by the department of environmental resources was sufficient to prove beyond a reasonable doubt that strip mine operator caused air pollution by using a drag line excavating machine to shovel away dirt and shale and then dropping the dirt from the drag line shovel into dump trucks. Midway Coal Co. v. Com., Dept. of Environmental Resources, 413 A.2d 1139, 50 Pa.Cmwlth. 326, Cmwlth.1980.

Evidence in proceedings on summary complaint charging university with violation of provision of rules and regulations of county health department by causing or allowing emission of visible air contaminants from incinerator located on campus, which failed to establish that university had "caused, suffered, or allowed" emission in question, supported judgment exonerating university. Com. ex rel. Allegheny County Health Dept., Bureau of Air Pollution Control v. University of Pittsburgh, 388 A.2d 1163, 37 Pa.Cmwlth. 117, Cmwlth.1978.

Scientific evidence is not exclusive means of proof of violation of Air Pollution Control Act. Rushton Min. Co. v. Com., 328 A.2d 185, 16 Pa.Cmwlth. 135, Cmwlth.1974.

In criminal action against deep coal mine operator for violations of Air Pollution Control Act, evidence consisting of oral testimony of defendant's neighbors as to effects of defendant's emissions on their properties was sufficient to prove elements of offense charged. Rushton Min. Co. v. Com., 328 A.2d 185, 16 Pa. Cmwlth. 135, Cmwlth.1974.

10. Defenses

Gasoline station owner's preference for newer vacuum-assist system that was not available until after statutory deadline for installing Stage II vapor recovery technology at three stations did not justify noncompliance with deadline. American Auto Wash, Inc. v. Department of Environmental Protection, 729 A.2d 175, Cmwlth.1999, appeal denied 743 A.2d 923, 560 Pa. 711.

11. Contempt

Trial court's conclusion that power company's compliance with court order requiring submission of pollution control plan meeting state emissions regulations and establishing October 1972 commitment date was impossible so that company could not be held in contempt for failure to comply could not be deemed erroneous because it failed to address question whether new sulfur dioxide standards would be attainable in 1975 and avoided technology-forcing aspects envisioned by Federal Clean Air Act, 42 U.S.C.A. § 1857 et seq., where inquiry into such issues was not necessary to determination whether company was in contempt of court order. (Per Jones, C. J., with two Judges concurring and four Judges concurring in the result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

Where only hearing held prior to issuance of court order requiring power company to submit pollution control plan meeting newly promulgated sulfur dioxide emission standards related to Commonwealth's motion for injunctive relief under earlier emission standards, defense of impossibility of performance under new regulations was not available to power company at hearing, for purposes of determining whether power company could raise such defense for first time in subsequent proceeding to hold company in civil contempt for violation of court order. (Per Jones, C. J., with two Judges concurring and four Judges concurring in the result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

12. Penalties

Given fact of violations of requirement of Stage II vapor recovery technology at three gasoline stations owned by petitioner, Department of Environmental Protection (DEP) did not abuse its discretion in assessing a penalty. American Auto Wash, Inc. v. Department of Environmental Protection, 729 A.2d 175, Cmwlth.

Note 12

1999, appeal denied 743 A.2d 923, 560 Pa. 711.

Where base penalty for gasoline station owner's failure to install Stage II vapor recovery technology at three stations by statutory deadline was calculated based on throughput, subsequent ten percent increase in penalty, based on average monthly throughput, was an unreasonable increase based on same factor. American Auto Wash, Inc. v. Department of Environmental Protection, 729 A.2d 175, Cmwlth.1999, appeal denied 743 A.2d 923, 560 Pa. 711.

Where penalties sought by Department of Environmental Resources for power company's failure to submit pollution control plan complying with newly promulgated sulfur dioxide emission standards exceeded those authorized by Air Pollution Control Act, penalties would not have been enforceable even if court had found power company in civil contempt for failing to comply with court order requiring submission of plan complying with such emission standards. (Per Jones, C. J., with two Judges concurring and four Judges concurring in the result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

13. Discretion of court

Department of Environmental Protection's (DEP) failure to reduce penalty for gasoline station owner's noncompliance with requirements of Stage II vapor recovery technology in some measure in consideration of mitigating factor that at least part of eight or nine month period of noncompliance was caused by factors beyond owner's control was not an abuse of discretion. American Auto Wash, Inc. v. Department of Environmental Protection, 729 A.2d 175, Cmwlth.1999, appeal denied 743 A.2d 923, 560 Pa. 711.

Environmental Hearing Board objectively entertained gasoline station owner's arguments in opposition to penalty for failure to install Stage II vapor recovery technology at three stations by statutory deadline, and did not abuse its discretion in construing Air Pollution Control Act and Department of Environmental Protection's (DEP) regulations; record contained no evidence that Board treated DEP more favorably than it treated owner or that Board failed to discharge its adjudicative duties in objective manner. American Auto Wash, Inc. v. Department of Environmental Protection, 729 A.2d 175, Cmwlth.1999, appeal denied 743 A.2d 923, 560 Pa. 711.

14. Court orders

Where court in attempting to ameliorate conflict between power company and Department of Environmental Resources formulated its own order to abate air pollution, including commitment date, without agency assistance and where department was given opportunity to make a decision reviewable through administrative procedures but elected to bring action to hold company in civil contempt for violation of order, court hearing contempt petition did not err in ruling on validity of original order and in so ruling did not substitute its expertise for that of administrative agency. (Per Jones, C. J., with two Judges concurring and four judges concurring in result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

15. Review

Order of district justice sustaining defendant's demurrer to evidence of department of environmental resources, which had filed summary charges against defendant for violations under Air Pollution Control Act, was appealable by Commonwealth. Com., Dept. of Environmental Resources v. Lee Bowman Asphalt, Inc., 420 A.2d 23, 54 Pa.Cmwlth. 71, Cmwlth.1980.

Even if statutory implementation is required to give Commonwealth right of appeal from summary proceeding, Judicial Code, which grants right of appeal from final order of district justice and makes no distinction between civil proceedings and criminal or between Commonwealth and defendant, provided such implementation; therefore, Commonwealth did not have appellate disability merely because order in issue by which district justice sustained defendant's demurrer to evidence of department of environmental resources which had filed summary charge against defendant for violations under Air Pollution Control Act, occurred in summary proceeding before district justice. Com., Dept. of Environmental Resources v. Lee Bowman Asphalt, Inc., 420 A.2d 23, 54 Pa.Cmwlth. 71, Cmwlth.1980.

Under Clean Air Act, 42 U.S.C.A. § 1857 et seq., and Air Pollution Control Act, if an agency order or decision is challenged, review is limited to administrative review. (Per Jones, C. J., with two Judges concurring and four Judges concurring in the result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

Where defendant was convicted on October 9, 1970 of a summary offense under this section and filed an appeal and gave notice to the district justice on October 14, 1970 who did not file his transcript until December 4, 1970, it was held that defendant was entitled to a judgment of non pros since the district justice failed to comply with § 3(d) of the Minor Judiciary Court Appeals Act. The defendant was not deemed to have waived the benefit of this provision by proceeding with his motion to quash the complaint filed October 15, 1970 and then waiting for an adverse decision which was rendered on April 12, 1971 before moving on April 13, 1971 for judgment of non pros. Com. v. B. Abrams & Sons, Inc., 54 Pa. D. & C.2d 169, 94 Dauph. 254 (1971).

§ 4009. Penalties

(a) Any person who violates any provision of this act, any rule or regulation adopted under this act, any order of the department or any condition or term of any plan approval or permit issued pursuant to this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than one hundred dollars ($100.00) nor more than two thousand five hundred dollars ($2,500.00) for each separate offense and, in default of the payment of such fine, may be sentenced to imprisonment for ninety (90) days for each separate offense. Employes of the department authorized to conduct inspections or investigations are hereby declared to be law enforcement officers authorized to issue or file citations for summary violations under this act, and the General Counsel is hereby authorized to prosecute these offenses. For purposes of this subsection, a summary offense may be prosecuted before any district justice in the county where the offense occurred. There is no accelerated rehabilitative disposition authorized for a summary offense.

(b) (1) Any person who wilfully or negligently violates any provision of this act, any rule or regulation adopted under this act or any order of the department or any condition or term of any plan approval or permit issued pursuant to this act commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than one thousand dollars ($1,000.00) nor more than fifty thousand dollars ($50,000.00) for each separate offense or to imprisonment for a period of not more than two (2) years for each separate offense, or both.

(2) Any person who knowingly makes any false statement or representation in any application, record, report, certification or other document required to be either filed or maintained by this act or the

regulations promulgated under this act commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than two thousand five hundred dollars ($2,500.00) nor more than fifty thousand dollars ($50,000.00) for each separate offense or to imprisonment for a period of not more than two (2) years for each separate offense, or both.

(3) Any person who negligently releases into the ambient air any hazardous air pollutant listed under section 112 of the Clean Air Act [1] or any extremely hazardous substance listed under section 302(a)(2) of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99–499, 100 Stat. 1613) that is not listed in section 112 of the Clean Air Act and who at the time negligently places another person in imminent danger of death or serious bodily injury commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than five thousand dollars ($5,000.00) nor more than fifty thousand dollars ($50,000.00) for each separate offense or to imprisonment for a period of not more than one (1) year for each separate offense, or both.

(c) (1) Any person who knowingly releases into the ambient air any hazardous air pollutant listed under section 112 of the Clean Air Act or any extremely hazardous substance listed under section 302(a)(2) of the Superfund Amendments and Reauthorization Act of 1986 that is not listed in section 112 of the Clean Air Act and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury commits a felony of the first degree and shall, upon conviction, be sentenced to pay a fine of not less than twenty-five thousand dollars ($25,000.00) nor more than one hundred thousand dollars ($100,000.00) per day for each violation or to imprisonment for a period of not less than two (2) years nor more than twenty (20) years, or both. Any person which is an organization committing such violation shall, upon conviction under this clause, be subject to a fine of not more than one million dollars ($1,000,000.00) per day for each violation. If a conviction of any person under this clause is for a violation committed after a first conviction of such person under this clause, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the board has set an emissions standard or for any source for which a permit has been issued by the department, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this section.

(2) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury:

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant, except that, in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(3) It is an affirmative defense to a prosecution under this subsection that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of either of the following:

(i) An occupation, a business or a profession and the person had been made aware of the risks involved prior to giving consent.

(ii) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subclause by a preponderance of the evidence.

(4) All general defenses, affirmative defenses and bars to prosecution that may apply with respect to other State criminal offenses may apply under this clause and shall be determined by the courts according to the principles of common law. Concepts of justification and excuse applicable under this section may be developed according to those principles.

(5) For purposes of this subsection, the term "organization" means a legal entity, other than a government, established or organized for any purpose, and the term includes a corporation, a company, an association, a firm, a partnership, a joint stock company, a foundation, an institution, a trust, a society, a union or any other association of persons.

(d) For purposes of subsections (b) and (c) of this section, the term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

(e) For purposes of this section, the term "person" includes, in addition to the entities referred to in section 3, any responsible corporate officer.

(f) For purposes of the provisions of subsections (b) and (c) of this section and section 9.1,[2] the term "operator," as used in such provisions, shall include any person who is senior management

personnel or a corporate officer. Except in the case of knowing and wilful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair or monitoring of equipment and facilities and who often has supervisory and training duties, but who is not senior management personnel or a corporate officer. Except in the case of knowing and wilful violations, for purposes of clause (3) of subsection (b) of this section, the term "a person" shall not include an employe who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and wilful violations, for the purposes of clauses (1) and (2) of subsection (b) and subsection (c) of this section, the term "a person" shall not include an employe who is carrying out his normal activities and who is acting under orders from the employer.

(g) For purposes of this section, a person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and intent of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

1960, Jan. 8, P.L. (1959) 2119, § 9. Amended 1968, June 12, P.L. 163, No. 92, § 7; 1972, Oct. 26, P.L. 989, No. 245, § 8, imd. effective; 1992, July 9, P.L. 460, No. 95, § 10, imd. effective.

[1] 42 U.S.C.A. § 7412.
[2] 35 P.S. § 4009.1.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment rewrote this section, which prior thereto read:

"(a) Summary Offense. Any person as herein defined, except a department, board, bureau or agency of the Commonwealth, engaging in unlawful conduct as set forth in section 8 of this act, shall, for each offense, upon conviction thereof in a summary proceeding before a district justice, magistrate, alderman or justice of the peace, be sentenced to pay the costs of prosecution and a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00), and, in default thereof, to undergo imprisonment of not less than ten (10) days nor more than thirty (30) days.

"(b) Misdemeanors. Any person as herein defined, except a department, board, bureau or agency of the Commonwealth, who, within two years after being convicted of a summary offense pursuant to subsection (a) of this section, engages in similar unlawful conduct, shall be guilty of a misdemeanor and, upon conviction thereof, shall, for each separate offense, be subject to a fine of not less than five hundred dollars ($500.00) nor more than five thousand dollars ($5,000.00), or to imprisonment for a period of not more than one year for each separate offense hereunder, or both. For the purposes of this subsection, similar unlawful conduct shall mean a violation of the same order of the department, or a violation of the same provision of any rule or regulation of the department by the same organizational unit of the defendant.

"(c) For the purpose of this section, violations on separate days shall be considered separate offenses. Where a person engages in continuing unlawful conduct, such person shall be guilty of separate offenses for each day such conduct continues up until the time of hearing or trial.

"(d) Upon conviction of an association, partnership or corporation of an offense under subsection (a) or (b) of this section, the responsible members, officers, employes or agents may be imprisoned for the term provided therein which shall run concurrently with any term of imprisonment imposed upon such persons individually upon conviction for the same offense."

Law Review and Journal Commentaries

Commonwealth Court's environmental decisions. 76 Dick.L.Rev. 668 (1972).

Library References

Environmental Law ⇐296.
Westlaw Topic No. 149E.

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1. Validity

Exclusion of governmental bodies from this section does not constitute unlawful discrimination in violation of State and Federal Constitutions. Bortz Coal Co. v. Air Pollution Commission, 279 A.2d 388, 2 Pa.Cmwlth. 441, Cmwlth.1971.

2. Adjudication

Letter from director of Division of Enforcement and Compliance of Bureau of Air Pollution Control stating that time-schedule submitted by alleged polluter for reducing particulate matter emissions from operations was unacceptable and matter was being referred to the office of legal counsel was not an adjudication affecting personal property rights or privileges from which an appeal could be taken. Standard Lime & Refractories Co. v. Department of Environmental Resources, 279 A.2d 383, 2 Pa.Cmwlth. 434, Cmwlth. 1971.

3. Notice

Contention of cement manufacturing facility owner-operator that environmental hearing board should have dismissed all opacity and fugitive emission violations charges because of denial of due process, in that, of more than 700 violations alleged, department of environmental resources had given prompt notice of violation to operator only with respect to 19 opacity instances and 19 fugitive emission instances, thus giving operator, in most instances, no contemporaneous opportunity to observe violation or note operating conditions, in order to defend, had been adequately covered by board's conclusions that there were only 19 opacity violations and 19 fugitive emission violations subject to penalty, those as to which prompt notice had been given. Medusa Corp. v. Com., Dept. of Environmental Resources, 415 A.2d 105, 51 Pa. Cmwlth. 520, Cmwlth.1980.

In prosecution for an alleged violation of an order of the department of environmental resources, contrary to this section and § 4008 it is necessary for the commonwealth to prove beyond a reasonable doubt that notice of said order had been

York 198, 56 Pa. D. & C.2d 729 (1972).

A certified copy of the order in the form of a carbon copy of a letter addressed to defendant, preceded by the words "certified mail," plus a receipt card signed by defendant for certified mail four days after the date of the order does not meet the required burden of proof, absent affirmative proof that the letter was actually mailed and that this is the item for which defendant receipted. Com. v. Snyder, 85 York 198, 56 Pa. D. & C.2d 729 (1972).

In a summary conviction proceeding based upon the defendant's alleged violation of an order issued pursuant to this section, the defendant demurred on the grounds that there was no proof that he had received notice of the order which is an essential element of the offense, and the court held that the certification of the order stating that it was "issued" was insufficient to show notice, that the presumption of regularity in favor of public officials does not extend to the additional and subsequent act of notice, and that the commonwealth's circumstantial evidence was insufficient for a criminal case requiring proof beyond a reasonable doubt. Com. v. Snyder, 85 York 198, 56 Pa. D. & C.2d 729 (1972).

4. Actions and proceedings

Cement manufacturing facility owner-operator would not be accorded, under heading of due process violation, a defense to all charges by reason of delay of department of environmental resources in not commencing complaint charges until July, 1976, to cover period of alleged violations which began in December, 1973, where, although operator pointed out that at least five of its employees had become no longer available as witnesses, operator had suggested no legal basis for statute of limitations or principle of laches in support of such a defense. Medusa Corp. v. Com., Dept. of Environmental Resources, 415 A.2d 105, 51 Pa.Cmwlth. 520, Cmwlth.1980.

In proceeding on department of environmental resources' complaint seeking civil penalties against cement manufacturing facility owner-operator for alleged fugitive emission violations, environmental hearing board's parenthetical comment that operator did not avail itself of "minor significance" exception in attempting to show that variance terms were such that no cable regulation was fair and legitimate exception could extend beyond December 18, 1973 termination date of variance, and fact that procedural provisions where exception existed substantially throughout time period involved had been added to that subsection by amendment in 1977 was of no materiality. Medusa Corp. v. Com., Dept. of Environmental Resources, 415 A.2d 105, 51 Pa.Cmwlth. 520, Cmwlth.1980.

In proceeding on department of environmental resources' complaint seeking civil penalties against cement manufacturing facility owner-operator for certain alleged opacity violations, a criminal action brought by department against operator for alleged opacity violations on April 16, 1974 and June 13, 1974, as to which operator was acquitted, did not have effect of providing a defense of collateral estoppel, election of remedies or laches, because neither of those incidents was among opacity violations settled upon by environmental hearing board. Medusa Corp. v. Com., Dept. of Environmental Resources, 415 A.2d 105, 51 Pa.Cmwlth. 520, Cmwlth.1980.

5. Presumptions and burden of proof

Environmental Quality Board's determination that fugitive emissions cause air pollution is presumed to be reasonable and thus Commonwealth did not have to prove that quarry's fugitive dust emissions caused or contributed to air pollution in order for quarry to be guilty of violating rules and regulations of the Department of Environmental Resources. Com., Dept. of Environmental Resources v. Locust Point Quarries, Inc., 396 A.2d 1205, 483 Pa. 350, Sup.1979.

6. Findings

In proceeding on department of environmental resources' complaint seeking civil penalties against cement manufacturing facility owner-operator for alleged opacity violations during start-up conditions of kilns, environmental hearing board properly rejected operator's defense based upon variance order providing that operator shall on and after September 1, 1973, activate its electrostatic precipitators not later than two minutes after combustible gases had been purged from kiln exhaust system following ignition of oil-fired kiln start-up burners

cement manufacturing facility owner-operator's discovery requests before environmental hearing board, department's concentrations upon observation testing of operator's plant, and department's failure to file complaints against other cement companies, despite evidence submitted by operator in board hearing that their plants were emitting visible plumes from their stacks, did not suggest "discriminatory design" on which to base finding of unequal enforcement, and thus operator had not shown that it was victim of discriminatory enforcement by department, resulting in denial of equal protection rights. Medusa Corp. v. Com., Dept. of Environmental Resources, 415 A.2d 105, 51 Pa.Cmwlth. 520, Cmwlth.1980.

In proceeding on department of environmental resources' complaint seeking civil penalties against cement manufacturing facility owner-operator for alleged fugitive emission violations, violation could be found, for sources involved here, with respect to general prohibition, under applicable regulation, of "the emission into the outdoor atmosphere of any fugitive air contaminant" without reference to certain specific standard stated in another regulation relating to "fugitive particulate matter," as fact that two regulations did not overlap meant that either one could stand alone as basis for violation. Medusa Corp. v. Com., Dept. of Environmental Resources, 415 A.2d 105, 51 Pa.Cmwlth. 520, Cmwlth.1980.

In proceeding on department of environmental resources' complaint seeking civil penalties against cement manufacturing facility owner-operator for alleged opacity and fugitive emission violations, Commonwealth Court found no evidence, with respect to operator's claims as to technical basis for violations found, concerning opacity reading procedure, observation procedure, observation position and viewpoint, and similar claims, that would cause Commonwealth Court to disregard and displace expertise of environmental hearing board on these points. Medusa Corp. v. Com., Dept. of Environmental Resources, 415 A.2d 105, 51 Pa. Cmwlth. 520, Cmwlth.1980.

In proceeding on department of environmental resources' complaint seeking civil penalties against cement manufacturing facility owner-operator for alleged opacity and fugitive emission violations, the opacity and fugitive emission violations, as finally found by environmental hearing board, were supported by substantial evidence. Medusa Corp. v. Com., Dept. of Environmental Resources, 415 A.2d 105, 51 Pa.Cmwlth. 520, Cmwlth. 1980.

Evidence, consisting of department of environmental resources' resistance to

Evidence in proceedings on summary complaint charging university with violation of provision of rules and regulations of county health department by causing or allowing emission of visible air contaminants from incinerator located on campus, which failed to establish that university had "caused, suffered, or allowed" emission in question, supported judgment exonerating university. Com. ex rel. Allegheny County Health Dept., Bureau of Air Pollution Control v. University of Pittsburgh, 388 A.2d 1163, 37 Pa.Cmwlth. 117, Cmwlth.1978.

7. Public officers' liability

A county commissioner is not individually criminally responsible for criminal actions of the county, such as violation of the Air Pollution Control Act. Com. v. Stahl, 70 Pa. D. & C.2d 111 (1975).

8. Contempt

Prior determination in contempt proceeding that it was impossible for public utility to meet Commonwealth's sulfur dioxide emission standards was not relevant to imposition of fines for utility's violation of particulate matter standards and thus imposition of civil penalties for violation of the Commonwealth's particulate emission standards was not barred by res judicata in subsequent civil proceeding, in which, additionally, the "thing sued for" was different from that sued for in contempt proceeding. Com., Dept. of Environmental Protection v. Pennsylvania Power Co., 384 A.2d 273, 34 Pa.Cmwlth. 546, Cmwlth.1978.

Determination in contempt proceeding that it was impossible for public utility to comply with Commonwealth's current sulfur dioxide emission limitations due to inadequacy of current technology collaterally estopped environmental hearing board from reaching a different conclusion on question in civil proceeding seeking assessment of civil penalties against utility. Com., Dept. of Environmental Protection v. Pennsylvania Power Co., 384 A.2d 273, 34 Pa.Cmwlth. 546, Cmwlth.1978.

Where sole relevant result in contempt proceeding was that it was impossible for public utility to meet sulfur dioxide emission standards, and, additionally, contempt action was seeking submission of plan for abatement on behalf of utility while in civil proceeding department of environmental resources was seeking to impose monetary penalties for specific violations of particulate matter emission standards and resulting air pollution, doctrine of collateral estoppel was inapplicable to environmental hearing board's imposition of civil penalties for particulate matter emission violations. Com., Dept. of Environmental Protection v. Pennsylvania Power Co., 384 A.2d 273, 34 Pa.Cmwlth. 546, Cmwlth.1978.

Where penalties sought by Department of Environmental Resources for power company's failure to submit pollution control plan complying with newly promulgated sulfur dioxide emission standards exceeded those authorized by Air Pollution Control Act, penalties would not have been enforceable even if court had found power company in civil contempt for failing to comply with court order requiring submission of plan complying with such emission standards. (Per Jones, C.J., with two Judges concurring and four Judges concurring in the result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

Where court in attempting to ameliorate conflict between power company and Department of Environmental Resources formulated its own order to abate air pollution, including commitment date, without agency assistance and where department was given opportunity to make a decision reviewable through administrative procedures but elected to bring action to hold company in civil contempt for violation of order, court hearing contempt petition did not err in ruling on validity of original order and in so ruling did not substitute its expertise for that of administrative agency. (Per Jones, C. J., with two Judges concurring and four Judges concurring in result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

Evidence, in proceeding to hold power company in contempt for failure to comply with court order requiring submission of pollution control plan complying with particulate matter and sulfur dioxide emission standards, showing, inter alia, that power company made complete investigation but did not discover any fuels that could be used to comply with standards, that desulfurization operations were experimental and had not been demonstrated as workable for company and that power company had submitted alternative application setting forth methods of complying with emission regulations supported trial court's finding that power company made good-faith attempt to comply with order but that full compliance was impossible. (Per Jones, C. J., with two Judges concurring and four Judges concurring in the result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

Where only hearing held prior to issuance of court order requiring power company to submit pollution control plan meeting newly promulgated sulfur dioxide emission standards related to Commonwealth's motion for injunctive relief under earlier emission standards, defense of impossibility of performance under new regulations was not available to power company at hearing, for purposes of determining whether power company could raise such defense for first time in subsequent proceeding to hold company in civil contempt for violation of court order. (Per Jones, C. J., with two Judges concurring and four Judges concurring in the result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

Trial court's conclusion that power company's compliance with court order requiring submission of pollution control plan meeting state emissions regulations and establishing October 1972 commitment date was impossible so that company could not be held in contempt for failure to comply could not be deemed erroneous because it failed to address question whether new sulfur dioxide standards would be attainable in 1975 and avoided technology-forcing aspects envisioned by Federal Clean Air Act, 42 U.S.C.A. § 1857 et seq., where inquiry into such issues was not necessary to determination whether company was in contempt of court order. (Per Jones, C. J., with two Judges concurring and four Judges concurring in the result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

9. Review

Review of agency decision regarding air pollution permits court to ask only whether based on full record before agency agency's action was arbitrary, capricious or an abuse of discretion. (Per Jones, C. J., with two Judges concurring and four Judges concurring in the result.) Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 337 A.2d 823, 461 Pa. 675, Sup.1975.

10. Remand

Proceeding, which involved department of environmental resources' complaint seeking civil penalties against cement manufacturing facility owner-operator for alleged opacity violations during start-up of kilns, had to be remanded to environmental hearing board with direction to make findings as to how many of 19 days of opacity violations meriting penalty, because department gave proper notice, included violations related to start-up conditions, rather than malfunction conditions within scope of "normal operations" apart from startups, where department's charges expressly related opacity violations to start-up conditions, not to conditions "other than normal operations." Medusa Corp. v. Com., Dept. of Environmental Resources, 415 A.2d 105, 51 Pa.Cmwlth. 520, Cmwlth.1980.

In proceeding on department of environmental resources' complaint seeking civil penalties against cement manufacturing facility owner-operator for alleged fugitive emission violations, environmental hearing board's findings and conclusions concerning whether number of days of fugitive emission violations was 19 or 20 were not consistent in supporting penalty order assessing $6,000 penalty for fugitive emissions on basis of 20 days at $300 per day, and thus proceeding had to be remanded for correction or clarification as to one-day difference. Medusa Corp. v. Com., Dept. of Environmental Resources, 415 A.2d 105, 51 Pa.Cmwlth. 520, Cmwlth.1980.

In proceeding on department of environmental resources' complaint seeking civil penalties against cement manufacturing facility owner-operator, operator, as to air pollution issues, filed, following oral argument on appeal, application for remand to consider after-discovered evidence, and pursuant to hearing held on that application, separate order of Commonwealth Court remanded those issues for reconsideration by board in light of evidence described in application, and it was to be expected that board would coordinate its reconsideration under that separate order with other remanded matters. Medusa Corp. v. Com., Dept. of Environmental Resources, 415 A.2d 105, 51 Pa.Cmwlth. 520, Cmwlth.1980.

§ 4009.1. Civil penalties

(a) In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this act or any rule or

regulation promulgated under this act or any order, plan approval or permit issued pursuant to this act, the department may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was wilful. The civil penalty so assessed shall not exceed ten thousand dollars ($10,000.00) per day for each violation which occurs in the first three (3) years following enactment of this section, fifteen thousand dollars ($15,000.00) per day for each violation which occurs in the fourth year following enactment of this section and twenty-five thousand dollars ($25,000.00) per day for each violation which occurs in the fifth year and all subsequent years following enactment of this section. In determining the amount of the penalty, the department shall consider the wilfulness of the violation; damage to air, soil, water or other natural resources of the Commonwealth or their uses; financial benefit to the person in consequence of the violation; deterrence of future violations; cost to the department,[1] the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the owners or operator of the source or facility; and other relevant factors.

(b) When the department proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full, or, if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the hearing board within the thirty (30) day period for placement in an escrow account with the State Treasurer or any Commonwealth bank or post an appeal bond to the hearing board within thirty (30) days in the amount of the proposed penalty, provided that such bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the department. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the hearing board shall, within thirty (30) days, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the violation or the amount of the civil penalty unless the appellant alleges financial inability to prepay the penalty or to post the appeal bond. The hearing board shall conduct a hearing to consider the appellant's alleged inability to pay within thirty (30) days of the date of the

appeal. The hearing board may waive the requirement to prepay the civil penalty or to post an appeal bond if the appellant demonstrates and the hearing board finds that the appellant is financially unable to pay. The hearing board shall issue an order within thirty (30) days of the date of the hearing to consider the appellant's alleged inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the Commonwealth and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest at the rate established in subsection (c) of section 6.3,[2] which shall run from the date of assessment of the penalty. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a debt of such person, as may be appropriate, to the Clean Air Fund. The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to the department, the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this subsection, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this subsection.

1970, Jan. 8, P.L. 2119, § 9.1, added 1972, Oct. 26, P.L. 989, No. 245, § 9, imd. effective. Amended 1992, July 9, P.L. 460, No. 95, § 10, imd. effective.

[1] So in enrolled bill.
[2] 35 P.S. § 4006.3(c).

Historical and Statutory Notes

1992–95 legislation

The 1992 amendment rewrote the section which prior thereto read:

"In addition to proceeding under any other remedy available at law, or in equity for a violation of a provision of this act or a rule or regulation of the board, or an order of the department, the hearing board, after hearing, may assess a civil penalty upon a person for such violation. Such a penalty may be assessed whether or not the violation was wilful. The civil penalty so assessed shall not exceed ten thousand dollars ($10,000.00), plus up to two thousand five hundred dollars ($2,500.00) for each day of continued violation. In determining the amount of the civil penalty, the hearing board shall consider the wilfulness of the

violation, damage or injury to the outdoor atmosphere of the Commonwealth or its uses, and other relevant factors. It shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided at law for the collection of debt. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the Commonwealth upon the property, both real and personal, of such person, but only after same has been entered and docketed of record by the prothonotary of the county where such is situated. The hearing board may, at any time, transmit to the prothonotaries of the respective counties certified copies of all such liens, and it shall be the duty of each prothonotary to enter and docket the same of record in his office, and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof."

Law Review and Journal Commentaries

Imposition of civil penalties on electric utility for violation of "technologically infeasible" sulfur dioxide emission standard. 54 Temp. L.Q. 597 (1981).

Library References

Environmental Law ⇐296.
Westlaw Topic No. 149E.

Notes of Decisions

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1. Validity

35 P.S. § 4009.1, under which department of environmental resources sought to assess civil penalties on electric utility for violation of sulfur dioxide air pollution regulation, with which technology then present rendered compliance impossible, was not unconstitutional, in that such "technology forcing," by the imposition of civil penalties, was reasonably related to reduction of pollution in state, and thus, could not be said to violate constitutional protection of utility's property interests. Com., Dept. of Environmental Resources v. Pennsylvania Power Co., 416 A.2d 995, 490 Pa. 399, Sup. 1980.

2. In general

Since Air Pollution Control Act is designed to go beyond federal ambient air quality standards, since reduction of air pollution to such a degree is a valid public interest, and since particulate matter standards in question were obtainable, imposition of civil penalties, which were reasonably necessary to accomplish regulation of particulate matter pollution, for public utility's noncompliance with such standards was appropriate in all respects. Com., Dept. of Environmental Protection v. Pennsylvania Power Co., 384 A.2d 273, 34 Pa.Cmwlth. 546, Cmwlth.1978.

3. Election of remedies

Where equity action was brought to compel compliance with Commonwealth's air pollution regulations, contempt petition was initiated to obtain adherence to court's subsequent order requiring submission of an abatement plan and civil penalties action was initiated to recover damages for specific violations of particulate matter emission regulations and to inhibit future pollution, doctrine of election of remedies did not preclude action for civil penalties. Com., Dept. of Environmental Protection v. Pennsylvania Power Co., 384 A.2d 273, 34 Pa.Cmwlth. 546, Cmwlth.1978.

4. Findings

Findings that quality of ambient air downwind of public utility's generating station was in general significantly more deteriorated than was air quality upwind of station and that emissions from utility's boiler were a significant fact in determining quality of ambient air in vicinity of utility's generating plant were supported by substantial evidence and were, in and of themselves, sufficient to allow for imposition of civil penalties against public utility for violation of particulate matter emission standards. Com., Dept. of Environmental Protection v. Pennsylvania Power Co., 384 A.2d 273, 34 Pa.Cmwlth. 546, Cmwlth.1978.

Where it was technologically impossible for public utility to attain established sulfur dioxide emission levels, any intended regulatory aspect of civil penalties assessed for failure of public utility to meet sulfur dioxide emission limitations failed to further any public interest since penalties could pose no deterrence as to future sulfur dioxide pollution nor could penalties be utilized to clean air polluted by past violations as no present technology was capable of accomplishing that result, and thus imposition of such penalties violated utility's constitutionally protected property rights. Com., Dept. of Environmental Protection v. Pennsylvania Power Co., 384 A.2d 273, 34 Pa.Cmwlth. 546, Cmwlth.1978.

5. Penalties

Where base penalty for gasoline station owner's failure to install Stage II vapor recovery technology at three stations by statutory deadline was calculated based on throughput, subsequent ten percent increase in penalty, based on average monthly throughput, was an unreasonable increase based on same factor. American Auto Wash, Inc. v. Department of Environmental Protection, 729 A.2d 175, Cmwlth.1999, appeal denied 743 A.2d 923, 560 Pa. 711.

6. Discretion of court

Department of Environmental Protection's (DEP) failure to reduce penalty for gasoline station owner's noncompliance with requirements of Stage II vapor recovery technology in some measure in consideration of mitigating factor that at least part of eight or nine month period of noncompliance was caused by factors beyond owner's control was not an abuse of discretion. American Auto Wash, Inc. v. Department of Environmental Protection, 729 A.2d 175, Cmwlth.1999, appeal denied 743 A.2d 923, 560 Pa. 711.

Environmental Hearing Board objectively entertained gasoline station owner's arguments in opposition to penalty for failure to install Stage II vapor recovery technology at three stations by statutory deadline, and did not abuse its discretion in construing Air Pollution Control Act and Department of Environmental Protection's (DEP) regulations; record contained no evidence that Board treated DEP more favorably than it treated owner or that Board failed to discharge its adjudicative duties in objective manner. American Auto Wash, Inc. v. Department of Environmental Protection, 729 A.2d 175, Cmwlth.1999, appeal denied 743 A.2d 923, 560 Pa. 711.

§ 4009.2. Disposition of fees, fines and civil penalties

(a) All fines, civil penalties and fees collected under this act shall be paid into the Treasury of the Commonwealth in a special fund known as the Clean Air Fund, hereby established, which, along with interest earned, shall be administered by the department for use in the elimination of air pollution. The department may establish such separate accounts as may be necessary or appropriate to implement the requirements of this act and the Clean Air Act. The board shall adopt rules and regulations for the management and use of the money in the fund.

(b) The Clean Air Fund may be supplemented by appropriations from the General Assembly, the Federal, State or local government or any private source.

(c) The Clean Air Fund shall not be subject to 42 Pa.C.S.Ch. 37 Subch. C (relating to judicial computer system).

1960, Jan. 8, P.L. 2119, § 9.2, added 1972, Oct. 26, P.L. 989, No. 245, § 9, imd. effective. Amended 1992, July 9, P.L. 460, No. 95, § 10, imd. effective.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment rewrote the section, which prior thereto read:

"All fines, civil penalties and fees collected under this act shall be paid into the Treasury of the Commonwealth in a special fund known as the 'Clean Air Fund,' hereby established, which shall be administered by the department for use in the elimination of air pollution. The board shall adopt rules and regulations for the management and use of the money in the fund."

Law Review and Journal Commentaries

Imposition of civil penalties on electric utility for violation of "technologically infeasible" sulfur dioxide emission standard. 54 Temp.L.Q. 597 (1981).

Library References

Environmental Law ⇐296.
Westlaw Topic No. 149E.

§ 4009.3. Continuing violations

Each day of continued violation and each violation of any provision of this act, any rule or regulation adopted under this act or any order of the department or any condition or term of any plan approval or permit issued pursuant to this act shall constitute a separate offense and violation.

1960, Jan. 8, P.L. 2119, § 9.3, added 1992, July 9, P.L. 460, No. 95, § 11, imd. effective.

Library References

Environmental Law ⇐295, 296, 744.
Westlaw Topic No. 149E.

§ 4010. Repealed by 1992, July 9, P.L. 460, No. 95, § 12, imd. effective

Historical and Statutory Notes

Former § 4010, which was added by Act 1960, Jan. 8, P.L. (1959) 2119, § 10, related to civil remedies and prior to repeal was amended by Act 1968, June 12, P.L. 163, No. 92, § 7; Act 1972, Oct. 26, P.L. 989, No. 245, § 10.

See, now, 35 P.S. § 4010.1.

§ 4010.1. Enforcement orders

(a) The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. These orders shall include, but shall not be limited to, orders modifying, suspending, terminating or revoking any plan approvals or permits, orders requiring persons to cease unlawful activities or cease operation of a facility or air contamination source which, in the course of its operation, is in violation of any provision of this act, any rule or regulation promulgated under this act or plan approval or permit, order to take corrective action or to abate a public nuisance or an order requiring the testing, sampling or monitoring of any air contamination source or orders requiring production of information. Such an order may be issued if the department finds that any condition existing in or on the facility or source involved is causing or contributing to or is creating a danger of air pollution or if it finds that the permittee or any person is in violation of any provision of this act or of any rule, regulation or order of the department.

(b) The department may, in its order, require compliance with such conditions as are necessary to prevent or abate air pollution or effect the purposes of this act.

(c) An order issued under this section shall take effect upon notice, unless the order specifies otherwise. An appeal to the hearing board of the department's order shall not act as a supersedeas, provided, however, that, upon application and for cause shown, the hearing board may issue such a supersedeas under rules established by the hearing board.

(d) The authority of the department to issue an order under this section is in addition to any remedy or penalty which may be imposed pursuant to this act. The failure to comply with any such order is hereby declared to be a public nuisance.

1960, Jan. 8, P.L. (1959) 2119, § 10.1, added 1992, July 9, P.L. 460, No. 95, § 13, imd. effective.

Library References

Environmental Law ⇐295.
Westlaw Topic No. 149E.

§ 4010.2. Appealable actions

Any person aggrieved by an order or other administrative action of the department issued pursuant to this act or any person who participated in the public comment process for a plan approval or permit shall have the right, within thirty (30) days from actual or

constructive notice of the action, to appeal the action to the hearing board in accordance with the act of July 13, 1988 (P.L. 530, No. 94), known as the Environmental Hearing Board Act,[1] and 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

1960, Jan. 8, P.L. (1959) 2119, § 10.2, added 1992, July 9, P.L. 460, No. 95, § 13, imd. effective.

[1] 35 P.S. § 7511 et seq.

Library References

Environmental Law ⇐294, 295.
Westlaw Topic No. 149E.

Notes of Decisions

Notice 1

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1. Notice

Facsimile indicating that it was "advanced copy" of letter from Department of Environmental Protection (DEP) denying request to extend air pollution control plan approval was not operative notice of DEP's final decision, and thus, 30-day appeal period did not begin to run until applicant received original letter by certified mail several days later. Soil Remediation Systems, Inc. v. Department of Environmental Protection, 703 A.2d 1081, Cmwlth.1997.

§ 4010.3. Limitation on action

The provisions of any other statute to the contrary notwithstanding, actions for civil or criminal penalties under this act may be commenced at any time within a period of seven (7) years from the date the offense is discovered.

1960, Jan. 8, P.L. (1959) 2119, § 10.3, added 1992, July 9, P.L. 460, No. 95, § 13, imd. effective.

Library References

Environmental Law ⇐296, 751.
Westlaw Topic No. 149E.

§ 4011. Powers reserved to the department under existing laws

Nothing in this act shall limit in any way whatever the powers conferred upon the department under laws other than this act, it being expressly provided that all such powers are preserved to the department and may be freely exercised by it. No court exercising general equitable jurisdiction shall be deprived of such jurisdiction even though a nuisance or condition detrimental to health is subject to regulation or other action by the board under this act.

1960, Jan. 8, P.L. (1959) 2119, § 11. Amended 1966, P.L. (1965) 1520, § 1; 1972, Oct. 26, P.L. 989, No. 245, § 11, imd. effective; 1992, July 9, P.L. 460, No. 95, § 14, imd. effective.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment deleted the second sentence, which read, "The department shall have the right upon approval of the Attorney General, to petition a court of competent jurisdiction to order the abatement of any nuisance or condition detrimental to health."; and in the former third sentence, at the beginning, deleted "For that purpose" and, following "even though", substituted "a" for "such".

Library References

Environmental Law ⇐290.
Westlaw Topic No. 149E.

Notes of Decisions

Equity 1

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1. Equity

Provisions in Air Pollution Control Act (this section) that nothing in act should limit powers conferred upon health department to control and abate nuisances detrimental to public health as provided by Administrative Code, 71 P.S. § 531, did not amount to preservation of equity's jurisdiction to inquire into air pollution controversies. Com. v. Glen Alden Corp., 210 A.2d 256, 418 Pa. 57, Sup.1965.

The equity powers of the Department of Health, with respect to the abatement of public nuisances, arise under 71 P.S. § 532. The Air Pollution Control Act (§ 4001 et seq. of this title), however, merely reserves to the department the right to abate nuisances in the manner provided in 71 P.S. § 531, which is by physical entry and abatement. Com. v. Glen Alden Corp., 81 Dauph. 355 (1963), vacated on other grounds 210 A.2d 256, 418 Pa. 57.

§ 4012. Powers reserved to political subdivisions

(a) Nothing in this act shall prevent counties, cities, towns, townships or boroughs from enacting ordinances with respect to air pollution which will not be less stringent than the provisions of this act, the Clean Air Act or the rules and regulations promulgated under either this act or the Clean Air Act. This act shall not be construed to repeal existing ordinances, resolutions or regulations of the aforementioned political subdivisions existing at the time of the effective date of this act, except as they may be less stringent than the provisions of this act, the Clean Air Act or the rules or regulations adopted under either this act or the Clean Air Act.

(b) The administrative procedures for the abatement, reduction, prevention and control of air pollution set forth in this act shall not apply to any county of the first or second class of the Commonwealth which has and implements an air pollution control program that, at a minimum, meets the requirements of this act, the Clean Air Act and the rules and regulations promulgated under both this act and the Clean Air Act and has been approved by the department.

(b.1) Provisions of this act pertaining to dust control measures shall not apply to portions of highways in townships of the second class where no businesses or residences are located.

(c)(1) Whenever, either upon complaint made to or initiated by the department, the department finds that any person is in violation of air pollution control standards, or rules and regulations promulgated pursuant to the grant of authority made in subsection (b), the department shall give notification of that fact to that person and to the air pollution control agency of the county involved.

(2) If such violation continues to exist after said notification has been given, the department may take any abatement action provided for under the terms of this act.

(d) Whenever the department finds that violations of this act or the rules and regulations promulgated under this act are so widespread that such violations appear to result from a failure of the local county control agency involved to enforce those requirements, the department may assume the authority to enforce this act in that county.

(e) The department shall have the power to refuse approval, or to suspend or rescind approval, once given, to any county air pollution control agency if the department finds that such county agency is unable or unwilling to conduct an air pollution control program to abate or reduce air pollution problems within its jurisdiction in accordance with the requirements of this act, the Clean Air Act or the rules and regulations promulgated under both this act and the Clean Air Act.

(f) Whenever the department takes action under the provisions of subsections (d) or (e) of this section, it shall give written notification to the air pollution control agency of the county involved and such notification shall be an appealable action.

(g) Irrespective of subsection (b) above, and in order that the civil and criminal penalties and equitable remedies for air pollution violations shall be uniform throughout the Commonwealth, the penalties and remedies set forth in this act shall be the penalties and remedies available for enforcement of any municipal air pollution ordinances or regulations, and shall be available to any municipality, public official, or other person having standing to initiate proceedings for the enforcement of such municipal ordinances or regulations, and the amounts of the fines or civil penalties set forth herein shall be the amounts of the fines or civil penalties assessable and to be levied for violations of any municipal ordinances or regulations. It is hereby declared to be the purpose of this section to enunciate further that the purpose of this act is to provide additional and cumulative

remedies to abate the pollution of the air of this Commonwealth. Any action for the assessment of civil penalties brought for the enforcement of a municipal air pollution ordinance or regulation shall be brought in accordance with the procedures set forth in such ordinance. Where any municipal ordinance or regulation does not provide a procedure for the assessment of civil penalties, the provisions related to assessment and collection of civil penalties of section 9.1 [1] shall apply.

(h) Nothing in this act shall affect the Municipal Planning Code unless required by the Clean Air Act.

1960, Jan. 8, P.L. (1959) 2119, § 12. Amended 1966, Jan. 24, P.L. (1965) 1520, § 1; 1972, Oct. 26, P.L. 989, No. 245, § 11, imd. effective; 1992, July 9, P.L. 460, No. 95, § 14, imd. effective; 1995, Nov. 28, P.L. 645, No. 68, § 1, imd. effective.

[1] 35 P.S. § 4009.1.

Historical and Statutory Notes

Act 1995–68 legislation

The 1995 amendment added subsec. (h.1).

Pennsylvania Code References

Local air pollution agencies, see 25 Pa. Code § 133.1 et seq.

Law Review and Journal Commentaries

Enforcement of Philadelphia's 1969 air management code. James D. Keeney, 18 Vill.L.Rev. 173 (1972).

Library References

Environmental Law ⇐256.
Westlaw Topic No. 149E.

Notes of Decisions

1. Preemption

Excepting this section, the Commonwealth of Pennsylvania had preempted the enforcement of air pollution standards and to come within the enabling exception of the act the local authority had to establish standards with sufficient specificity to determine if its provisions were not less stringent than the provisions of the act and the rules and regulations promulgated pursuant to its provisions, and to put on notice the standards required by persons subject to its provisions. Borough of Ridgway Zoning Hearing Bd. v. Buehler Lumber Co., Inc., 19 Pa. D. & C.3d 780 (1981).

2. Ordinances

Air Pollution Control Act merely superseded penalty provisions of local anti-pollution ordinances but left political subdivisions free to enforce remaining sec-

Note 2

tions of their ordinances, and enforcement action was properly grounded upon local ordinance though penalty was prescribed by the Act. Com. ex rel. Allegheny County Health Dept. Bureau of Air Pollution Control v. University of Pittsburgh, 363 A.2d 1342, 26 Pa.Cmwlth. 375, Cmwlth.1976.

Provisions of city's air management code, which was enacted to carry out provisions of home rule charter relating to department of public health and the air pollution control board, had same effect as would like provisions of statute enacted by the legislature. City of Philadelphia v. Franklin Smelting & Refining Co., 284 A.2d 339, 3 Pa.Cmwlth. 626, Cmwlth. 1971.

3. Equity

In absence of allegation or showing of irreparable harm or of a continuing violation of an order of department of public health, procedures available to city under city's air management code provided city's exclusive remedy for alleged violation of the code and, therefore, equity had no jurisdiction to entertain city's action for injunction. City of Philadelphia v. Franklin Smelting & Refining Co., 284 A.2d 339, 3 Pa.Cmwlth. 626, Cmwlth. 1971.

4. Appeals

Final order of court of common pleas concerning enforcement of county anti-pollution ordinance was appealable to the Commonwealth Court under 17 P.S. § 211.402, conferring upon Commonwealth Court exclusive jurisdiction of appeal from final orders of courts of common pleas in cases of, inter alia, any home rule charter or local ordinance or resolution. Com. ex rel. Allegheny County Health Dept. Bureau of Air Pollution Control v. University of Pittsburgh, 363 A.2d 1342, 26 Pa.Cmwlth. 375, Cmwlth. 1976.

§ 4012.1. Repealed by 1972, Oct. 26, P.L. 989, No. 245, § 11.1, imd. effective

Historical and Statutory Notes

This section, derived from Act 1968, June 12, P.L. 163, No. 92, § 8, preserved existing rights and remedies relating to the abatement of public and private nuisances.

§ 4012.1a. Construction

Nothing in this act shall be construed as estopping the Commonwealth, or any district attorney or solicitor of a municipality, from proceeding in courts of law or equity to abate pollutions forbidden under this act, or abate nuisances under existing law. It is hereby declared to be the purpose of this act to provide additional and cumulative remedies to abate the pollution of the air of this Commonwealth, and nothing contained in this act shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or statutory law, criminal or civil, nor shall any provision of this act, or the granting of any plan approval or permit under this act, or any act done by virtue of this act, be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts of law or equity to suppress nuisances, or to abate any pollution now or

hereafter existing, or enforce common law or statutory rights. No courts of this Commonwealth having jurisdiction to abate public or private nuisance shall be deprived of such jurisdiction to abate any private or public nuisance instituted by any person for the reason that such nuisance constitutes air pollution.

1960, Jan. 8, P.L. 2119, § 12.1, added 1972, Oct. 26, P.L. 989, No. 245, § 11.2, imd. effective. Amended 1992, July 9, P.L. 460, No. 95, § 14, imd. effective.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment, following "granting of any", inserted "plan approval or".

Library References

Nuisance ⇐77.
Westlaw Topic No. 279.
C.J.S. Nuisances §§ 84, 91.

§ 4013. Public nuisances

A violation of this act or of any rule or regulation promulgated under this act or any order, plan approval or permit issued by the department under this act shall constitute a public nuisance. The department shall have the authority to order any person causing a public nuisance to abate the public nuisance. In addition, the department or any Commonwealth agency which undertakes to abate a public nuisance may recover the expenses of abatement following the process for assessment and collection of a civil penalty contained in section 9.1.[1] Whenever the nuisance is maintained or continued contrary to this act or any rule or regulation promulgated under this act or any order, plan approval or permit, the nuisance may be abatable in the manner provided by this act. Any person who causes the public nuisance shall be liable for the cost of abatement.

1960, Jan. 8, P.L. (1959) 2119, § 13. Amended 1972, Oct. 26, P.L. 989, No. 245, § 12, imd. effective; 1992, July 9, P.L. 460, No. 95, § 14, imd. effective.

[1] 35 P.S. § 4009.1.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment rewrote the section, which prior thereto read:

"A violation of any order or of any provision of any rule or regulation promulgated pursuant to a local air pollution code or to a State air pollution act, which limits or controls the emission of any air contaminant shall constitute a public nuisance and shall be abatable in the manner provided by law."

Library References

Environmental Law ⇐295, 296.
Nuisance ⇐65, 79.
Westlaw Topic Nos. 149E, 279.

C.J.S. Nuisances §§ 14, 16, 24, 94 to 95, 151.

Notes of Decisions

Difficult or impossible compliance 1
Injunctions 2

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1. Difficult or impossible compliance

Testimony that all sulfur dioxide emission control equipment either was of a wrong size, used a fuel unavailable to power company, did not work, or was experimental supported finding that power company's refusal to comply with court ordered pollution program, which was identical to department of environmental resources order, was not willful but rather due to impossibility. Com. Dept. of Environmental Resources v. Pennsylvania Power Co., 316 A.2d 96, 12 Pa.Cmwlth. 212, Cmwlth.1974, affirmed 337 A.2d 823, 461 Pa. 675.

2. Injunctions

Under this section, if court finds violation of either or both this Act or Philadelphia Air Management Code, on suit of residents, court may enjoin such violations as public nuisances, notwithstanding failure to give prior notice to state Attorney General. Concerned Citizens of Bridesburg v. City of Philadelphia. E.D.Pa.1986, 643 F.Supp. 713.

§ 4013.1. Search warrants

Whenever an agent or employe of the department, charged with the enforcement of the provisions of this act, has been refused access to property, or has been refused the right to examine any air contamination source, or air pollution control equipment or device, or is refused access to or examination of books, papers and records pertinent to any matter under investigation, such agent or employe may apply for a search warrant to any Commonwealth official authorized by the laws of the Commonwealth to issue the same to enable him to have access, examine and seize such property, air contamination source, air pollution control equipment or device, or books, papers and records, as the case may be. It shall be sufficient probable cause to issue a search warrant that the inspection is necessary to properly enforce the provisions of this act.

1960, Jan. 8, P.L. 2119, § 13.1, added 1972, Oct. 26, P.L. 989, No. 245, § 13, imd. effective. Amended 1992, July 9, P.L. 460, No. 95, § 14, imd. effective.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment, following "to have access", substituted ", examine and seize" for "and examine".

Library References

Environmental Law ⇐295
Searches and Seizures ⇐102.

Westlaw Topic Nos. 149E, 349.

C.J.S. Searches and Seizures §§ 132 to 134.

United States Supreme Court

Entry on property, air pollution control, see Air Pollution Variance Bd. of Colorado v. Western Alfalfa Corp., 1974, 94 S.Ct. 2114, 416 U.S. 861, 40 L.Ed.2d 607, on remand 534 P.2d 796, 35 Colo.App. 207.

§ 4013.2. Confidential information

All records, reports or information obtained by the department or referred to at public hearings under the provisions of this act shall be available to the public, except that upon cause shown by any person that the records, reports or information, or a particular portion thereof, but not emission data, to which the department has access under the provisions of this act, if made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, including intellectual property rights, the department shall consider such record, report or information, or particular portion thereof confidential in the administration of this act. The department shall implement this section consistent with sections 112(d) [1] and 114(c) [2] of the Clean Air Act. Nothing herein shall be construed to prevent disclosure of such report, record or information to Federal, State or local representatives as necessary for purposes of administration of any Federal, State or local air pollution control laws, or when relevant in any proceeding under this act.

1960, Jan. 8, P.L. 2119, § 13.2, added 1972, Oct. 26, P.L. 989, No. 245, § 13, imd. effective. Amended 1992, July 9, P.L. 460, No. 95, § 13.2, imd. effective.

[1] 42 U.S.C.A. § 7412(d).
[2] 42 U.S.C.A. § 7414.

Historical and Statutory Notes

Act 1992–95 legislation

The 1992 amendment, in the first sentence, inserted the reference to intellectual property rights, and inserted the second sentence.

Library References

Records ⇐30, 59.
Westlaw Topic No. 326.
C.J.S. Records §§ 60, 62 to 63, 65, 93, 95, 106.

Privileges, executive privilege, governmental records, see Packel & Poulin, 1 Pennsylvania Practice § 533.

Repealed

§§ 4013.3 to 4013.5. Repealed by 1992, July 9, P.L. 460, No. 95, § 15, imd. effective

Historical and Statutory Notes

Former §§ 4013.3 to 4013.5, which derived from Act 1960, Jan. 8, P.L. 2119 §§ 13.3 to 13.5, and were added by Act 1972, Oct. 26, P.L. 989, No. 245, § 13, related to existing rules, regulations, permits and approvals, public nuisances, and variances.

For subject matter of repealed § 4013.4, see, now, 35 P.S. § 4013.

§ 4013.6. Suits to abate nuisances and restrain violations

(a) Any activity or condition declared by this act to be a nuisance or which is otherwise in violation of this act shall be abatable in the manner provided by law or equity for the abatement of public nuisance. In addition, in order to restrain or prevent any violation of this act or the rules and regulations promulgated under this act or any plan approval or permit or orders issued by the department or to restrain the maintenance and threat of public nuisance, suits may be instituted in equity or at law in the name of the Commonwealth upon relation of the Attorney General, the General Counsel, the district attorney of any county or the solicitor of any municipality affected after notice has first been served upon the Attorney General of the intention of the General Counsel, district attorney or solicitor to so proceed. Such proceedings may be prosecuted in the Commonwealth Court or in the court of common pleas of the county where the activity has taken place, the condition exists or the public is affected, and, to that end, jurisdiction is hereby conferred in law and equity upon such courts. Except in cases of emergency where, in the opinion of the court, the exigencies of the case require immediate abatement of the nuisance, the court may, in its decree, fix a reasonable time during which the person responsible for the nuisance may make provision for the abatement of the same.

(b) In cases where the circumstances require it or the public health is endangered, a mandatory preliminary injunction, special injunction or temporary restraining order may be issued upon the terms prescribed by the court, notice of the application therefor having been given to the defendant in accordance with the rules of equity practice, and, in any such case, the Attorney General, the General Counsel, the district attorney or the solicitor of any municipality shall not be required to give bond. In any such proceeding the court shall, upon motion of the Commonwealth, issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct as defined by this act or is engaged in conduct which is causing immediate and irreparable harm to the

public. In addition to an injunction, the court in such equity proceedings may levy civil penalties in the same manner as the department in accordance with section 9.1. [1]

(c) Except as provided in subsection (d) of this section, any person may commence a civil action to compel compliance with this act or any rule, regulation, order or plan approval or permit issued pursuant to this act by any owner or operator alleged to be causing or contributing to a violation of any provision of this act or any rule or regulation promulgated under this act or any plan approval, permit or order issued by the department. In addition to seeking to compel compliance, any person may request the court to award civil penalties. The court shall use the factors and amounts contained in section 9.1 in awarding civil penalties under this subsection. Such penalties shall be paid into the Clean Air Fund established by section 9.2 [2] or be used to prevent air pollution in the county where the violation occurred. Except where 42 Pa.C.S. (relating to judiciary and judicial procedure) requires otherwise, the courts of common pleas shall have jurisdiction of such actions. Such an action may not be commenced if the department has commenced and is diligently prosecuting a civil action in a Federal or State court or is in litigation before the hearing board to require the alleged violator to comply with this act, any rule or regulation promulgated under this act or any order, plan approval or permit issued pursuant to this act, but, in any such action in a Federal or State court or before the hearing board, any person having or representing an interest which is or may be adversely affected may intervene as a matter of right without posting bond.

(d) An action pursuant to subsection (c) of this section may not be commenced prior to sixty (60) days after the plaintiff has given notice in writing of the violation to the department and to any alleged violator.

(e) The sixty (60) day notice provisions of subsection (d) of this section to the contrary notwithstanding, any action pursuant to subsection (c) of this section may be initiated immediately upon written notification to the department in the case where the violation or condition complained of constitutes an imminent threat to the health or safety of the plaintiff or would immediately affect a legal interest of the plaintiff.

(f) The court, in issuing any final order in any action brought pursuant to subsection (c) of this section, may award costs of litigation, including attorney and expert witness fees, to any party whenever the court determines such an award is appropriate. Except as provided in subsection (b) of this section, the court may, if a tempo-

rary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Pennsylvania Rules of Civil Procedure.

1960, Jan. 8, P.L. 2119, § 13.6, added 1992, July 9, P.L. 460, No. 95, § 16, imd. effective.

[1] 35 P.S. § 4009.1.
[2] 35 P.S. § 4009.2.

Library References

Environmental Law ⇐295.
Nuisance ⇐77 to 80.
Westlaw Topic Nos. 149E, 279.
C.J.S. Nuisances §§ 84, 90 to 91, 94 to 97.

§ 4014. Severability

The provisions of this act are severable and if any provision,[1] sentence, clause, section or part thereof shall be held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the ordinance or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the ordinance or any part thereof is inapplicable had not specifically been exempted therefrom.

1960, Jan. 8, P.L. (1959) 2119, § 14.

[1] Enrolled bill read "provisions".

Library References

Statutes ⇐64(1).
Westlaw Topic No. 361.
C.J.S. Statutes §§ 83 to 85.

§ 4015. Effective date

This act shall take effect immediately: Provided, however, That the rules and regulations promulgated pursuant to the provisions of this act shall be of no effect until one (1) year after the passage of this act.

1960, Jan. 8, P.L. (1959) 2119, § 15.

INTERSTATE AIR POLLUTION AGREEMENTS

§ 4101. Declaration of policy

It is the policy of this State to cooperate with other states sharing airsheds with this State. It is recognized that the quality of regional air masses is affected by sources of air contamination anywhere within an airshed, and that interstate concentrations of population, industry, motor vehicles, and other factors make coordination of air pollution control activities on a regional basis highly desirable. In order to promote this coordination, it is the policy of this State to administer its air pollution control programs with due regard for the quality of air masses moving between or among this State and one or more other states. It is further the policy of this State to provide for the development of recommendations concerning standards of air quality and their implementation applicable in interstate airsheds or regions through activities carried on under interstate administrative agreements, and for this State to give full consideration to these recommendations.

1972, Feb. 17, P.L. 64, No. 20, § 1, imd. effective.

Historical and Statutory Notes

Complementary Legislation:
Ky.—KRS 224.18-200 to 224.18-220.
N.J.—N.J.S.A. 32:19A-1 et seq.; 32:29-1 et seq.
Pa.—35 P.S. §§ 4101 to 4106.

Title of Act:
An Act providing for interstate air pollution agreements. 1972, Feb. 17, P.L. 64, No. 20.

Law Review and Journal Commentaries

Pollution—Right of private enforcement, Henry T. Reath, 43 Pa.B.A.Q. 238

Library References

Environmental Law ⇐241.
States ⇐6.
Westlaw Topic Nos. 149E, 360.
C.J.S. States §§ 31 to 32, 143.

§ 4102. Short title

This act shall be known and may be cited as the "Uniform Interstate Air Pollution Agreements Act."

1972, Feb. 17, P.L. 64, No. 20, § 2, imd. effective.

§ 4103. Agreements authorized

(a) The Department of Environmental Resources of the Commonwealth of Pennsylvania may make one or more administrative agree-

Appendix E-2: PA Permitting Regulations

CHAPTER 127. CONSTRUCTION, MODIFICATION, REACTIVATION AND OPERATION OF SOURCES

Authority

The provisions of this Chapter 127 issued under section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20); and section 5 of the Air Pollution Control Act (35 P. S. § 4005), unless otherwise noted.

Cross References

This chapter cited in 25 Pa. Code § 77.455 (relating to air pollution control plan); 25 Pa. Code § 77.575 (relating to air resources protection); 25 Pa. Code § 87.66 (relating to air pollution control plan); 25 Pa. Code § 87.137 (relating to air resources protection); 25 Pa. Code § 88.48 (relating to air pollution control plan); 25 Pa. Code § 88.114 (relating to air resources protection); 25 Pa. Code § 88.205 (relating to air resources protection); 25 Pa. Code § 88.317 (relating to air resources protection); 25 Pa. Code § 88.492 (relating to minimum requirements for reclamation and operation plan); 25 Pa. Code § 89.13 (relating to air pollution control plan); 25 Pa. Code § 89.64 (relating to air resources protection); 25 Pa. Code § 90.44 (relating to air pollution control plan); 25 Pa. Code § 90.149 (relating to air resources protection); 25 Pa. Code § 121.1 (relating to definitions); 25 Pa. Code § 123.112 (relating to source operating permit provision requirements); 25 Pa. Code § 123.118 (relating to emission reduction credit provisions); 25 Pa. Code § 129.14 (relating to open burning operations); 25 Pa. Code § 129.15 (relating to coke pushing operations); 25 Pa. Code § 139.101 (relating to general requirements); 25 Pa. Code § 145.74 (relating to recordkeeping and reporting); 25 Pa. Code § 145.90 (relating to emission reduction credit provisions); 25 Pa. Code § 273.217 (relating to air resources protection); 25 Pa. Code § 277.217 (relating to air resources protection); 25 Pa. Code § 288.217 (relating to air resources protection); and 25 Pa. Code § 298.61 (relating to restrictions on burning).

Subchapter A. GENERAL

Sec.

Cross References

This subchapter cited in 25 Pa. Code § 123.45 (relating to alternative opacity limitations); 25 Pa. Code § 128.1 (relating to procedure for submission of alternative emission reduction plans); and 25 Pa. Code § 128.2 (relating to adoption of alternative emission reduction option standards).

§ 127.1. Purpose.

The purpose of this article is to regulate air contamination sources for the public welfare. Air quality shall be maintained at existing levels in areas where the existing ambient air quality is better than the applicable ambient air quality standards, and air quality shall be improved to achieve the applicable ambient air quality standards in areas where the existing air quality is worse than the applicable ambient air quality standards. In accordance with this purpose, this chapter is designed to insure that new sources conform to the applicable standards of this article and that they do not result in producing ambient air contaminant concentrations in excess of those specified in Chapter 131 (relating to ambient air quality

standards). New sources shall control the emission of air pollutants to the maximum extent, consistent with the best available technology as determined by the Department as of the date of issuance of the plan approval for the new source.

Source

The provisions of this § 127.1 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (185996).

§ 127.2. [Reserved].

Source

The provisions of this § 127.2 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; corrected October 26, 1979, effective May 12, 1979, 9 Pa.B. 3563; reserved October 26, 1979, effective May 12, 1979, 9 Pa.B. 3563. Immediately preceding text appears at serial page (42535).

§ 127.3. Operational flexibility.

(a) The following regulations implement section 502(b)(10) of the Clean Air Act (42 U.S.C.A. § 7661a(b)(10)) and section 6.1(i) of the act (35 P. S. § 4006.1(1)) related to operational flexibility:

(1) Section 127.448 (relating to emissions trading at facilities with Federally enforceable emissions caps) authorizes emissions trading within a facility when there is a Federally enforceable emissions cap on emissions of air contaminants.

(2) Section 127.449 (relating to de minimis emission increases) authorizes de minimis emissions increases without a permit amendment and continues the Department's existing program for exempting sources of minor significance contained in § 127.14 (relating to exemptions).

(b) The following regulations contain additional provisions that provide operational flexibility:

(1) Section 127.14 authorizes minor changes involving construction, modification, reactivation and installation to be made without requiring plan approval.

(2) Section 127.447 (relating to alternate operating scenarios) authorizes permittees to describe alternate operating scenarios in their permit application and allows the Department to issue operating permits incorporating several alternate operating scenarios.

(3) Section 127.462 (relating to minor operating permit modifications) provides for an expedited process for making minor operating permit modifications.

(4) Section 127.450 (relating to administrative operating permit amendments) allows the administrative amendment procedures to be used for Title V operating permit amendments which have received State plan approval.

(5) Subchapter H (relating to general plan approvals and operating permits) allows the use of general plan approvals and general operating permits for stationary and portable sources.

Source

The provisions of this § 127.3 adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

Subchapter B. PLAN APPROVAL REQUIREMENTS

Cross References

This subchapter cited in 25 Pa. Code § 127.450 (relating to administrative operating permit amendments); and 25 Pa. Code § 127.702 (relating to plan approval fee).

§ 127.11. Plan approval requirements.

Except as provided in §§ 127.11a and 127.215 (relating to reactivation of sources; and reactivation), a person may not cause or permit the construction or modification of an air contamination source, the reactivation of an air contamination source after the source has been out of operation or production for 1 year or more, or the installation of an air cleaning device on an air contamination source, unless the construction, modification, reactivation or installation has been approved by the Department.

Source

The provisions of this § 127.11 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (185997).

Notes of Decisions

General Comments

Department of Environmental Resources' appeal to Commonwealth Court after the granting of a demurrer in County Court was barred by the concept of double jeopardy. *Department of Environmental Resources v. Monarch Pallet Corp.*, 532 A.2d 1246 (Pa. Cmwlth. 1987).

Cross References

This section cited in 25 Pa. Code § 127.25 (relating to compliance requirement); 25 Pa. Code § 127.443 (relating to operating permit requirements); and 25 Pa. Code § 129.92 (relating to RACT proposal requirements).

§ 127.11a. Reactivation of sources.

(a) Except as provided by § 127.215 (relating to reactivation), a source which has been out of operation or production for at least 1 year but less than or equal to 5 years may be reactivated and will not be considered a new source if the following conditions are satisfied:

(1) The owner or operator shall, within 1 year of the deactivation submit to the Department and implement a maintenance plan which includes the measures to be taken, including maintenance, upkeep, repair or rehabilitation procedures, which will enable the source to be reactivated in accordance with the terms of the permit issued to the source.
(2) The owner or operator shall submit a reactivation plan to the Department for approval at least 60 days prior to the proposed date of reactivation. The reactivation plan shall include sufficient measures to ensure that the source will be reactivated in compliance with the permit requirements. The permittee may submit a reactivation plan to the Department at any time during the term of its operating permit. The reactivation plan may also be submitted to and reviewed by the Department as part of the plan approval or permit application or renewal process.
(3) The owner or operator of the source shall submit a notice to the Department within 1 year of deactivation requesting preservation of emissions in the inventory and indicating the intent to reactivate the source.
(4) The owner or operator of the source shall comply with the terms and conditions of the maintenance plan while the source is deactivated, and shall comply with the terms of the reactivation plan and operating permit upon reactivation.
(5) The owner or operator of the source with an approved reactivation plan and operating permit shall notify the Department in writing at least 30 days prior to reactivation of the source.
(b) A source which has been out of operation or production for more than 5 years but less than 10 years may be reactivated and will not be considered a new source if the following conditions are satisfied:
(1) The owner or operator of the source complies with the requirements of subsection (a).
(2) The owner or operator of the source obtains a plan approval and operating permit which requires that the emission of air contaminants from the source will be controlled to the maximum extent, consistent with the best available technology as determined by the Department as of the date of reactivation.
(c) A source which has been out of operation for 10 or more years shall meet the requirements of this chapter applicable to a new source.
(d) Other provisions of this section to the contrary notwithstanding, a source that is out of production or operation on November 26, 1994, shall have 1 year to demonstrate compliance with the requirements of subsection (a)(1), (3) and (4).
(e) A source located in a nonattainment area that would emit an air contaminant related to the nonattainment designation or a source that would emit NO_x or VOC emissions may not be reactivated unless the proposed emissions are included in the SIP emission inventory or until the proposed emissions of these contaminants from the source are submitted to and approved by the EPA as an amendment of the SIP. The Department may refuse to allow reactivation of such a source for cause.
(f) The source shall have an operating permit prior to reactivation.

Source

The provisions of this § 127.11a adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

Cross References

This section cited in 25 Pa. Code § 127.11 (relating to plan approval requirements); and 25 Pa. Code § 127.13 (relating to extensions).

§ 127.12. Content of applications.

(a) An application for approval shall:
(1) Identify the location of the source and the name, title, address and telephone

number of the individual responsible for the operation of the source.
(2) Contain information that is requested by the Department and is necessary to perform a thorough evaluation of the air contamination aspects of the source.
(3) Show that the source will be equipped with reasonable and adequate facilities to monitor and record the emissions of air contaminants and operating conditions which may affect the emissions of air contaminants and that the records are being and will continue to be maintained and that the records will be submitted to the Department at specified intervals or upon request.
(4) Show that the source will comply with applicable requirements of this article and requirements promulgated by the Administrator of the EPA under the Clean Air Act (42 U.S.C.A. §§ 7401—7706).
(5) Show that the emissions from a new source will be the minimum attainable through the use of the best available technology.
(6) Show that the source will not prevent or adversely affect the attainment or maintenance of ambient air quality standards when requested by the Department.
(7) Contain a plan of action for the reduction of emissions during each level specified in Chapter 137 (relating to air pollution episodes), when required by the Department.
(8) Show that the provisions of § 127.43a (relating to municipal notification) have been met. The applicant shall submit a copy of the notification letter and proof that the notice was received.
(9) Contain a plan for dealing with air pollution emergencies, when requested by the Department, or when required by the Clean Air Act.
(10) Show that the source and the air cleaning devices are capable of being and will be operated and maintained in accordance with good air pollution control practices.
(11) Contain a completed compliance review form or reference the most recently submitted compliance review form for facilities submitting a compliance review form on a periodic basis.
(b) The Department will not approve an application which fails to meet the requirements of subsection (a). An approval may be granted with appropriate conditions.
(c) The records, reports or information obtained by the Department or referred to at public hearings shall be available to the public, except as provided in subsection (d).
(d) Upon cause shown by any person that the records, reports or information, or a particular portion thereof, but not emission data, to which the Department has access under the act, if made public, would divulge production or sales figures or methods, processes or production unique to that person or would otherwise tend to affect adversely the competitive position of that person by revealing trade secrets, including intellectual property rights, the Department will consider the record, report or information, or particular portion thereof confidential in the administration of the act. The Department will implement this section consistent with sections 112(d) and 114(c) of the Clean Air Act (42 U.S.C.A. §§ 7412(d) and 7414(c)). Nothing in this section prevents disclosure of the report, record or information to Federal, State or local representatives as necessary for purposes of administration of Federal, State or local air pollution control laws, or when relevant in a proceeding under the act.

Source

The provisions of this § 127.12 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (185997) to (185998).

Notes of Decisions

Double Jeopardy

Department of Environmental Resources' appeal to Commonwealth Court after the granting of a demurrer in county court was barred by the concept of double jeopardy. *Department of Environmental Resources v. Monarch Pallet Corp.*, 532 A.2d 1246 (Pa. Cmwlth. 1987).

Cross References

This section cited in 25 Pa. Code § 129.15 (relating to coke pushing operations); 25 Pa. Code § 139.51 (relating to purpose); and 25 Pa. Code § 283.218 (relating to air resources protection).

§ 127.12a. Compliance review.

(a) This section describes the compliance review procedures applicable during the review of an application for a plan approval including a general plan approval.

(b) Each applicant for a plan approval shall, as part of the application or on a periodic basis as authorized under subsection (j), submit the compliance review on a form provided by the Department, signed by a corporate officer or other responsible official of the facility submitting the application and containing a verification that the information contained in the application is true and correct to the best of the signatory's belief formed after reasonable inquiry.

(c) The compliance review form shall provide information related to the compliance status of the applicant and related parties, including:

(1) The name, address, telephone number, taxpayer identification number and plan approval or application number.

(2) The form of management under which the applicant conducts its business and a brief description of the types of business activities performed.

(3) The name and location, including both the address and the municipality and county, telephone number and relationship to the applicant—parent, subsidiary or general partner—of the related parties in this Commonwealth.

(4) The name and business address of the plant manager and general partners of the applicant.

(5) A list of plan approvals and operating permits issued by the Department or the Allegheny County or Philadelphia County air pollution control agencies to the applicant or related parties that are in effect at the time of application or were in effect during the previous 5 years. The list shall include each plan approval and operating permit number, locations and expiration dates.

(6) A list of documented conduct and deviations by the applicant or related parties. The list shall include the date, location, plan approval or operating permit number, the nature of the documented conduct or deviation and the incident status—litigation, existing/continuing, corrected and date of correction.

Unless otherwise specifically directed by the Department, the applicant is not required to report deviations which have been previously reported to the Department in writing under the requirements of this article related to monitoring and reporting requirements.

(d) The applicant shall update the compliance review form if the documented conduct or deviations occur from the date of the submission of the application through the date of operating permit issuance.

(e) The Department may establish a supplemental compliance review form that may be used to update information submitted on the compliance review form.

(f) If the Department finds that the applicant or a related party has an existing or continuing violation or lacks the intention or ability to comply with the act, or the regulations under the act, or a plan approval operating permit or order of the Department, as indicated by past or present violations, the Department will attempt to resolve the violations or lack of intention or ability to comply informally.

(g) If the Department is unable to resolve the violation or lack of intention or

ability to comply on an informal basis, the Department will place the violation and may place the lack of intention or ability to comply on the compliance docket. The violation or lack of intention or ability to comply shall remain on the compliance docket until it is resolved to the satisfaction of the Department.
(h) Plan approval will not be issued to an applicant or related party if a violation or lack of intention or ability to comply at a source owned or operated by the applicant or a related party appears on the compliance docket.
(i) A permittee or applicant may appeal to the EHB a violation or lack of intention or ability to comply which the Department places on the compliance docket.
(j) Other provisions of this section notwithstanding, a facility may submit the compliance review form required by this section on a periodic basis of not less than once every 6 months. The owners and operators of the facility shall make an election to submit the compliance review information on a periodic basis or as part of the plan approval application with the submission of the first operating permit application filed after November 26, 1994, or by making an election in writing by May 26, 1995. The facility may only change the election with the approval of the Department in writing or upon renewal of the first filed permit or a Title V permit.
(k) The owners and operators of the facility shall have reasonable procedures in place to insure that documented conduct and deviations are identified and made part of the compliance review information submitted to the Department.

Source

The provisions of this § 127.12a adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

Cross References

This section cited in 25 Pa. Code § 127.32 (relating to transfer of plan approvals).

§ 127.12b. Plan approval terms and conditions.

(a) A plan approval may contain terms and conditions the Department deems necessary to assure the proper operation of the source including the requirement for a compliance demonstration prior to issuance of an operating permit.
(b) At a minimum, each plan approval shall incorporate by reference the emission and performance standards and other requirements of the act, the Clean Air Act or the regulations adopted under the act or the Clean Air Act.
(c) The plan approval shall incorporate the monitoring, recordkeeping and reporting provisions required by Chapter 139 (relating to sampling and testing) and other monitoring, recordkeeping or reporting requirements of this article and additional requirements related to monitoring, recordkeeping and reporting required by the Clean Air Act and the regulations thereunder, including, if applicable, the enhanced monitoring requirements of 40 CFR Part 64 (relating to enhanced monitoring).
(d) The plan approval shall authorize temporary operation to facilitate shakedown of sources and air cleaning devices, to permit operations pending issuance of a permit under Subchapter F (relating to operating permit requirements) or Subchapter G (relating to Title V operating permits) or to permit the evaluation of the air contamination aspects of the source. This temporary operation period will be valid for a limited time, not to exceed 180 days, but may be extended for additional limited periods, each not to exceed 120 days.
(e) Temporary operation will not be authorized or extended under this section which may circumvent the requirements of this chapter.

Source

The provisions of this § 127.12b adopted November 25, 1994, effective November 26, 1994, 24

Pa.B. 5899.

§ 127.12c. Plan approval reporting requirements.

Each source shall submit reports to the Department containing the information the Department may prescribe relative to the operation and maintenance of the source.

Source

The provisions of this § 127.12c adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

§ 127.13. Extensions.

(a) Approval granted by the Department will be valid for a limited time, as specified by the Department in the approval. Except as provided in §§ 127.11a and 127.215 (relating to reactivation of sources; and reactivation), at the end of the time, if the construction, modification, reactivation or installation has not been completed, a new plan approval application or an extension of the previous approval will be required.

(b) If the construction, modification or installation is not commenced within 18 months of the issuance of the plan approval or if there is more than an 18-month lapse in construction, modification or installation, a new plan approval application that meets the requirements of this subchapter and Subchapters D and E (relating to prevention of significant deterioration of air quality; and new source review) shall be submitted.

Source

The provisions of this § 127.13 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (173551).

§ 127.13a. Plan approval changes for cause.

A plan approval may be terminated, modified, suspended or revoked and reissued if one or more of the following applies:

(1) The permittee constructs or operates the source subject to the plan approval in violation of the act, the Clean Air Act, the regulations promulgated under the act or the Clean Air Act, a plan approval or permit or in a manner that causes air pollution.

(2) The permittee fails to properly or adequately maintain or repair an air pollution control device or equipment attached to or otherwise made a part of the source.

(3) The permittee fails to submit a report required by the plan approval.

(4) The EPA determines that the plan approval is not in compliance with the Clean Air Act or the regulations thereunder.

Source

The provisions of this § 127.13a adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

§ 127.13b. Denial of plan approval application.

(a) The Department will deny a plan approval for a source if one or more of the following applies:

(1) The Department has determined that the source is likely to cause air pollution or to violate the act, the Clean Air Act or the regulations promulgated under the act or the Clean Air Act applicable to the source.

(2) In the design of the source, provision has not been made for adequate demonstration and verification of compliance, including source testing or alternative

means to demonstrate and verify compliance.
(3) The EPA has notified the Department in writing that the plan approval is not in compliance with the Clean Air Act or the regulations thereunder.
(4) The applicant or a related party has a violation or lack of intention or ability to comply that appears on the compliance docket.
(b) The applicant may not construct, install, modify or operate an air contamination source or install air pollution control equipment or devices on the source contrary to the plans and specifications approved by the Department.

Source

The provisions of this § 127.13b adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

§ 127.13c. Notice of basis for certain plan approval decisions.

(a) When the Department denies a plan approval application or terminates, modifies, suspends or revokes a plan approval already issued, the action shall be in the form of a written notice to the person affected informing the person of the action taken by the Department and setting forth in the notice a full and complete statement of the reasons for the action.
(b) The notice required by subsection (a) will be served upon the person affected either by hand delivery or by certified mail return receipt requested.
(c) The Department will publish a notice and brief description of the action in the *Pennsylvania Bulletin*.
(d) The action in the notice shall be final and not subject to review unless, within 30 days of the service of the notice, a person affected thereby appeals to the EHB setting forth the grounds relied upon.

Source

The provisions of this § 127.13c adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

§ 127.14. Exemptions.

(a) Plan approval is not required for the construction, modification, reactivation or installation of the following:
(1) Air conditioning or ventilation systems not designed to remove pollutants generated by or released from other sources.
(2) Combustion units rated at 2.5 million or less Btus per hour of heat input.
(3) Combustion units with a rated capacity of less than 10 million Btu per hour of heat input fueled by natural gas supplied by a public utility, liquified petroleum gas or by commercial fuel oils which are No. 2 or lighter—viscosity less than or equal to 5.82 C St—and which meet the sulfur content requirements of § 123.22 (relating to combustion units). Combustion units converting to fuel oils which are No. 3 or heavier—viscosity greater than 5.82 C St—or contain sulfur in excess of the requirements of § 123.22 require approval. For the purpose of this section, commercial fuel oil shall be virgin oil which has no reprocessed, recycled or waste material added.
(4) Sources used in residential premises designed to house four or less families.
(5) Space heaters which heat by direct heat transfer.
(6) Mobile sources.
(7) Laboratory equipment used exclusively for chemical or physical analyses.
(8) Other sources and classes of sources determined to be of minor significance by the Department.
(9) Physical changes to sources when the Department has determined the physical changes to be of minor significance.
(b) When the Department allows de minimis emission increases under

§ 127.449 (relating to de minimis emission increases), approval is not required for the construction, modification, reactivation or installation of the source creating the de minimis emission increases.

(c) For physical changes requested under subsection (a)(9), the Department will process requests for determinations as follows:

(1) For physical changes of minor significance that would not violate the terms of an operating permit, the act, the Clean Air Act or the regulations adopted under the act or the Clean Air Act and which would not result in emission increases above the emissions allowable in the operating permit or result in an increased ambient air quality impact for an air contaminant and which does not add new equipment, the applicant shall request approval, in writing, from the Department and the change may be made within 7 days of receipt by the Department of a written request unless the Department requests additional information or objects to the change within the 7- day period.

(2) For physical changes of minor significance that would not violate the terms of an operating permit, the act, the Clean Air Act or the regulations thereunder, and which would not result in emission increases above the emissions allowable in the operating permit or result in an increased ambient air quality impact for an air contaminant and which adds new equipment, the applicant shall request approval, in writing, from the Department and the change may be made within 15 days of receipt of the written request unless the Department requests additional information or objects to the change within the 15-day period.

(3) For physical changes of minor significance that would violate the terms of an operating permit, the plan approval exemption may be processed contemporaneously with the minor operating permit modification under § 127.462 (relating to minor operating permit modifications) unless precluded by the Clean Air Act or the regulations thereunder, or the applicant may request approval, in writing, from the Department for the plan approval exemption. The change may not be made until written approval is obtained from the Department and the necessary permit modification procedure has been completed.

(d) The Department may establish a list of sources and physical changes meeting the requirements of subsections (a)(8) and (9). The Department will publish notice of its intention to establish or modify the list in the *Pennsylvania Bulletin* and will establish a comment period of at least 30 days. After the close of the comment period, the Department will publish the final list or any modifications to the final list in the *Pennsylvania Bulletin*.

Source

The provisions of this § 127.14 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (173551) to (173552).

Notes of Decisions

Minor Significance

A rock quarry is not a source of minor significance within the meaning of 25 Pa. Code § 127.14 (relating to exemptions) if nothing in the record supports such a determination and the DER has not so determined. *Mignatti Construction Co., Inc. v. Environmental Hearing Board*, 411 A.2d 860 (Pa. Cmwlth. 1980).

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility); and 25 Pa. Code § 127.462 (relating to minor operating permit modifications).

§ 127.21. [Reserved].

Source

The provisions of this § 127.21 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17,

1989, effective March 18, 1989, 19 Pa.B. 1169; reserved November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (173552) and (149149).

§ 127.22. [Reserved].

Source

The provisions of this § 127.22 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; reserved March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169. Immediately preceding text appears at serial pages (126092), (50977) and (84523).

§ 127.23. [Reserved].

Source

The provisions of this § 127.23 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended September 26, 1980, effective September 27, 1980, 10 Pa.B. 3788; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; reserved November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (149149) to (149150).

§ 127.24. [Reserved].

Source

The provisions of this § 127.24 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 3, 1972, effective March 20, 1972, 2 Pa.B. 383; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended May 25, 1990, effective May 26, 1990, 20 Pa.B. 2746; reserved November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149150).

§ 127.25. Compliance requirement.

A person may not cause or permit the operation of a source subject to § 127.11 (relating to plan approval requirements), unless the source and air cleaning devices identified in the application for the plan approval and the plan approval issued to the source, are operated and maintained in accordance with specifications in the application and conditions in the plan approval issued by the Department.

A person may not cause or permit the operation of an air contamination source subject to this chapter in a manner inconsistent with good operating practices.

Source

The provisions of this § 127.25 adopted May 23, 1975, effective June 9, 1975, 5 Pa.B. 1346; amended July 23, 1976, effective July 24, 1976, 6 Pa.B. 1732; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (149150) to (149151).

§ 127.31. [Reserved].

Source

The provisions of this § 127.31 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved March 3, 1972, effective March 20, 1972, 2 Pa.B. 383.

§ 127.32. Transfer of plan approvals.

(a) A plan approval may not be transferred from one person to another except when a change of ownership is demonstrated to the satisfaction of the Department and the Department approves the transfer of the plan approval in writing.

(b) Section 127.12a (relating to compliance review) applies to a request for transfer of a plan approval.

(c) A plan approval is valid only for that specific source and that specific location of the source as described in the application.

Source

The provisions of this § 127.32 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149151).

§ 127.33. [Reserved].

Source

The provisions of this § 127.33 adopted September 10, 1971, effective September 11, 1971, 1 Pa.B. 1804; reserved August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478. Immediately preceding text appears at serial page (53965).

§ 127.34. [Reserved].

Source

The provisions of this § 127.34 adopted May 25, 1990, effective May 26, 1990, 20 Pa.B. 2746; reserved November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (149151) to (149152).

§ 127.35. Maximum achievable control technology standards for hazardous air pollutants.

(a) This section establishes the process that the Department will follow in establishing maximum achievable control technology standards in plan approvals.

(b) The regulations establishing performance or emission standards promulgated under section 112 of the Clean Air Act (42 U.S.C.A. § 7412) at 40 CFR Part 63 (relating to National Emission Standards for Hazardous Air Pollutants for Source Categories) are incorporated by reference into the Department's plan approval program. After the effective date of the performance or emission standard, new, reconstructed, modified and existing sources shall comply with the performance or emission standards pursuant to the compliance schedule established under section 112 of the Clean Air Act and the regulations thereunder.

(c) If the Administrator of the EPA has not promulgated a standard to control the emissions of hazardous air pollutants for a category or subcategory of major stationary sources under section 112 of the Clean Air Act pursuant to the schedule established under section 112(c) of the Clean Air Act, the Department will establish a performance or emission standard on a case-by-case basis for individual sources or a category of sources for those major stationary sources.

(d) The Department will establish performance or emission standards as required by section 112(g) of the Clean Air Act for the construction, reconstruction or modification of sources.

(e) The standards established under this section will be incorporated into the plan approval of each source within the category or subcategory for which a maximum achievable control technology requirement has been established. The Department has the authority to require, in the plan approval, reasonable monitoring, recordkeeping and reporting requirements for sources which emit hazardous air pollutants.

(f) A person challenging the performance or emission standards established by the Department has the burden to demonstrate that the performance or emission standard does not meet the requirements of section 112 of the Clean Air Act.

(g) In addition to the requirements of this section, the Department is authorized to require that new sources demonstrate in the plan approval application that the source will reduce or control emissions of air pollutants, including hazardous air pollutants, by using best available technology.

(h) The early emissions reduction program authorized under section 112(i)(5) of the Clean Air Act is incorporated by reference into the Department's plan approval and operating permit program.

Source

The provisions of this § 127.35 adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

Cross References

This section cited in 25 Pa. Code § 127.450 (relating to administrative operating permit amendments); and 25 Pa. Code § 127.702 (relating to plan approval fees).

§ 127.36. Health risk-based emission standards and operating practice requirements.

(a) This section describes the process for establishing health risk-based emission standards and operating practice requirements.

(b) When needed to protect public health, welfare and the environment from emissions of hazardous air pollutants from new and existing sources, the Department may impose health risk-based emission standards or operating practice requirements, except as precluded by section 6.6(d)(2) and (3) of the act (35 P. S. § 4006.6(d)(2) and (3)).

(c) In developing health risk-based emission standards or operating practice requirements, the Department will provide an explanation and rationale for the standards or requirements.

(d) The Department will provide for public review and comment on a plan approval, guideline and regulation which contains a health risk-based emission standard or operating practice requirement.

(e) Standards or requirements adopted under this section shall be developed using an analysis which, among other factors, considers, when appropriate for a source or source category, the criteria in section 112(f)(1) of the Clean Air Act (42 U.S.C.A. § 7412(f)(1)), in assessing the proposed risk to the public health, welfare and the environment from the source.

(f) The standards established under this section shall be incorporated into the plan approval of each source within the category or subcategory for which the health risk-based performance or emission standard has been established. The Department has the authority to require, in the plan approval and operating permit, reasonable monitoring, recordkeeping and reporting requirements for sources which emit hazardous air pollutants.

(g) A person challenging a performance or emission standard established by the Department has the burden to demonstrate that the performance or emission standard does not meet the requirements of section 112 of the Clean Air Act.

Source

The provisions of this § 127.36 adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899.

§ 127.41. [Reserved].

Source

The provisions of this § 127.41 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; reserved November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149152).

§ 127.42. [Reserved].

Source

The provisions of this § 127.42 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; reserved August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478. Immediately preceding text appears at serial pages (35377) to (35378).

§ 127.43. [Reserved].

Source

The provisions of this § 127.43 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; reserved August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478. Immediately preceding text appears at serial pages (35379) to (35380).

§ 127.43a. Municipal notification.

The applicant for a plan approval shall notify the local municipality and county where the air pollution source is to be located that the applicant has applied for the plan approval as required by section 1905-A of The Administrative Code of 1929 (71 P. S. § 510-5). The notification shall clearly describe the source and modifications that are to take place. The notice shall state that there is a 30-day comment period which begins upon receipt of the notice by the municipality and county.

Authority

The provisions of this § 127.43a issued under section 5 of the Air Pollution Control Act (35 P. S. § 4005).

Source

The provisions of this § 127.43a adopted March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169.

Cross References

This section cited in 25 Pa. Code § 127.12 (relating to content of applications).

§ 127.44. Public notice.

(a) The Department will prepare a notice of action to be taken on applications for plan approvals for the following:

(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 required to obtain plan approval.

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

(b) The notice required by subsection (a)(1)—(4) will be completed and sent 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. The applicant shall, within 10 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 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.

(c) If the Department denies a plan approval, the requirements of subsection (b) do not apply. Written notice of a denial will be given to requestors and to the applicant.

(d) In each case, the Department will publish notices required in subsection (a) in the *Pennsylvania Bulletin*.

(e) The notice will state, at a minimum, 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.

(3) Plan approvals issued to sources identified in subsection (a)(1)—(4) or plan approvals issued to sources with limitations on their potential to emit may become part of the SIP and will be submitted to the EPA for review and approval.

Source

The provisions of this § 127.44 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (185999) to (186000).

Cross References

This section cited in 25 Pa. Code § 127.45 (relating to contents of notice); 25 Pa. Code § 127.46 (relating to filing protests); and 25 Pa. Code § 127.424 (relating to public notice).

§ 127.45. Contents of notice.

The notice of proposed plan approval issuance required by § 127.44(a) (relating to public notice) shall include the following:

(1) The name and address of applicant.

(2) The location and name of the plant or facility at which construction or modification is taking place.

(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 plant or facility.

(5) The conditions being placed in the plan approval and a brief description of the reasons for including these conditions 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 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 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).

Source

The provisions of this § 127.45 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149155).

§ 127.46. Filing protests.

(a) A protest to a proposed action shall be filed with the Department within 30 days of the date that notice of the proposed action was published under § 127.44 (relating to public notice).

(b) A protest shall include the following:

(1) Name, address and telephone number of the person filing the protest.

(2) Identification of the proposed plan approval issuance being opposed.

(3) Concise statement of the objections to the plan approval issuance and the relevant facts upon which the objections are based.

Authority

The provisions of this § 127.46 amended under section 5 of the Air Pollution Control Act (35 P. S. § 4005).

Source

The provisions of this § 127.46 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; corrected October 7, 1983,

effective August 13, 1983, 13 Pa.B. 3094; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173. Immediately preceding text appears at serial page (84527).

Cross References

This section cited in 25 Pa. Code § 127.47 (relating to consideration of protest); 25 Pa. Code § 127.48 (relating to conferences and hearings); and 25 Pa. Code § 127.51 (relating to plan approval disposition).

§ 127.47. Consideration of protest.

(a) A protest alerts the Department to the fact and nature of the objection of the protestant to the proposed action on the application.

(b) The Department is not required to consider protests filed subsequent to the time designated in § 127.46 (relating to filing protests), but it may consider them if filed prior to issuance of a plan approval as detailed in this subchapter.

Authority

The provisions of this § 127.47 amended under section 5 of the Air Pollution Control Act (35 P. S. § 4005).

Source

The provisions of this § 127.47 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149156).

§ 127.48. Conferences and hearings.

(a) Prior to any plan approval issuance, the Department may, in its discretion, hold a fact finding conference or hearing at which the petitioner, and any person who has properly filed a protest under § 127.46 (relating to filing protests) may appear and give testimony; provided, however, that in no event will the Department be required to hold such a conference or hearing.

(b) The applicant, the protestant, and other participants will be notified of the time, place and purpose of a conference or hearing, in writing or by publication in a newspaper or the *Pennsylvania Bulletin*, except where the Department determines that notification by telephone will be sufficient.

Source

The provisions of this § 127.48 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478. Immediately preceding text appears at serial page (35382).

§ 127.49. Conference or hearing procedure.

(a) Conferences and hearings shall be conducted by a presiding officer.

(b) Except if provided otherwise in the notice or by the presiding officer, conferences and hearings shall be conducted in an informal manner and the rules of evidence are not applicable.

(c) When provided in the notice, a participant may be required to present a written statement, together with exhibits required, at the conference or hearing for the use of the participants. Persons unable to attend the conference or hearing may submit three copies of a written statement and exhibits within 10 days thereafter to the Department.

(d) At the conference or hearing, a participant may, at his own cost, record the proceedings using a stenographer, tape recorder or other means.

Source

The provisions of this § 127.49 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149157).

§ 127.50. Conference or hearing record.

(a) Following the conference or hearing, the presiding officer shall prepare a summary which shall contain the following:
(1) Identification of the plan approval application and the name of the plant or facility which is being constructed or modified.
(2) The names and addresses of each participant and whom the participant represents.
(3) The substance of the opening and closing statement by the presiding officer.
(4) The substance of the matters discussed or testified to and agreements reached by the participants.
(5) Other relevant matters to inform the Department of the results of the conference or hearing.
(b) A copy of the summary shall be submitted upon request to each participant in the proceeding. Copies of the summary, together with any transcript of the proceedings, written statements, exhibits and protests will also be placed in the file in the appropriate office in the Department for review by the participants prior to disposition of the plan approval application.

Source

The provisions of this § 127.50 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial pages (149157) to (149158).

§ 127.51. Plan approval disposition.

(a) After reviewing a protest or record of a conference or hearing, the Department may take action authorized by this chapter.
(b) A notice of denial or a plan approval will be issued to the applicant. Each protestant who has submitted a comment within the time period set forth in § 127.46 (relating to filing protests) will be notified personally or by mailing a copy of the plan approval disposition to the address set forth in the protest.
(c) The Department will also publish notice of its action in the *Pennsylvania Bulletin* which will be deemed to be sufficient notice to others.

Source

The provisions of this § 127.51 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1173; amended November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899. Immediately preceding text appears at serial page (149158).

§ 127.52. [Reserved].

Source

The provisions of this § 127.52 adopted August 12, 1977, effective August 29, 1977, 7 Pa.B. 2251; reserved August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478. Immediately preceding text appears at serial pages (35384) and (62474).

Subchapter C. [Reserved]

§ 127.61. [Reserved].

Source

The provisions of this § 127.61 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149159).

§ 127.62. [Reserved].

Source

The provisions of this § 127.62 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149160).

§ 127.63. [Reserved].

Source

The provisions of this § 127.63 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; amended June 19, 1981, effective June 20, 1981, 11 Pa.B. 2118; amended August 12, 1983, effective August 13, 1983, 13 Pa.B. 2478; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial pages (149160) to (149161).

§ 127.64. [Reserved].

Source

The provisions of this § 127.64 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149162).

§ 127.65. [Reserved].

Source

The provisions of this § 127.65 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; amended June 19, 1981, effective June 20, 1981, 11 Pa.B. 2118; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial pages (149162) to (149163).

§ 127.66. [Reserved].

Source

The provisions of this § 127.66 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; amended June 19, 1981, effective June 20, 1981, 11 Pa.B. 2118; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial pages (149163) to (149164).

§ 127.67. [Reserved].

Source

The provisions of this § 127.67 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; corrected April 13, 1990, effective March 18, 1989, 20 Pa.B. 2032; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149165).

§ 127.68. [Reserved].

Source

The provisions of this § 127.68 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149166).

§ 127.69. [Reserved].

Source

The provisions of this § 127.69 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169; corrected April 13, 1990, effective March 18, 1989, 20 Pa.B. 2032; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial page (149166).

§§ 127.70—127.73. [Reserved].

Source

The provisions of these §§ 127.70—127.73 adopted June 22, 1979, effective July 1, 1979, 9 Pa.B. 1935; corrected June 29, 1979, effective July 1, 1979, 9 Pa.B. 2150; reserved January 14, 1994, effective January 15, 1994, 24 Pa.B. 443. Immediately preceding text appears at serial pages (149166) to (149168).

Subchapter D. PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

Sec.
127.81. Purpose.
127.82. Scope.
127.83. Adoption of program.

Cross References

This subchapter cited in 25 Pa. Code § 127.13 (relating to extensions); 25 Pa. Code § 127.44 (relating to public notice); 25 Pa. Code § 127.45 (relating to contents of notice); 25 Pa. Code § 127.449 (relating to de minimis emission increases); 25 Pa. Code § 127.450 (relating to administrative operating permit amendments); and 25 Pa. Code § 127.702 (relating to plan approval fees).

§ 127.81. Purpose.

The purpose of this subchapter is to adopt the Prevention of Significant Deterioration (PSD) requirements promulgated by the United States Environmental Protection Agency under the Clean Air Act. The requirements are adopted to make the PSD requirements independently enforceable by the Department and to implement Part C of the Clean Air Act.

Source

The provisions of this § 127.81 adopted May 30, 1980, effective May 31, 1980, 10 Pa.B. 2160; reserved March 20, 1981, effective March 21, 1981, 11 Pa.B. 1025; amended June 17, 1983, effective June 18, 1983, 13 Pa.B. 1940. Immediately preceding text appears at serial page (62483).

Notes of Decisions

Petition for review of EPA administrative order which sought immediate cessation of construction and/or operation of a gas turbine facility was not a final action for purposes of direct review by the court of appeals. *Solar Turbines, Inc. v. Seif*, 879 F.2d 1073 (1989).

§ 127.82. Scope.

The requirements adopted in this chapter do not apply to sources located in areas under the jurisdiction of local air pollution control agencies under section 12 of the act (35 P. S. § 4012). The local agencies may adopt such requirements as they deem appropriate.

Source

The provisions of this § 127.82 adopted May 30, 1980, effective May 31, 1980, 10 Pa.B. 2160; reserved March 20, 1981, effective March 21, 1981, 11 Pa.B. 1025; amended June 17, 1983, effective June 18, 1983, 13 Pa.B. 1940. Immediately preceding text appears at serial page (62483).

§ 127.83. Adoption of program.

The Prevention of Significant Deterioration requirements promulgated in 40 CFR 52 by the Administrator of the EPA under section 161 of the Clean Air Act (42 U.S.C.A. § 7471) are adopted in their entirety by the Department and incorporated herein by reference. The adoption of these requirements supplements the requirements of this chapter and does not supersede or rescind requirements of the act or this article. The term ‘‘Administrator’’ used in 40 CFR 52.21(b)(17), (f)(1)(v), (3) and (4)(i), (g)(1)—(6), (l)(2), (p)(1) and (2) and (t) means the Administrator of the EPA. The term ‘‘Administrator’’ used in 40 CFR 52.21(b)(3)(iii), (r)(2) and (w)(2) means the Administrator of the EPA or the Secretary of the Department. The term ‘‘Administrator’’ means the Department in all

other portions of 40 CFR 52.21.

Authority

The provisions of this § 127.83 amended under section 5 of the Air Pollution Control Act (35 P. S. § 4005).

Source

The provisions of this § 127.83 adopted June 17, 1983, effective June 18, 1983, 13 Pa.B. 1940; amended March 17, 1989, effective March 18, 1989, 19 Pa.B. 1169. Immediately preceding text appears at serial page (114831).

Notes of Decisions

Department's consideration of Federal best available control technology criteria when drafting ''best available technology'' criteria for municipal waste incineration facilities was not an error of law and DER did not err in not requiring that the ''lowest achievable emission rate'' be included in plan approval application. *T.R.A.S.H., Ltd. v. Department of Environmental Resources*, 574 A.2d 721 (Pa. Cmwlth. 1990).

Subchapter E. NEW SOURCE REVIEW

Sec.

Source

The provisions of this Subchapter E adopted January 14, 1994, effective January 15, 1994, 24 Pa.B. 443, unless otherwise noted.

Cross References

This subchapter cited in 25 Pa. Code § 127.13 (relating to extensions); 25 Pa. Code § 127.44 (relating to public notice); 25 Pa. Code § 127.449 (relating to de minimis emission increases); 25 Pa. Code § 127.450 (relating to administrative operating permit amendments); and 25 Pa. Code § 127.702 (relating to plan approval fee).

§ 127.201. General requirements.

(a) A person may not cause or permit the construction or modification of an air contamination facility in a nonattainment area or having an impact on a nonattainment area unless the Department or an approved local air pollution control agency has determined that the requirements of this subchapter have been met.

(b) The nonattainment area classification that applies for offset trading and offset ratio selection shall be the highest classification designated by the EPA Administrator in 40 CFR Part 81.339 (relating to designation of areas for air quality planning purposes) or by operation of law.

(c) The new source review requirements of this subchapter also apply to a facility located in an attainment area for ozone and within an ozone transport region that emits or has the potential to emit at least 50 tons per year of VOC or 100 tons per year of NO_x. A facility within either an unclassifiable/attainment area for ozone or within a marginal or incomplete data nonattainment area for ozone and located within an ozone transport region will be considered a major

stationary facility and shall be subject to the requirements applicable to a major stationary facility located in a moderate nonattainment area.

§ 127.202. Effective date.

(a) The special permit requirements in this subchapter apply to a facility submitting a complete plan approval application to the Department after January 15, 1994.
(b) For SO_x, particulate matter, PM-10 precursors, PM-10, lead and CO, this subchapter applies until a given nonattainment area is redesignated as an unclassifiable or attainment area. After a redesignation, special permit conditions remain effective until the Department approves a permit modification request and modifies the permit.

§ 127.203. Facilities subject to special permit requirements.

(a) This subchapter applies to a facility with the potential to emit 100 tons per year or more of one of the following pollutants and meeting the requirements for that pollutant:
(1) For PM-10, PM-10 precursors and particulate matter, either a new facility, or a modification to an existing facility including the addition of a new source at an existing facility, which when aggregated with the other emissions increases determined in accordance with § 127.211 (relating to applicability determination) results in an increase in the potential to emit PM-10, PM-10 precursors or particulate matter that would yield 15 tons per year of PM-10 or 25 tons per year of particulate matter, or 1,000 pounds per day, or 100 pounds per hour of PM-10 or particulate matter, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:
(i) A nonattainment area.
(ii) An attainment or unclassifiable area which impacts a part of a nonattainment area in excess of the following significance levels:
Averaging Period Significance Levels
Annual 1.00 $\mu g/m^3$
24-hour 5.00 $\mu g/m^3$
(2) For sulfur oxides, either a new facility, or a modification to an existing facility including the addition of a new source at an existing facility, which when aggregated with the other emissions increases determined in accordance with § 127.211 results in an increase in the potential to emit of 40 tons per year, or 1,000 pounds per day, or 100 pounds per hour of SO_x, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:
(i) A nonattainment area.
(ii) An attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance levels:
Averaging Period Significance Levels
Annual 1.00 $\mu g/m^3$
24-hour 5.00 $\mu g/m^3$
3-hour 25.00 $\mu g/m^3$
(3) For carbon monoxide, either a new facility, or a modification to an existing facility, including the addition of a new source at an existing facility which, when aggregated with the other emissions increases determined in accordance with § 127.211, results in an increase in the potential to emit of 50 tons per year, 1,000 pounds per day or 100 pounds per hour of CO, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:
(i) A nonattainment area.
(ii) An attainment or unclassifiable area which impacts a nonattainment

area in excess of the following significance levels:
Averaging Period Significance Levels
8-hour 0.5 mg/m3
1-hour 2.0 mg/m3
(4) For lead, either a new facility, or a modification to an existing facility including the addition of a new source at an existing facility, which when aggregated with the other emissions increases determined in accordance with § 127.211, results in an increase in the potential to emit of 0.6 tons per year, 10 pounds per day or 1 pound per hour of lead, or more, whichever is more restrictive, and which new facility or modification is located in one of the following:
(i) A nonattainment area.
(ii) An attainment or unclassifiable area which impacts a nonattainment area in excess of the following significance level:
Averaging Period Significance Level
24-hour 0.1 μg/m3
(b) This subchapter applies to a VOC or NO_x facility located in or having an impact on one of the following areas and meeting the applicable requirements:
(1) For an area either classified at 40 CFR 81.339 (relating to Pennsylvania) as a moderate nonattainment area for ozone, or an area included in an ozone transport region established under section 184 of the Clean Air Act (42 U.S.C.A. § 7511c), which is either classified as a marginal or incomplete data nonattainment area for ozone or designated as an unclassifiable/attainment area for ozone, this subchapter applies to the following:
(i) A new facility with the potential to emit 100 tons or more per year of NO_x or 50 tons or more per year of VOCs.
(ii) A modification to an existing facility with the potential to emit 100 tons or more per year of NO_x or 50 tons or more per year of VOCs, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or NO_x which, when aggregated with the other emissions increases determined in accordance with § 127.211, results in an increase of 40 tons per year, 1,000 pounds per day or 100 pounds per hour of VOC or NO_x, or more, whichever is more restrictive.
(2) For an area classified at 40 CFR 81.339 as a serious nonattainment area for ozone, this subchapter applies to the following:
(i) A new facility with the potential to emit 50 tons or more per year of NO_x or VOCs.
(ii) A modification to an existing facility with the potential to emit 50 tons or more per year of VOC or NO_x, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or NO_x which, when aggregated with the other emissions increases determined in accordance with subsection (c)(1), results in an increase of 25 tons per year, 1,000 pounds per day or 100 pounds per hour of VOC or NO_x, or more, whichever is more restrictive.
(3) For an area classified at 40 CFR 81.339 as a severe nonattainment area for ozone, this subchapter applies to the following:
(i) A new facility with the potential to emit 25 tons or more per year of NO_x or VOCs.
(ii) A modification to an existing facility with the potential to emit 25 tons or more per year of NO_x or VOC, or a new source at an existing facility resulting in an increase in the potential to emit either VOC or NO_x which, when aggregated with the other emissions increases determined in accordance with subsection (c)(1), results in an increase of 25 tons per year or 1,000 pounds per day or 100 pounds per hour of VOC or NO_x, or more, whichever is more restrictive.
(c) Special rules for modifications to VOC or NO_x facilities located in serious

and severe nonattainment areas for ozone are as follows:
(1) The applicability requirements in § 127.211 apply except as provided by this subsection. A modification to an existing facility with the potential to emit 25 tons per year or more which results in an increase in the potential to emit VOC or NO_x may not be considered a de minimis increase. The requirements of this subchapter apply, if the increase in potential to emit, when aggregated with the other net emission increases in potential to emit occurring over a consecutive 5-calendar-year period exceeds 25 tons per year or 1,000 pounds per day or 100 pounds per hour, whichever is more restrictive. The consecutive 5-calendar-year period for an increase that is not considered de minimis shall include the calendar year of the modification or addition which results in the emissions increase, and may not extend beyond either January 1, 1991, or the design year of the most recent attainment demonstration, whichever is later.
(2) For a facility with the potential to emit less than 100 tons per year of VOC or NO_x, when a modification results in an increase—other than a de minimis increase—in emissions of VOC or NO_x from a discrete operation, unit or other pollutant emitting activity at the facility, the increase shall be considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOC or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not elect to offset at the required ratio, the change shall be considered a modification, but in the case of the modification, the BACT requirement shall be substituted for LAER. The facility shall comply with the applicable EPA requirements and shall also satisfy the Best Available Technology (BAT) requirement.
(3) For a facility with the potential to emit 100 tons per year or more of VOC or NO_x, when a modification at the facility results in an increase—other than a de minimis increase—in emissions of VOC or NO_x from a discrete operation, unit or other pollutant emitting activity at the facility, the increase shall be considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOC or NO_x from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator elects to offset at the required ratio, the LAER requirement does not apply. The facility shall comply with the applicable EPA requirements and shall also satisfy the BAT requirement.

Cross References

This section cited in 25 Pa. Code § 121.1 (relating to definitions); 25 Pa. Code § 127.204 (relating to emissions subject to this subchapter); 25 Pa. Code § 127.205 (relating to special permit requirements); 25 Pa. Code § 127.211 (relating to applicability determination); 25 Pa. Code § 127.212 (relating to portable facilities); and 25 Pa. Code § 127.213 (relating to construction and demolition).

§ 127.204. Emissions subject to this subchapter.

(a) In determining whether a facility exceeds the emissions rates or significance levels specified in § 127.203 (relating to facilities subject to special permit requirements), the potential emissions, actual emissions and actual emissions increase shall be determined by aggregating the emissions or emissions increases from the facilities on contiguous or adjacent properties under the common control of a person or entity. This includes emissions resulting from the following: flue emissions, stack and additional fugitive emissions, material transfer, use of parking lots and paved and unpaved roads on the facility property, storage piles and other emission generating activities resulting from operation of the new or modified facility.
(b) Secondary emissions need not be considered in determining whether a facility meets the requirements of § 127.203. If a facility is subject to § 127.203

on the basis of the direct emissions from the facility, the conditions of § 127.205 (relating to special permit requirements) shall also be met for secondary emissions.

§ 127.205. Special permit requirements.

The Department will not issue a plan approval, or an operating permit, or allow continued operations under an existing permit or plan approval unless the applicant demonstrates that the following special requirements are met:

(1) A new or modified facility subject to this subchapter shall comply with LAER. In cases where a facility is composed of several sources, only sources which are new or which are modified shall be required to implement LAER.

(i) A project that does not commence construction within 18 months of the date specified in the plan approval shall be reevaluated for its compliance with LAER before the start of construction.

(ii) A project that discontinues construction for 18 months or more after construction is commenced shall be reevaluated for its compliance with LAER before resuming construction.

(iii) A project that does not complete construction within the time period specified in the plan approval shall be reevaluated for its compliance with LAER.

(iv) A project that is constructed in phases shall be reevaluated for its compliance with LAER if there is a delay of greater than 18 months beyond the projected and approved commencement date for each independent phase.

(2) Each facility located within this Commonwealth which meets or exceeds the threshold limits contained in § 127.203 (relating to facilities subject to special permit requirements), which is owned or operated by the applicant, or by an entity controlling, controlled by or under common control with the applicant, and which is subject to emissions limitation shall be in compliance, or on a schedule for compliance approved by the Department in a plan approval or permit, with the applicable emissions limitation and standards contained in this article. A responsible official of the applicant shall certify as to the facilities' compliance in writing on a form provided by the Department.

(3) Each modification to a facility which meets the requirements of and is subject to § 127.203 shall offset, in accordance with §§ 127.210 and 127.211 (relating to offset ratios; and applicability determination), the total of the net increase in potential to emit.

(4) Each new facility which meets the requirements of and is subject to § 127.203 shall offset the potential to emit of that facility with ERCs in accordance with § 127.210.

(5) For a new or modified facility with potential emissions exceeding significance levels or otherwise meeting the requirements of § 127.203, an analysis shall be conducted of alternative sites, sizes, production processes and environmental control techniques for the proposed facility, which demonstrates that the benefits of the proposed facility significantly outweigh the environmental and social costs imposed within this Commonwealth as a result of its location, construction or modification.

(6) In the case of a new or modified facility which is located in a nonattainment area, and within a zone, identified by the EPA Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, emissions of a pollutant resulting from the proposed new or modified facility may not cause or contribute to emission levels which exceed the allowance permitted for the pollutant for the area from new or modified facilities in the SIP.

Cross References

This section cited in 25 Pa. Code § 127.204 (relating to emissions subject to this subchapter); 25

Pa. Code § 127.206 (relating to ERC general requirements); 25 Pa. Code § 127.211 (relating to applicability determination); and 25 Pa. Code § 127.213 (relating to construction and demolition).

§ 127.206. ERC general requirements.

(a) Emissions reductions banked prior to January 1, 1991, may not be used as ERCs for emission offsets. ERCs generated prior to January 1, 1991, which meet the requirements of this subchapter for ERCs and are approved by the Department may be used in applicability determinations conducted in accordance with § 127.211 (relating to applicability determination) for netting purposes, if the ERCs are treated as new source growth and offset at the applicable ratio specified in § 127.210 (relating to offset ratios).

(b) The EQB may, by regulation and upon notice in the *Pennsylvania Bulletin* and opportunity for public comment, proportionally reduce the quantity of registered ERCs not previously included in a plan approval, or may halt transfer activity, in a nonattainment area or throughout this Commonwealth only as necessary when the other measures required by the Clean Air Act and the act may fail to achieve NAAQS or SIP requirements.

(c) ERCs shall be proportionally reduced prior to use in a plan approval in an amount equal to the reductions that the generating facility is or would have been required to make in order to comply with new requirements promulgated by the Department or the EPA, which apply to the generating facility after the ERCs were created.

(d) The Department may issue a plan approval for the construction of a new or modified facility which satisfies the offset requirements specified in § 127.205(3) and (4) (relating to special permit requirements) under the following conditions:

(1) The application for a plan approval demonstrates that the proposed facility either has or will secure the appropriate ERCs which are suitable for use at the specific facility. The ERCs shall be identified in a Department approved and Federally enforceable permit condition for the ERC generating source. The permit condition will provide that the ERCs are properly generated, certified by the Department and processed through the registry no later than the date approved by the Department for commencement of operation of the proposed new or modified facility.

(2) The proposed new or modified facility may not commence operation or increase emissions until the required emissions reductions are certified by the Department.

(e) ERCs generated by the overcontrol of emissions by an existing facility will not expire for use as offsets. The use of these ERCs in applicability determinations for netting purposes is limited to the period specified in § 127.211.

(f) ERCs generated by the curtailment or shutdown of a facility which are not included in a plan approval and used as offsets will expire for use as offsets 10 years after the date the facility ceased emitting the ERC generating emissions. The use of these ERCs in applicability determinations for netting purposes is limited to the period specified in § 127.211.

(g) The expiration date of ERCs may not extend beyond the 10-year period allowed by subsection (f), if the ERCs are included in a plan approval but are not used and are subsequently reentered in the registry.

(h) ERCs which are included in a plan approval issued by the Department for a new or modified facility which is never operated may be reentered in the registry if the ERCs are no longer required by the plan approval. Applicable discounts in subsections (b) and (c) shall be applied when the ERCs are reentered in the registry.

(i) ERCs may not be used to achieve compliance with RACT, BAT, NSPS, BACT, LAER or other emissions limitations required by the Clean Air Act or the act.

(j) ERCs may not be entered into the ERC registry until the emissions reduction generating the ERCs has been certified by the Department in accordance with the criteria for ERC generation and creation contained in § 127.207 (relating to ERC generation and creation), with the following qualifications:
(i) ERCs may not be generated for emissions in excess of those previously identified in required emission statements and for which applicable emission fees have been paid.
(ii) Emissions reduction at a facility occurring after January 1, 1991, but prior to January 15, 1994 may be used to generate ERCs, if a complete ERC registry application is submitted to the Department by May 16, 1994.
(k) A major facility which, due to reductions in the maximum allowable emissions rates, including reductions made to generate ERCs, no longer meets the criteria in § 127.203 will continue to be treated as a major facility.
(l) ERCs may not be traded to facilities under different ownership until the emissions reduction generating the ERCs is made Federally enforceable. A facility which is not subject to Title V permit requirements under the Clean Air Act will require EPA approval in the form of a SIP revision which incorporates the required permit modification reflecting the reduced emissions limitation of the generating facility.
(m) ERCs may not be created for an emissions reduction previously used in an applicability determination for netting purposes nor for an emissions decrease used to create an alternative emissions limitation.
(n) ERCs transferred from one facility to another may not be transferred to a third party, except as provided in subsection (h).
(o) An ERC created for a regulated criteria pollutant shall only be used for offsetting or netting an emissions increase involving the same criteria pollutant.
(p) A source or facility which has registered ERCs with the Department may not exceed the emissions limitation or violate other permit conditions established in generating the ERCs.

Cross References

This section cited in 25 Pa. Code § 127.208 (relating to ERC use and transfer requirements); and 25 Pa. Code § 127.209 (relating to ERC registry system).

§ 127.207. ERC generation and creation.

ERC generation and creation may occur under the following conditions:
(1) ERCs shall be surplus, permanent, quantified and Federally enforceable as follows:
(i) *Surplus*. ERCs shall be included in the current emission inventory, and may not be required by or be used to meet past or current SIP, attainment demonstration, RFP, emissions limitation or compliance plans. Emission reductions necessary to meet NSPS, LAER, RACT, Best Available Technology (BAT), BACT and permit or plan approval emissions limitations or another emissions limitations required by the Clean Air Act or the act may not be used to generate ERCs.
(ii) *Permanent*. ERCs generated from emissions reductions which are Federally enforceable through an operating permit or a revision to the SIP and assured for the life of the corresponding increase, whether unlimited or limited in duration, are considered permanent. Emissions limitations and other restrictions imposed on a permit as a result of ERC generation shall be carried over into each successive permit issued to that facility. MERCs and other ERCs generated pursuant to an approved economic incentive program shall be permanent within the time frame specified by the program.
(iii) *Quantified*. ERCs shall be quantified in a credible, workable and replicable method consistent with procedures promulgated by the Department

and the EPA.
(iv) *Enforceable*. ERCs shall be Federally enforceable, regulated by Federal or SIP emissions limitation, such as a limit on potential to emit in the permit, and be generated from a plan approval, economic incentive program or permit limitation.
(2) For facilities subject to this subchapter, an ERC registry application shall be submitted to the Department within 1 year of the initiation of an emissions reduction used to generate ERCs. Facilities or sources not subject to this subchapter shall submit a registry application and receive Department approval prior to the occurrence of an emissions reduction.
(3) An ERC registry application shall include the following information:
(i) The name of the owner and operator of the source or facility.
(ii) The intended use of the ERCs, including information as to whether the ERCs are to be used for netting, internal offsetting or trading purposes.
(iii) The intended or actual date of initiation of emission reductions.
(iv) A description of the emission reduction techniques used to generate the ERCs.
(v) Full characterization of the emissions reductions using a protocol approved by the Department, including the following:
(A) Requirements and methods specified by EPA emission regulations and trading policies.
(B) Information concerning tests and related emission quantification methods specified in Chapter 139 (relating to sampling and testing) and other Department and EPA approved test methods and sampling procedures.
(C) The amounts, rates, hours, seasonal variations, annual emission profile and other data necessary to determine the ambient impact of the emissions.
(D) Compliance and verification methods.
(vi) Other information required by the Department to properly certify the ERCs.
(vii) For an ERC generating source or facility located outside of this Commonwealth, the name of the Pennsylvania agent authorized to accept service of process, and a statement that the applicant accepts the jurisdiction of this Commonwealth for purposes of regulating the ERCs registered with the Department.
(4) In establishing the baseline used to calculate ERCs, the Department will consider emission characteristics and operating conditions which include, at a minimum, the emission rate, capacity utilization, hours of operations and seasonal emission rate variations, in accordance with the following:
(i) The baseline emissions rate will be determined as follows:
(A) The average actual emissions or allowable emissions, whichever is lower, shall be calculated over the 2 calendar years immediately preceding the emissions reduction which generates the ERCs.
(B) When the Department determines that the 2-year period immediately preceding the emissions reduction is not representative of the normal emission rates or characteristics of the existing facility, the Department may specify a different 2-year period if that period of time or other conditions are representative of normal operations occurring within the preceding 5 calendar years. If the existing facility has been in operation for fewer than 2 years, the Department will determine the baseline emissions rate based on a shorter representative period when the facility was in operation.
(ii) The baseline emissions rate may not exceed the emissions in the emission statements required by Chapter 135 (relating to reporting of sources), for which fees have been paid.
(iii) The baseline emissions rate will not exceed the allowable emissions

rate including RACT requirements in force at the time the ERC registry application is submitted. The allowable emissions rate will be based on the emissions limitation in this article or a permit limitation or another more stringent emissions limitation required by the Clean Air Act or the act, whichever is more restrictive. The Department will consider only complete applications and will apply the requirements in effect at that time in determining the emission reduction achieved.

(5) Acceptable emissions reduction techniques which an applicant may use to generate ERCs are limited to the following:

(i) Shutdown of an existing facility occurring after January 1, 1991, pursuant to the issuance of a new permit or permit modification which is not otherwise required to comply with the Clean Air Act or the act.

(ii) Permanent curtailment in production or operating hours of an existing facility operating in accordance with a new permit or a permit modification if the curtailment results in an actual emissions reduction and is not otherwise required to comply with the Clean Air Act or the act.

(iii) Improved control measures, including improved control of fugitive emissions, which decrease the actual emissions from an existing facility to less than that required by the most stringent emissions limitation required by the Clean Air Act or the act and which is reflected in a new permit or a permit modification.

(iv) New technology and materials or new process equipment modifications which are not otherwise required by the Clean Air Act or the act.

(v) The incidental emissions reduction of nonhazardous air pollutants resulting from statutorily required reductions of hazardous air pollutants, or the emissions reduction of nonhazardous air pollutants which are incidental to the excess early emissions reduction of hazardous air pollutants listed in section 112(b)(1) of the Clean Air Act (42 U.S.C.A. § 7412(b)(1)), if the reduction meets the other requirements of this section.

(vi) For facilities or sources not subject to this subchapter, a MERC program or another Economic Incentive Program which meets the requirements of this subchapter and which is approved by the EPA as a SIP revision.

(A) The program shall comply with the following requirements:

(I) The program shall be consistent with the Clean Air Act and the act.

(II) ERCs shall be quantifiable and enforceable at both the Federal and State levels.

(III) ERCs shall be consistent with SIP attainment and RFP demonstrations.

(IV) ERCs shall be surplus to other Federal and State regulations relied upon in an applicable attainment plan or demonstration or credited in an RFP or milestone demonstration.

(V) ERCs shall be permanent within the time frame specified by the program.

(B) The program shall contain the following elements:

(I) A clearly defined purpose and goals and an incentive mechanism that can rationally be related to accomplishing the goals.

(II) A clearly defined scope, which identifies affected sources and assures that the program will not interfere with other applicable regulatory requirements.

(III) A program baseline from which projected program results, including quantifiable emission reductions, can be determined.

(IV) Credible, workable and replicable procedures for quantifying emissions or emission-related parameters.

(V) Source requirements, including those for monitoring, recordkeeping and reporting, that are consistent with specified quantification procedures and allow for compliance certification and enforcement.

(VI) Projected program results and methods for accounting for compliance and program uncertainty.

(VII) An implementation schedule, administrative system and

enforcement provisions adequate for ensuring Federal and state enforceability of the program.
(VIII) Audit procedures to evaluate program implementation and track results.
(IX) Reconciliation procedures to trigger corrective or contingency measures to make up a shortfall between the projected emissions reduction and the emissions reduction actually achieved.
(6) Methods for initial quantification of ERCs and verification of the required emissions reduction include the following:
(i) The use of existing continuous emission monitoring data, operational records and other documentation which provide sufficient information to quantify and verify the required emissions reduction.
(ii) For a facility which does not have Department approved data collection or quantification procedures to characterize the emissions, the use of prereduction and postreduction emission tests. Emission tests used to establish emission data shall be conducted in accordance with the requirements and procedures specified in 40 CFR Part 51, Appendix S (relating to emission offset interpretive ruling) and Chapter 139, and other applicable Federal and state requirements.
(iii) For facilities for which emissions rates vary over time, a Department approved alternative method for quantifying the reduction and ensuring the continued emissions reduction, if the method is approved by the EPA.
(7) The reduced emissions limitation of the new or modified permit of the source or facility generating the ERC shall be continuously verified by Department, local air pollution control agency or other State approved compliance monitoring and reporting programs. Onsite inspections will be made to verify shutdowns. If equipment has not been dismantled or removed, the owner or operator shall on an annual basis certify to the Department the continuance of the shutdown.

Cross References

This section cited in 25 Pa. Code § 127.206 (relating to ERC general requirements); 25 Pa. Code § 127.209 (relating to ERC registry system); 25 Pa. Code § 127.211 (relating to applicability determination).

§ 127.208. ERC use and transfer requirements.

The use and transfer of ERCs shall meet the following conditions:
(1) The registry system established by § 127.209 (relating to ERC registry system) shall be used to transfer ERCs, with the Department's approval, directly from an existing source or facility where the ERCs were generated to the proposed facility.
(2) The transferee shall secure approval to use the offsetting ERCs through a plan approval which indicates the Department approval of the ERC transfer and use. Upon the issuance of a plan approval, the ERCs are no longer subject to expiration under § 127.206(f) (relating to ERC general requirements) except as specified in § 127.206(g).
(3) For the pollutants regulated under this subchapter, the facility shall demonstrate to the satisfaction of the Department that the ERCs proposed for use as offsets will provide, at a minimum, ambient impact equivalence to the extent equivalence can be determined and that the use of the ERCs will not interfere with the overall control strategy of the SIP.
(4) ERCs shall include the same conditions, limitations and characteristics, including seasonal and other temporal variations in emission rate and quality, as well as the maximum allowable emission rates the emissions would have had if emitted by the generator, unless equivalent ambient impact is assured through other means.
(5) ERCs may be obtained from or traded in another state, which has reciprocity

with the Commonwealth for the trading and use of ERCs, only upon the approval of both the Commonwealth and the other state through SIP approved rules and procedures, including an EPA approved SIP revision. ERCs generated in another state may not be traded into or used at a facility within this Commonwealth unless the ERC generating facility's ERCs are enforceable by the Department.

(6) ERCs may not be transferred to and used in an area with a higher nonattainment classification than the one in which they were generated.

(7) A facility proposing new or increased emissions shall demonstrate that sufficient offsetting ERCs at the ratio specified in § 127.210 (relating to offset ratios) have been acquired from within the nonattainment area of the proposed facility.

(8) If the facility proposing new or increased emissions demonstrates that ERCs are not available in the nonattainment area where the facility is located, ERCs may be obtained from another nonattainment area if the other nonattainment area has an equal or higher classification and if the emissions from the other nonattainment area contribute to an NAAQS violation in the nonattainment area of the proposed facility. In addition, the requirements of paragraph (3) shall be satisfied.

(9) For a VOC or NO_x facility, the use and transfer of ERCs shall comply with the following:

(i) For the purpose of emissions offset transfers, the areas included within an ozone transport region established under section 184 of the Clean Air Act (42 U.S.C.A. § 7511c), which are designated in 40 CFR 81.339 as attainment areas or unclassifiable areas for ozone shall be treated as a single nonattainment area.

(ii) A facility shall acquire ERCs for use as offsets from an ERC generating facility located within the same nonattainment area.

(iii) An exception to the requirement of subparagraph (ii) may be granted to allow the acquisition of ERCs from a facility located outside the nonattainment area, but within either 2 days transport upwind or within 200 kilometers of the using facility, if the ERCs are obtained from another nonattainment area with an equal or higher classification and if the emissions from the other nonattainment area contribute to an NAAQS violation in the nonattainment area of the proposed facility. The facility shall demonstrate to the Department's satisfaction that the ERC generating facilities located in the nonattainment area were investigated and no suitable ERCs were available, and that the ERCs meet the 2-day transport upwind requirement.

Notes of Decisions

Agency Interpretation

Because the Department of Environmental Protection is more likely to develop expertise in assessing the effect of regulatory interpretations than the Environmental Hearing Board, it is presumed that the General Assembly intended to invest the Department, and not the EHB, with authoritative interpretive powers. *Department of Environmental Protection v. North American Refractories Co.*, 791 A.2d 461 (Pa. Cmwlth. 2002).

Commencement of Time

Although the interpretation of § 127.207(2) (relating to ERC generation and creation) that the commencement of the 1-year period for emissions begins to run at the initiation of emissions reduction rather that at the time the operator makes the decision to reduce emissions is reasonable, it was error not to consider whether that section is invalid because it is more stringent than Federal law. *Department of Environmental Protection v. North American Refractories Co.*, 791 A.2d 461 (Pa. Cmwlth. 2002).

Cross References

This section cited in 25 Pa. Code § 127.209 (relating to ERC registry system).

§ 127.209. ERC registry system.

(a) The Department will establish an ERC registry system to track ERCs which have been created, transferred and used in accordance with the requirements

of this subchapter. Prior to registration of the ERCs, the Department will review and approve the ERC registry application to verify compliance with this subchapter. Registration of the ERCs in the registry system will constitute certification that the ERCs satisfy the requirements of this subchapter and are available for use.

(b) The Department will maintain supporting documentation, including plan approval or permit decisions, registry applications and other items required to sufficiently characterize the emissions, which will allow the Department and potential users to determine if the ERCs are suitable for use at a specific facility.

(c) As part of the new source review process, the Department will provide the EPA and the public with notice of plan approval applications proposing to use ERCs.

(d) The Department will process each ERC registry application, permit modification and plan approval application, including those involving netting transactions, which contain a change in allowable emission rates, through the registry system to verify the information and to ensure that the requirements of §§ 127.206—127.208 (relating to ERC general requirements; ERC generation and creation; and ERC use and transfer requirements) have been met, including the requirement that the required reductions have been made and certified before registry entries or changes are made.

(e) Registry operations and procedures are as follows:

(1) The registry will list the ERCs, and the Department will publish the list of registered ERCs available for trading purposes in the *Pennsylvania Bulletin* on a quarterly basis.

(2) The registry will list ERCs by criteria pollutants and identify the nonattainment areas in which the ERCs were generated. The registry will identify ERCs that are available for use and that are in use.

(3) The ERC creation date entered in the registry will reflect the anticipated date of emissions reduction and will be amended as necessary to reflect the actual emissions reduction date.

(4) Upon issuance of a plan approval allowing the use of ERCs entered in the registry, the following registry transactions will occur:

(i) The registry will identify the remaining ERCs available for use, if any, after the transaction. The ERC expiration date will be included for ERCs generated under § 127.207(5)(i) and (ii).

(ii) The registry will indicate the effective date, the quantity of used ERCs, the originating generator and the ERC creation date, which is the date of actual or anticipated emissions reduction by the ERC generating facility.

Cross References

This section cited in 25 Pa. Code § 127.208 (relating to ERC use and transfer requirements).

§ 127.210. Offset ratios.

The emission offset ratios for ERC transactions subject to the requirements of this subchapter shall be in an amount equal to or greater than the ratios specified in the following table:

Required Emission Reductions From Existing Sources

	Emissions	*Fugitive Emissions*
Particulate Matter, PM-10 and SO_x		
Primary Nonattainment Areas	1.3:1	5:1
Secondary Nonattainment Areas	1.1:1	3:1
Volatile Organic Compounds		
Ozone Classification Areas		

Severe Areas	1.3:1	1.3:1
Serious Areas	1.2:1	1.3:1
Moderate Areas	1.15:1	1.3:1
Marginal/Incomplete Data Areas	1.15:1	1.3:1
Transport Region	1.15:1	1.3:1
NO_x		
Ozone Classification Areas		
Severe Areas	1.3:1	1.3:1
Serious Areas	1.2:1	1.2:1
Moderate Areas	1.15:1	1.15:1
Marginal/Incomplete Data Areas	1.15:1	1.15:1
Transport Region	1.15:1	1.15:1
Carbon Monoxide		
Primary Nonattainment Areas	1.1:1	1.1:1
Lead	1.1:1	1.1:1

Cross References

This section cited in 25 Pa. Code § 127.205 (relating to special permit requirements); 25 Pa. Code § 127.206 (relating to ERC general requirements); 25 Pa. Code § 127.208 (relating to ERC use and transfer requirements); 25 Pa. Code § 127.211 (relating to applicability determination).

§ 127.211. Applicability determination.

(a) An applicability determination will establish whether:

(1) A modification which results in an emissions rate increase or the emission of pollutants not previously emitted at an existing major facility for particulate matter, PM-10 precursors, PM-10, SO_x, CO or lead emissions, located in or impacting a nonattainment area for these criteria pollutants, is a major modification under § 127.203 (relating to facilities subject to special permit requirements) and is subject to the new source review requirements of this subchapter.

(2) A modification which results in an emissions rate increase or the emission of pollutants not previously emitted at an existing major facility of VOC or NO_x emissions, located in or impacting a moderate nonattainment area for ozone, or an area included within an ozone transport region and designated as either a marginal or incomplete data nonattainment area or as an unclassifiable/attainment area for ozone, is a major modification under § 127.203 and is subject to the new source review requirements of this subchapter.

(3) A modification which results in an emissions rate increase or the emission of pollutants not previously emitted at an existing major facility of VOC or NO_x emissions, located in or impacting a serious or severe nonattainment area for ozone is a major modification under § 127.203 and is subject to the new source review requirements of this subchapter, except as modified by the requirements in § 127.203(c).

(b) The Department will conduct an applicability determination during its review of a plan approval application for a proposed modification which results in an increase in allowable emissions to determine the amount of the net increase in accordance with the following:

(1) For a proposed de minimis increase the proposed increase will be summed with those emission increases and decreases occurring after January 1, 1991.

(2) For a proposed increase which equals or exceeds an emissions rate threshold or significance level specified in § 127.203, the proposed increase will be summed with those emissions increases and decreases that occurred within the contemporaneous period which begins 5 years before commencement of construction of the proposed modification and ends with the date that

the emission increase from the modification occurs. Notwithstanding the requirement to begin the contemporaneous period 5 years before construction, the period may not begin prior to January 1, 1991, or the design year of the most recent attainment demonstration, whichever is later.

(3) The following procedures will apply in determining the amount of emissions increases and decreases to be summed:

(i) If a facility's maximum allowable emissions rate has not been established, the rate will be calculated for purposes of the applicability determination.

(ii) The increase in potential to emit for each proposed modification or new source will be used to set an allowable emissions rate for the modified or new facility. The allowable rate increase will be treated as an increase in the maximum allowable emissions rate for the facility.

(iii) Other increases and decreases in allowable emission rates at a facility which occur within the applicable time period are creditable in accordance with the following:

(A) Increases in the allowable rates shall be factored into the facility maximum allowable emissions rate.

(B) A decrease in an allowable emissions rate is not creditable unless the following conditions are met:

(I) The emissions reduction credit provisions in § 127.207(1) and (3)—(7) (relating to ERC generation and creation) have been complied with, and the decrease is Federally enforceable by the time that actual construction begins on the modification. The plan approval for the modification will contain a provision specifying that the emissions decrease is Federally enforceable on or before the date of commencement of construction. The facility owner or operator shall certify in writing that the reductions were not relied on for a previous applicability determination or to generate ERCs.

(II) The emissions decrease is such that when compared with the proposed increase there is no significant change in the character of emissions, including seasonal emission patterns, stack heights or hourly emission rates. A significant change in the character of emissions means a change resulting in an increase in emissions equal to or greater than an emissions rate threshold or an impact in excess of a significance level as specified in § 127.203. For VOC and NO_x during the ozone season, the portion of the annual emissions rate threshold specified in § 127.203 which as a percentage occurs during the ozone season may not be exceeded.

(III) The emission decrease represents approximately the same qualitative significance for public health and welfare as attributed to the proposed increase. This requirement is satisfied if the emission rate thresholds and significance levels contained in § 127.203 are not exceeded.

(C) An emissions reduction or an ERC generated at the facility may be used as a creditable decrease in an applicability determination. A portion of an ERC generated at another facility, acquired by trade and incorporated in a plan approval for use at the facility will not be credited as an emissions decrease in an applicability determination.

(D) ERCs which the facility has generated and registered are not creditable as reductions in an applicability determination unless the ERCs are withdrawn from the registry.

(E) A creditable emissions decrease which occurred prior to January 1, 1991, or the design year of the most recent attainment demonstration, whichever is later, and within the contemporaneous period of the proposed increase will be treated as new source growth and discounted in accordance with the applicable nonattainment area ratio in § 127.210 (relating to offset ratios).

(iv) An emissions increase that results from a physical change at a facility

occurs when the unit on which construction occurred becomes operational and begins to emit a criteria pollutant. A replacement unit that is allowed a shakedown period becomes operational at the end of the approved shakedown period, which may not exceed 180 days.

(c) The new source review requirements of this subchapter apply to:

(1) A facility at which the proposed emissions increase and the net increase in the facility maximum allowable emissions rate as determined under subsection (b) meet or exceed the applicable threshold limits in § 127.203. A decrease in a facility maximum allowable emissions rate will not qualify as a decrease for purposes of this section when a facility petitions for a decrease in its maximum allowable emissions rate through a permit restriction unless the conditions of subsection (b)(3)(iii) are met.

(2) A facility which was deactivated for a period in excess of 1 year and is not in compliance with the reactivation requirements of § 127.215 (relating to reactivation).

(3) A source which has netted out of new source review by applying emissions reduction or ERCs generated by another source at the facility, if the emissions reduction or ERC generating source subsequently increases its allowable emissions unless the facility generates sufficient additional emissions reductions or ERCs equal to the proposed increase at the ERC generating source.

(d) For a proposed emissions increase that is subject to the new source requirements under subsection (c), the requirements of § 127.205 (relating to special permit requirements) are applicable in the following manner:

(1) Emissions offsets shall be required for the entire net emissions increase which occurred over the contemporaneous period except to the extent that offsets or other reductions were previously applied against increases in an earlier applicability determination.

(2) LAER applies to the proposed modification which results in an increase in emissions, and to subsequent or previous modifications which result in emissions increases that are directly related to and normally included in the project associated with the proposed modification and which occurred within the contemporaneous period of the proposed emissions increase.

(e) For a proposed de minimis increase in which the net emissions increase since January 1, 1991, meets or exceeds the threshold limits in § 127.203, only the emissions offset requirements in § 127.205(3) apply to the net emissions increase.

(f) The new source review requirements of this subchapter do not apply to:

(1) A facility at which a proposed major modification results in a net increase in the maximum allowable emission rate as determined under subsection (b) which does not meet or exceed the applicable threshold limits in § 127.203.

(2) A facility at which a proposed de minimis increase results in a net emissions increase since January 1, 1991, which as determined under subsection (b) does not meet or exceed the applicable threshold limits in § 127.203.

Cross References

This section cited in 25 Pa. Code § 127.203 (relating to facilities subject to special permit requirements); 25 Pa. Code § 127.205 (relating to special permit requirements); and 25 Pa. Code § 127.206 (relating to ERC general requirements).

§ 127.212. Portable facilities.

(a) A portable SO_x, particulate matter, PM-10 precursor, PM-10, lead or CO facility subject to this subchapter which will be relocated within 6 months of the commencement of operation to a location within an attainment area which does not have an impact on a nonattainment area at or above the significance levels contained in § 127.203 (relating to facilities subject to special permit requirements)

shall be exempt from this subchapter. A facility which subsequently returns to a location where it is subject to this subchapter shall comply with this subchapter.
(b) A portable VOC or NO_x facility subject to this subchapter which will be relocated outside of this Commonwealth within 6 months of the commencement of operation shall be exempt from this subchapter. A facility which subsequently returns to a location in this Commonwealth where it is subject to this subchapter shall comply with this subchapter.

§ 127.213. Construction and demolition.

(a) Emissions from construction or demolition activities will be exempt from § 127.205 (relating to special permit requirements) if BACT is used during the construction or demolition period.
(b) Emissions from construction and demolition activities may not be considered under § 127.203 (relating to facilities subject to special permit requirements).

§ 127.214. Exemption.

The special permit requirements of this subchapter may be waived for modifications to an existing facility through a plan approval application which demonstrates to the satisfaction of the Department that:
(1) The capital expenditure is being made with the primary purpose of achieving compliance with a new, more stringent regulation than was previously applicable, and will bring the facility into compliance with the new regulation.
(2) The maximum allowable emissions from the facility itself or a discrete operation, unit or other pollutant emitting activity at the facility will not increase.

§ 127.215. Reactivation.

(a) A facility which has been out of operation or production for 1 year or more during the term of its operating permit may be reactivated within the term of its operating permit and will not be considered a new facility subject to this subchapter if the following conditions are satisfied:
(1) The permittee shall within 1 year of the deactivation submit to the Department and implement a maintenance plan which includes the measures to be taken, including maintenance, upkeep, repair or rehabilitation procedures, which will enable the facility to be reactivated in accordance with the terms of the permit.
(2) The permittee shall submit a reactivation plan at least 30 days prior to the proposed date of reactivation. The reactivation plan shall include sufficient measures to ensure that the facility will be reactivated in compliance with the permit requirements. The permittee may submit a reactivation plan to the Department at any time during the term of its operating permit. The reactivation plan may also be submitted to and approved by the Department as part of the plan approval or permit application process.
(3) The permittee shall submit a notice to the Department within 1 year of deactivation requesting preservation of the emissions in the inventory and indicating the intent to reactivate the facility.
(4) The permittee shall comply with the terms and conditions of the maintenance plan while the facility is deactivated, and shall comply with the terms and conditions of the reactivation plan and the operating permit upon reactivation.
(5) The permittee with an approved reactivation plan shall notify the Department in writing at least 30 days prior to reactivation of the facility.
(b) The Department will approve or disapprove the complete reactivation plan within 30 days of plan submission, unless additional time is required based on the size or complexity of the facility.

(c) For a facility which is deactivated in accordance with subsection (a), ERCs may be created only if an ERC registry application is filed within 1 year of deactivation.

Cross References

This section cited in 25 Pa. Code § 127.11 (relating to plan approval requirements); 25 Pa. Code § 127.11a (relating to reactivation of sources); 25 Pa. Code § 127.13 (relating to extensions); and 25 Pa. Code § 127.211 (relating to applicability determination).

§ 127.216. Circumvention.

Regardless of the exemptions provided in this subchapter, an owner or other person may not circumvent this subchapter by causing or allowing a pattern of ownership or development, including the phasing, staging, delaying or engaging in incremental construction, over a geographic area of a facility which, except for the pattern of ownership or development, would otherwise require a permit or submission of a plan approval application.

§ 127.217. Clean Air Act Titles III—V applicability.

Compliance with this subchapter does not relieve a source or facility from complying with Titles III—V of the Clean Air Act (42 U.S.C.A. §§ 7601—7627; 7641, 7642 and 7651—7651o; and 7661—7661f).

Subchapter F. OPERATING PERMIT REQUIREMENTS

GENERAL

Sec.

PERMIT APPLICATIONS

REVIEW OF APPLICATIONS

OPERATING PERMIT CONDITIONS

OPERATING PERMIT MODIFICATIONS

Source

The provisions of this Subchapter F adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899, unless otherwise noted.

Cross References

This subchapter cited in 25 Pa. Code § 127.12b (relating to plan approval terms and conditions); and 25 Pa. Code § 127.501 (relating to scope).

GENERAL

§ 127.401. Scope.

This subchapter is applicable to sources required to obtain an operating permit under the act.

§ 127.402. General provisions.

(a) A person may not operate a stationary air contamination source unless the Department has issued to the person a permit to operate the source under this article in response to a written application for a permit submitted on forms and containing the information the Department may prescribe.
(b) The Department will provide public notice and the right to comment on each permit prior to issuance or denial and may hold public hearings concerning a permit.
(c) A permit may be issued to an applicant for a stationary air contamination source requiring construction, assembly, installation, reactivation or modification when the requirements of this article related to operating requirements have been met and there has been performed upon the source a test or evaluation which satisfies the Department that the air contamination source will not discharge into the outdoor atmosphere an air contaminant at a rate in excess of that permitted by applicable regulations under this article, or in violation of a performance or emission standard or other requirements established by the EPA or the Department for the source, and will not cause air pollution.
(d) An application, form, report or compliance certification submitted under this subchapter shall contain certification by a responsible official as to truth, accuracy and completeness. This certification and other certification required under this subchapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and complete.

§ 127.403. Permitting of sources operating lawfully without a permit.

(a) A stationary air contamination source operating lawfully without a permit for which fees required by Subchapter I (relating to plan approval and operating permit fees) have been paid is authorized to continue to operate without a permit until 120 days after the Department provides notice to the source that a permit application is required or until November 1, 1996, whichever occurs first.
(b) If the applicant submits a complete permit application within the time frame required by this section and the Department fails to issue a permit through no fault of the applicant, the source may continue to operate if the fees required by Subchapter I have been paid and the source is operated in conformance with the act, the Clean Air Act and the regulations thereunder.
(c) For a performance or emission standard or other requirement established

by the EPA or the Department for the source subsequent to July 9, 1992, but prior to the permit issuance date, the permit may contain a compliance schedule authorizing the source to operate out of compliance and requiring the source to achieve compliance as soon as possible but no later than the time required by the act, the Clean Air Act or the regulations thereunder.
(d) For the purposes of this section, a source is operating lawfully without a permit if it is a source for which no permit was previously required and the source is operating in compliance with applicable regulatory requirements.

§ 127.404. Compliance schedule for repermitting.

A new permit issued to a source which is operating under a valid permit on July 9, 1992, or which has received a permit subsequent to July 9, 1992, and which is required to meet performance or emission standards or other requirements established subsequent to the issuance of the existing permit, may contain a compliance schedule authorizing the source to continue to operate out of compliance and requiring the source to achieve compliance as soon as possible but no later than the time required by the act, the Clean Air Act or the regulations thereunder.

PERMIT APPLICATIONS.

§ 127.411. Content of applications.

(a) An application for an operating permit shall:
(1) Identify the location of the source and the name, title, address and telephone number of the individual responsible for the operation of the source.
(2) Contain information that is requested by the Department and is necessary to perform a thorough evaluation of the air contamination aspects of the source.
(3) Include the information contained in the plan approval application.
(4) Demonstrate that:
(i) The source is equipped with reasonable and adequate facilities to monitor and record the emissions of air contaminants and the operating conditions which may affect the emissions of air contaminants.
(ii) The records are being and will continue to be maintained.
(iii) The records will be submitted to the Department at specified intervals or upon request.
(5) Demonstrate that the source is complying with applicable requirements of this article and requirements promulgated by the Administrator of the EPA under the Clean Air Act.
(6) Demonstrate that the emissions from a new source are the minimum attainable through the use of the best available technology as required by the plan approval.
(7) Demonstrate that the source is not preventing or adversely affecting the attainment or maintenance of ambient air quality standards when requested by the Department.
(8) Contain a plan of action for the reduction of emissions during each level specified in Chapter 137 (relating to air pollution episodes) when required by the Department.
(9) Demonstrate that the provisions of § 127.413 (relating to municipal notification) have been met. The applicant shall submit a copy of the notification letter and proof that the notice was received.
(10) Contain a plan for dealing with air pollution emergencies, when requested by the Department or when required by the Clean Air Act or the regulations adopted under the act or the Clean Air Act.
(11) Demonstrate that the source and the air cleaning devices are being and will be operated and maintained in accordance with good air pollution control practices.
(12) Contain a completed compliance review form or reference the most

recently submitted compliance review form for facilities submitting compliance review forms on a periodic basis.
(b) The Department will not approve an application which fails to meet the requirements of subsection (a).
(c) The records, reports or information obtained by the Department or referred to at public hearings shall be available to the public, except as provided in subsection (d).
(d) Upon cause shown by any person that the records, reports or information, or a particular portion thereof, but not emission data, to which the Department has access under the provisions of the act, if made public, would divulge production or sales figures or methods, processes or production unique to that person or would otherwise tend to affect adversely the competitive position of that person by revealing trade secrets, including intellectual property rights, the Department will consider the record, report or information, or particular portion thereof confidential in the administration of the act. The Department will implement this section consistent with sections 112(d) and 114(c) of the Clean Air Act (42 U.S.C.A. §§ 7412(d) and 7414(c)). Nothing in this section prevents the disclosure of the report, record or information to Federal, State or local representatives as necessary for purposes of administration of Federal, State or local air pollution control laws, or when relevant in any proceeding under the act.

§ 127.412. Compliance review forms.

(a) This section establishes the compliance review procedures applicable during the review of an application for an operating permit, including a general operating permit.
(b) Each applicant for an operating permit shall, as part of the application or on a periodic basis as authorized under subsection (j), submit a compliance review on a form provided by the Department signed by a corporate officer or other responsible official of the facility and containing a verification that the information contained in the application is true and correct to the best of the signatory's belief formed after reasonable inquiry.
(c) The compliance review form shall provide information related to the compliance status of the applicant and related parties including the following:
(1) The name, address, telephone number, taxpayer identification number and plan approval or application number.
(2) The form of management under which the applicant conducts its business and a brief description of the types of business activities performed.
(3) The name and location, including both the address and the municipality and county, telephone number and relationship to the applicant (parent, subsidiary or general partner) of all related parties in this Commonwealth.
(4) The name and business address of the plant manager and general partner of the applicant.
(5) A list of plan approvals and operating permits issued by the Department or the Allegheny County or Philadelphia County air pollution control agencies to the applicant or related parties that are in effect at the time of application or were in effect during the previous 5 years. The list shall include each plan approval and operating permit number, locations and expiration dates.
(6) A list of documented conduct and deviations by the applicant or a related party. The list shall include the date, location, plan approval or operating permit number, nature of the documented conduct or deviation, and the incident status—litigation, existing/continuing, corrected and date of correction. Unless specifically required by the Department, the applicant is not required to report deviations which have been previously reported to the Department in writing under the requirements of this title related to monitoring and reporting requirements.

(d) The applicant shall update the compliance review form if documented conduct or deviations occur from the date of the submission of the application through the date of operating permit issuance.
(e) The Department may establish a supplemental compliance review form that may be used to update information submitted on the compliance review form.
(f) If the Department finds that the applicant or related party has an existing or continuing violation or lacks the intention or ability to comply with the act, or the rules or regulations promulgated under the act, or a plan approval operating permit or order of the Department, as indicated by past or present violations, the Department will attempt to resolve the violations or lack of intention or ability to comply informally.
(g) If the Department is unable to resolve the violation or lack of intention or ability to comply on an informal basis, the Department will place the violation and may place the lack of intention or ability to comply on the compliance docket. The violation or lack of intention or ability to comply shall remain on the compliance docket until it is resolved to the satisfaction of the Department.
(h) An operating permit will not be issued to an applicant or related party if a violation or lack of intention or ability to comply at a source owned or operated by the applicant or a related party appears on the compliance docket.
(i) A permittee or applicant may appeal to the EHB a violation or lack of intention or ability to comply which the Department places on the compliance docket.
(j) Other provisions of this section notwithstanding, a source may, upon approval by the Department, submit the compliance review form required by this section on a periodic basis of not less than once every 6 months. The owners and operators of the facility shall make an election to submit the compliance review information on a periodic basis or as part of the operating permit application with the submission of the first operating permit filed after November 26, 1994, or by making an election in writing by May 26, 1995. The facility may only change the election with the approval of the Department in writing or upon renewal of the first filed permit or a Title V permit.
(k) The owners and operators of the facility shall have reasonable procedures in place to insure that documented conduct and deviations are identified and made part of the compliance review information submitted to the Department.

Cross References

This section cited in 25 Pa. Code § 127.464 (relating to transfer of operating permits).

§ 127.413. Municipal notification.

The applicant for an operating permit shall notify the local municipality and county where the air pollution source is to be located that the applicant has applied for the operating permit. The notification shall clearly describe the source and modifications that are to take place. The notice shall state that there is a 30-day comment period which begins upon receipt of the notice by the municipality and county.

Cross References

This section cited in 25 Pa. Code § 127.411 (relating to content of applications).

§ 127.414. Supplemental information.

(a) The applicant shall provide additional information as necessary to address requirements that become applicable to the source after the date it files a complete application but prior to the Department taking action on the permit application.
(b) The applicant shall provide supplementary facts or corrected information

upon becoming aware that it has submitted incorrect information or failed to submit relevant facts.
(c) Except as otherwise required by this article, the Clean Air Act or the regulations thereunder, the permittee shall submit additional information as necessary to address changes occurring at the source after the date it files a complete application but prior to the Department taking action on the permit application.
(d) The applicant shall submit information requested by the Department which is necessary to evaluate the permit application.

REVIEW OF APPLICATIONS

§ 127.421. Review of applications.

(a) The Department will determine if an application is complete within 60 days from receipt of the application. An application is complete if it contains sufficient information to begin processing the application, has the applicable sections completed and has been signed by a responsible official.
(b) Except as provided in subsections (c) and (d), the Department will approve or disapprove a complete application within 18 months after the date of receipt of a complete application.
(c) The Department will establish a phased schedule for acting on permit applications received within the first 12 months after the approval from the EPA of the Title V permit program established to implement the Clean Air Act.
(d) The schedule established under subsection (c) shall assure that at least one third of the permit applications will be acted upon by the Department annually over a period not to exceed 3 years.
(e) The submission of a complete application does not affect the requirement to obtain a plan approval as required by this chapter.

Cross References

This section cited in 25 Pa. Code § 127.505 (relating to initial application submitted for Title V facilities).

§ 127.422. Denial of permits.

The Department will deny or refuse to revise or renew an operating permit to a source to which one or more of the following applies:
(1) The Department has determined it is likely to cause air pollution or to violate the act, the Clean Air Act or the regulations thereunder applicable to the source.
(2) In the design of the source, provision is not made for adequate verification of compliance, including source testing or alternative means to verify compliance.
(3) The EPA has notified the Department in writing that the permit is not in compliance with the requirements of the Clean Air Act or the regulations thereunder.
(4) The applicant has constructed, installed, modified or operated an air contamination source or installed air pollution control equipment or devices on the source contrary to the plans and specifications approved by the Department.
(5) The applicant or a related party has a violation or lack of intention or ability to comply that is listed on the compliance docket.

§ 127.423. Notice of basis for certain operating permit decisions.

(a) When the Department refuses to grant an approval or to issue or reissue a permit or to terminate, modify, suspend or revoke an operating permit already issued, the action will be in the form of a written notice to the person affected informing the person of the action taken by the Department and setting forth in the notice a full and complete statement of the reasons for the action.
(b) The notice required by subsection (a) will be served upon the person

affected either by hand delivery or by certified mail return receipt requested.
(c) The action set forth in the notice shall be final and not subject to review unless, within 30 days of the service of the notice, a person affected thereby appeals to the EHB setting forth the grounds relied upon.
(d) The EHB will issue an adjudication affirming, modifying or overruling the action of the Department.

§ 127.424. Public notice.

(a) Except as provided in § 127.462 (relating to minor operating permit modifications), the Department will prepare a notice of action to be taken on applications for an operating permit.
(b) For sources identified in § 127.44(a)(1)—(4) (relating to public notice), the notice required by subsection (a) will be completed and sent 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. The applicant shall, within 10 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 thereafter. An operating permit will not be issued by the Department if the applicant fails to submit the proof of publication. The Department will publish notice for the sources identified in § 127.44(a), in the *Pennsylvania Bulletin.*
(c) If the Department denies an operating permit, written notice of the denial will be given to requestors and to the applicant and will be published in the *Pennsylvania Bulletin*.
(d) In each case, the Department will publish notices required in subsection (a) in the *Pennsylvania Bulletin*.
(e) The notice will state, at a minimum, 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.
(3) Permits issued to sources identified in § 127.44(a)(1)—(4) or permits issued to sources with limitations on their potential to emit used to avoid otherwise applicable Federal requirements may become a part of the SIP and will be submitted to the EPA for review and approval.

Cross References

This section cited in 25 Pa. Code § 127.425 (relating to contents of notice); and 25 Pa. Code § 127.426 (relating to filing protests).

§ 127.425. Contents of notice.

The notice required by § 127.424 (relating to public notice) shall include the following:
(1) The name and address of the applicant.
(2) The location and name of the plant or facility at which operation of the source will take place.
(3) The type and quantity of air contaminants being emitted.
(4) A brief description of the conditions being placed in the permit.
(5) A description of the procedures for reaching a final decision on the proposed permit action including the following:
(i) The ending date of the receipt of written protests.
(ii) The procedures for requesting a hearing and the nature of that hearing.
(iii) Other procedures by which the public may participate in the final decision.
(6) The name and telephone number of a person to contact for additional information.
(7) A statement that a person may object to the operating permit or a proposed

condition thereof by filing a written protest with the Department at the appropriate regional offices described in § 121.4 (relating to regional organization of the Department).

§ 127.426. Filing protests.

(a) A protest to a proposed action shall be filed with the Department within 30 days of the date that notice of the proposed action was published under § 127.424 (relating to public notice).
(b) A protest shall include the following:
(1) The name, address and telephone number of the person filing the protest.
(2) An identification of the proposed permit issuance being opposed.
(3) A concise statement of the objections to the permit issuance and the relevant facts upon which the objections are based.

Cross References

This section cited in 25 Pa. Code § 127.427 (relating to consideration of protest); 25 Pa. Code § 127.428 (relating to conferences and hearings); and 25 Pa. Code § 127.431 (relating to operating permit disposition).

§ 127.427. Consideration of protest.

(a) A protest alerts the Department to the fact and nature of the objection of the protestant to the proposed action on the application.
(b) The Department is not required to consider protests filed subsequent to the time designated in § 127.426 (relating to filing protests), but it may consider them if filed prior to issuance of an operating permit.

§ 127.428. Conferences and hearings.

(a) Prior to issuing an operating permit, the Department may hold a factfinding conference or hearing at which the petitioner, and a person who has properly filed a protest under § 127.426 (relating to filing protests) may appear and give testimony. The Department is not required to hold a conference or hearing.
(b) The applicant, the protestant and other participants will be notified of the time, place and purpose of a conference or hearing, in writing or by publication in a newspaper or the *Pennsylvania Bulletin*, unless the Department determines that notification by telephone will be sufficient.

§ 127.429. Conference or hearing procedure.

(a) Conferences and hearings shall be conducted by a presiding officer.
(b) Except if provided otherwise in the notice or by the presiding officer, conferences and hearings shall be conducted in an informal manner and the rules of evidence are not applicable.
(c) When provided in the notice, a participant may be required to present a written statement, together with exhibits required, at the conference or hearing for the use of the participants. Persons unable to attend the conference or hearing may submit three copies of a written statement and exhibits within 10 days thereafter to the Department.
(d) At the conference or hearing, a participant, may, at his own cost, record the proceedings using a stenographer, tape recorder or other means.

§ 127.430. Conference or hearing record.

(a) Following the conference or hearing, the presiding officer shall prepare a summary which contains the following:
(1) An identification of the operating permit application and the name of the plant or facility which is being constructed or modified.
(2) The names and addresses of each participant and whom the participant

represents.
(3) The substance of the opening and closing statement by the presiding officer.
(4) The substance of the matters discussed or testified to and agreements entered into by the participants.
(5) Other relevant matters to inform the Department of the results of the conference or hearing.
(b) A copy of the summary shall be submitted upon request to each participant in the proceeding. Copies of the summary, together with any transcript of the proceedings, written statements, exhibits and protests will also be placed in the file in the appropriate office in the Department for review by the participants prior to disposition of the operating permit application.

§ 127.431. Operating permit disposition.

(a) After reviewing a protest or record of a conference or hearing, the Department may take action authorized by this chapter.
(b) A notice of denial or an operating permit will be issued to the applicant. Each protestant who has submitted a comment within the time period in § 127.426 (relating to filing protests) will be notified personally or by mailing a copy of the plan approval disposition to the address set forth in the protest.
(c) The Department will also publish notice of its action in the *Pennsylvania Bulletin* which will be deemed to be sufficient notice to others.

OPERATING PERMIT CONDITIONS

§ 127.441. Operating permit terms and conditions.

(a) A permit may contain terms and conditions the Department deems necessary to assure the proper operation of the source.
(b) At a minimum, each permit shall incorporate by reference the emission and performance standards and other requirements of the act, the Clean Air Act or the regulations thereunder.
(c) The operating permit shall incorporate the monitoring, recordkeeping and reporting requirements required by Chapter 139 (relating to sampling and testing) and other monitoring, recordkeeping or reporting requirements of this article and additional requirements related to monitoring, recordkeeping and reporting required by the Clean Air Act and the regulations thereunder including, if applicable, the enhanced monitoring requirements of 40 CFR Part 64 (relating to enhanced monitoring).
(d) The permit shall contain a requirement that the permittee develop an accidental release program consistent with the Clean Air Act and the regulations thereunder.

§ 127.442. Reporting requirements.

(a) Each source shall submit reports to the Department containing information the Department may prescribe relative to the operation and maintenance of the source.
(b) At a minimum, each permit shall incorporate by reference the reporting requirements of the act, the Clean Air Act or the regulations thereunder applicable to the source.

§ 127.443. Operating permit requirements.

(a) A person may not cause or permit the operation of a source the construction, modification or reactivation of which, or the installation of an air cleaning device on which, is subject to § 127.11 (relating to plan approval requirements), unless the Department has issued a permit to operate the source.

(b) The permit shall be issued with the condition that the source shall operate in compliance with the plan approval, the conditions of the plan approval and the conditions of the operating permit. The Department may issue the permit with additional appropriate conditions.
(c) The Department will not issue an operating permit unless the source was constructed in accordance with the plan approval and the conditions of the plan approval.

§ 127.444. Compliance requirements.

A person may not cause or permit the operation of a source subject to this article unless the source and air cleaning devices identified in the application for the plan approval and operating permit and the plan approval issued to the source are operated and maintained in accordance with specifications in the application and conditions in the plan approval and operating permit issued by the Department.
A person may not cause or permit the operation of an air contamination source subject to this chapter in a manner inconsistent with good operating practices.

§ 127.445. Operating permit compliance schedules.

(a) The Department may issue an operating permit to an existing and operating source that is out of compliance with the act, the Clean Air Act or the regulations thereunder.
(b) An operating permit issued under subsection (a) shall contain an enforceable schedule requiring the source to attain compliance as soon as possible but no later than the date required by the act or the Clean Air Act.
(c) The compliance schedule required by subsection (b) may contain interim milestone dates for completing any phase of the required work, as well as a final compliance date and may contain stipulated penalties for the failure to meet the compliance schedule.
(d) If the permittee fails to achieve compliance by the final compliance date or fails to pay the stipulated penalties for failure to meet an interim compliance date, the permit shall be revoked.
(e) The operating permit shall be part of an overall resolution of the outstanding noncompliance and may include the payment of an appropriate civil penalty for past violations and shall contain other terms and conditions the Department deems appropriate.
(f) An operating permit may incorporate by reference a compliance schedule contained within a consent order and agreement, including provisions related to the implementation or enforcement of the compliance schedule or consent order and agreement.

Cross References

This section cited in 25 Pa. Code § 127.513 (relating to compliance certification).

§ 127.446. Operating permit duration.

(a) An operating permit issued under this chapter will be issued for a 5-year term unless a shorter term is required to comply with the Clean Air Act or the regulations thereunder or the permittee requests a shorter term.
(b) Notwithstanding subsection (a), a permit for acid deposition control will be issued for a 5-year term.
(c) The terms and conditions of an expired permit are automatically continued pending the issuance of a new permit when the permittee has submitted a timely and complete application and paid the fees required by Subchapter I (relating to plan approval and operating permit fees) and the Department is unable, through no fault of the permittee, to issue or deny a new permit before the expiration of the previous permit. An application is complete if it contains sufficient information to begin processing the application, has the applicable sections completed and has been signed by a responsible official.

(d) Failure of the Department to issue or deny a new permit prior to the expiration date of the previous permit for which a timely renewal application has been filed shall be an appealable action. The EHB may require that the Department take action on an application without delay.
(e) Applications for permit renewals shall be submitted at least 6 and not more than 18 months before expiration of the existing permit.

§ 127.447. Alternate operating scenarios.

(a) Stationary air contamination sources may make changes at a facility to implement alternate operating scenarios identified in its permit under this section.
(b) A permit issued under this section shall contain terms and conditions for reasonably anticipated operating scenarios determined to be necessary or otherwise identified by the source in its application as approved by the Department. The terms and conditions:
(1) Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating at all times and may require the source to notify the Department at the time it implements the change.
(2) Shall extend the permit shield described in § 127.516 (relating to permit shield) to the terms and conditions under each operating scenario, unless precluded by the Clean Air Act or the regulations thereunder.
(3) Shall ensure and require that the terms and conditions of each alternate scenario meet applicable requirements of the Clean Air Act, the act and the regulations thereunder.

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility); and 25 Pa. Code § 127.503 (relating to application information).

§ 127.448. Emissions trading at facilities with Federally enforceable emissions cap.

(a) The owner or operator of a facility with a Federally enforceable emissions cap may trade increases and decreases in emissions between sources with Federally enforceable emissions caps at the permitted facility, when the applicable SIP and this article provide for the emissions trades without requiring a permit revision and when the owner or operator of the facility provides 7 days written notice to the Department prior to the proposed change. This subsection is applicable when the permit does not already provide for the emissions trading.
(b) The written notification required by subsection (a) shall include information required by the SIP and this article authorizing the emissions trade, including at a minimum, when the proposed change will occur, a description of each change, changes in emissions that will occur as a result of the change from any source within the facility, the permit requirements with which the source will comply using the emissions trading provisions of the applicable implementation plan and this article and the air contaminants emitted subject to the emissions trade. The notice shall also refer to the provisions with which the source will comply in the applicable implementation plan and this article that provide for the emissions trade.
(c) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) extends to a change made under this section. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the SIP and this article authorizing the emissions trade.
(d) If a permit applicant requests it, the Department may issue permits that contain terms and conditions allowing for the trading of emissions increases and

decreases in the permitted facility solely for the purpose of complying with Federally-enforceable emissions caps that are established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Department will not include in the emissions trading provisions sources for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with applicable requirements.
(1) The facility shall provide 7 days written notice to the Department of the proposed trade.
(2) In addition to the information contained in subsection (b), the notice shall also state how the increases and decreases in emissions will comply with the terms and conditions of the permit.

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility); and 25 Pa. Code § 127.503 (relating to application information).

§ 127.449. De minimis emission increases.

(a) The Department may allow, as a condition of an operating permit, de minimis emission increases from a new or existing source up to the amounts authorized in this section.
(b) A de minimis increase may not occur at a facility if it would do one or more of the following:
(1) Increase the emissions of a pollutant regulated under section 112 of the Clean Air Act (42 U.S.C.A. § 7412) except as authorized in subsection (d)(4) and (5).
(2) Subject the facility to the permit requirements of Subchapters D and E (relating to prevention of significant deterioration of air quality; and new source review).
(3) Violate an applicable requirement of the act, the Clean Air Act or the regulations promulgated under the act or the Clean Air Act.
(c) The permittee shall provide the Department with 7 days prior written notice of any de minimis emission increase. The notice shall identify and describe the pollutants that will be emitted as a result of the de minimis emissions increase and provide emission rates in tons/year and in terms necessary to establish compliance consistent with any applicable requirement. The Department may disapprove or condition the de minimis emission increase at any time.
(d) Except as provided in subsection (e), the maximum de minimis emission rate increases, as measured in tons/year, that may be authorized in the permit during the term of the permit are one or more of the following:
(1) Four tons of carbon monoxide from a single source during the term of the permit and 20 tons of carbon monoxide at the facility during the term of the permit.
(2) One ton of the NO_x from a single source during the term of the permit and 5 tons of NO_x at the facility during the term of the permit.
(3) One and six-tenths tons of the oxides of sulfur from a single source during the term of the permit and 8.0 tons of the oxides of sulfur at the facility during the term of the permit.
(4) Six-tenths of a ton of PM_{10} from a single source during the term of the permit and 3.0 tons of PM_{10} at the facility during the term of the permit. This shall include emissions of a pollutant regulated under section 112 of the Clean Air Act unless precluded by the Clean Air Act, the regulations thereunder or this title.
(5) One ton of VOCs from a single source during the term of the permit and 5 tons of VOCs at the facility during the term of the permit. This shall include emissions of a pollutant regulated under section 112 of the Clean Air

Act unless precluded by the Clean Air Act, the regulations thereunder or this title.
(e) The Department may allow, as a condition of an operating permit, installation of the following minor sources:
(1) Air conditioning or ventilation systems not designed to remove pollutants generated by or released from other sources.
(2) Combustion units rated at 2,500,000 or less Btu per hour of heat input.
(3) Combustion units with a rated capacity of less than 10,000,000 Btu per hour of heat input fueled by natural gas supplied by a public utility or by commercial fuel oils which are No. 2 or lighter, viscosity less than or equal to 5.82 c St, and which meet the sulfur content requirements of § 123.22 (relating to combustion units). Combustion units converting to fuel oils which are No. 3 or heavier, viscosity greater than 5.82 c St, or contain sulfur in excess of the requirements of § 123.22 require an operating permit. For the purpose of this section, commercial fuel oil shall be virgin oil which has no reprocessed, recycled or waste material added.
(4) Space heaters which heat by direct heat transfer.
(5) Laboratory equipment used exclusively for chemical or physical analyses.
(f) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) shall extend to changes made under this section.
(g) Emissions authorized under this section shall be included in the monitoring, recordkeeping and reporting requirements of the source.
(h) De minimis emission threshold levels cannot be met by offsetting emission increases or the emission decreases at the same source.
(i) The Department will maintain a list of de minimis increases authorized by this section in the permit file for the facility and shall publish a list of the de minimis increases in the *Pennsylvania Bulletin* within 60 days of the receipt of notice for the source.

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility); and 25 Pa. Code § 127.14 (relating to exemptions).

§ 127.450. Administrative operating permit amendments.

(a) An ‘‘administrative permit amendment’’ is a permit revision that does one or more of the following:
(1) Corrects typographical errors.
(2) Identifies a change in the name, address or phone number of a person identified in the permit, or provides a similar minor administrative change at the source.
(3) Requires more frequent monitoring or reporting by the permittee.
(4) Allows for a change in ownership or operational control of a source if the Department determines that no other change in the permit is necessary, and if a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittee and a compliance review form has been submitted to and the permit transfer has been approved by the Department.
(5) Except when precluded by the Clean Air Act or the regulations, incorporates into an operating permit the requirements from plan approvals including plan approvals issued under Subchapter B (relating to plan approval requirements), Subchapter D (relating to prevention of significant deterioration of air quality) and Subchapter E (relating to new source review) or § 127.35 (relating to maximum achievable control technology standards for hazardous air pollutants) authorized under an EPA-approved program, if the program meets procedural requirements of this chapter.

(b) Administrative permit amendments for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642).
(c) An administrative permit amendment may be made by the Department consistent with the following:
(1) The Department will take no more than 60 days from receipt of a request from the owner or operator of a source for an administrative permit amendment to the Department with a copy to the EPA to take final action on the request, and may incorporate the changes without providing notice to the public or affected states except for permit revisions made under subsection (a)(5).
(2) The Department will submit a copy of the revised permit to the Administrator of the EPA.
(d) Unless precluded by the Clean Air Act or the regulations thereunder, the Department will, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in § 127.516 (relating to permit shield) for administrative permit amendments which meet the relevant requirements of this article.
(e) The Department will take final action on the administrative amendment and publish notice of the final action in the *Pennsylvania Bulletin.*
(f) Administrative amendments are not authorized for any amendment precluded by the Clean Air Act or the regulations thereunder from being processed as an administrative amendment.

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility).

OPERATING PERMIT MODIFICATIONS

§ 127.461. Operating permit changes for cause.

An operating permit may be terminated, modified, suspended or revoked and reissued if one or more of the following applies:
(1) The permittee constructs or operates the source subject to the operating permit so that it is in violation of the act, the Clean Air Act, the regulations thereunder, a plan approval, a permit or in a manner that causes air pollution.
(2) The permittee fails to properly or adequately maintain or repair an air pollution control device or equipment attached to or otherwise made a part of the source.
(3) The permittee has failed to submit a report required by the operating permit or an applicable regulation.
(4) The EPA determines that the permit is not in compliance with the Clean Air Act or the regulations thereunder.

§ 127.462. Minor operating permit modifications.

(a) Stationary air contamination sources and facilities may make minor permit modifications on an expedited basis under this section.
(b) The owner or operator of the facility shall submit to the Department, on a form provided by or approved by the Department, a brief description of the change, the date on which the change is to occur and the proposed language for revising the operating permit conditions proposed to be changed. The form shall be submitted to the Department by hand delivery or certified mail, return receipt requested.
(c) At the time of submission of the application for a minor permit modification, the owner and operator shall notify the municipality where the source or facility is located under section 1905-A of The Administrative Code of 1929 (71 P. S. § 510-5), any state within 50 miles of the location of the source or facility

or whose air quality may be affected by the change and the EPA and shall also publish a notice in a local newspaper of general circulation briefly describing the change including a change in actual emissions, of any air contaminant that would occur as a result of the change.
(d) The notice required by subsection (c) shall clearly indicate that a person may comment to the Department and the source or facility concerning the proposed change within 21 days from the date of submission of the proposed minor permit modification to the Department and the EPA.
(e) The Department will have 21 days in the absence of receipt of public comments and 28 days if public comments are received from receipt of the application for a minor permit modification to seek additional information or to disapprove the change.
(f) The source or facility may make the change subject to subsequent review and final action by the Department and the EPA under one of the following conditions:
(1) After the 21st day following submission under subsection (b) if the Department has received no public objection and does not otherwise object to the change.
(2) After the 28th day following submission under subsection (b) if the Department has received a public objection within 21 days of the submission which the Department determines is not bona fide and the Department does not disapprove the proposed change or require it to be processed as a plan approval or significant modification.
(g) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield described in § 127.516 (relating to permit shield) shall extend to an operational flexibility change authorized by this section.
(h) The Department will take final action on the proposed change within 60 days of receipt of the complete application for the minor permit modification and, after taking final action, will publish notice of the action in the *Pennsylvania Bulletin.*
(i) Approval of a minor permit modification for a physical change of minor significance authorized under § 127.14(c)(1) (relating to exemptions) is also approval of the request for minor significance determination for the physical change.
(j) For purposes of this section, a bona fide public objection is one that provides factual or other relevant information that the change does not meet the requirements for a minor modification or that objects to the change because of its impact on air quality.

Cross References

This section cited in 25 Pa. Code § 127.3 (relating to operational flexibility); 25 Pa. Code § 127.14 (relating to exemptions); and 25 Pa. Code § 127.424 (relating to public notice).

§ 127.463. Operating permit revisions to incorporate applicable standards.

(a) The Department will require revisions to an operating permit to incorporate applicable standards or regulations promulgated under the Clean Air Act after the issuance of the permit.
(b) The revisions shall occur as expeditiously as practicable, but not later than 18 months after the promulgation of the standards or regulations.
(c) A revision will not be required if the effective date of the standards or regulations is a date after the expiration of the permit term or if less than 3 years remain in the permit term.
(d) A revision issued under this section shall be treated as a permit renewal if it complies with the act and the regulations promulgated thereunder regarding renewals.
(e) Regardless of whether a revision is required under this section, the permittee shall meet the applicable standards or regulations promulgated under the

Clean Air Act within the time frame required by standards or regulations.

§ 127.464. Transfer of operating permits.

(a) An operating permit may not be transferred from one person to another except in cases of change-of-ownership which are documented and approved to the satisfaction of the Department.
(b) Section 127.412 (relating to compliance review forms) applies to a request to transfer an operating permit.
(c) An operating permit is valid only for that specific source and that specific location of the source as described in the permit.

Subchapter G. TITLE V OPERATING PERMITS

GENERAL

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Source

The provisions of this Subchapter G adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899, unless otherwise noted.

Cross References

This subchapter cited in 25 Pa. Code § 127.12b (relating to plan approval terms and conditions).

GENERAL

§ 127.501. Scope.

This subchapter describes the additional operating permit program requirements applicable to Title V facilities which are in addition to the requirements in Subchapter F (relating to operating permit requirements).

§ 127.502. Sources included within a Title V facility.

(a) For Title V facilities, the applicable requirements for stationary air contamination sources in the Title V facility shall be included in the operating permit.
(b) Fugitive emissions from a Title V facility shall be included in the permit application and the Title V permit in the same manner as stack emissions, regardless

of whether the source category in question is included in the list of sources contained in the definition of Title V facility.
(c) Research and development facilities located at a Title V facility will not be required to be included as part of the Title V facility. The emissions from a research and development facility shall, in all cases, be aggregated with the emissions of the Title V facility to determine whether the facility meets any of the requirements of subparagraphs (i)—(iv) in the definition of a Title V facility.

§ 127.503. Application information.

The owner or operator shall include the following in the Title V permit application:
(1) Identifying information, including company name and address, or plant name and address if different from the company name, owner's name and agent and telephone number and names of plant site manager/contact.
(2) A description of the source's processes and products, by standard industrial classification code, including those associated with each alternate operating scenario identified by the source.
(3) The following emissions-related information:
(i) Emissions of air contaminants for which the facility is a Title V facility, and emissions of regulated air pollutants. A permit application shall describe emissions of regulated air pollutants emitted from a stationary air contamination source. The Department may require additional information related to the emissions of air contaminants sufficient to verify which requirements are applicable to each source, and other information necessary to collect permit fees owed under Subchapter I (relating to plan approval and operating permit fees).
(ii) Identification and description of the points of emissions described in subparagraph (i) in sufficient detail to establish the basis for fees and applicability of the Clean Air Act.
(iii) Emissions rates in tons per year and in terms necessary to establish compliance consistent with the applicable emission limit and standard reference test method.
(iv) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates and operating schedules.
(v) Identification and description of air pollution control equipment and compliance monitoring devices or activities including enhanced monitoring protocols required by 40 CFR Part 64 (relating to enhanced monitoring).
(vi) Limitations on source operation affecting emissions or work practice standards, when applicable, for Title V regulated pollutants at each stationary air contamination source.
(vii) Other information required by an applicable requirement, including information related to stack height limitations developed under section 123 of the Clean Air Act (42 U.S.C.A. § 7423).
(viii) Calculations on which the information in subparagraphs (i)—(vii) is based.
(4) The following air pollution control requirements:
(i) The citation and description of applicable requirements.
(ii) A description of or reference to an applicable test method for determining compliance with each applicable requirement.
(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the act, the Clean Air Act, this article or 40 CFR Part 70 (relating to state operating permit program) or to determine the applicability of the requirements.
(6) An explanation of proposed exemptions from otherwise applicable requirements.
(7) Additional information as determined to be necessary by the Department to define alternate operating scenarios identified by the source under § 127.447 (relating to alternate operating scenarios) or to define permit terms

and conditions implementing § 127.448 (relating to emissions trading at facilities with Federally enforceable emission cap).
(8) A compliance plan for Title V facilities that contains the following information:
(i) A description of the compliance status of each stationary air contamination source with respect to applicable requirements.
(ii) A description as follows:
(A) A statement that the Title V facility will continue to comply with the requirements, for applicable requirements with which the Title V facility is in compliance.
(B) A statement that the Title V facility will meet the requirements on a timely basis, for applicable requirements that will become effective during the permit term.
(C) A narrative description of how the Title V facility will achieve compliance with the requirements, for requirements for which the Title V facility is not in compliance at the time of permit issuance.
(iii) A compliance schedule as follows:
(A) A statement that the Title V facility will continue to comply with the requirements, for applicable requirements with which the Title V facility is in compliance.
(B) A statement that the Title V facility will meet the requirements on a timely basis, for applicable requirements that will become effective during the permit term. A statement that the Title V facility will meet in a timely manner applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement or the Department.
(C) A schedule of compliance that includes a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with applicable requirements for which the source will be in noncompliance at the time of permit issuance including stipulated penalties for failure to meet a milestone, for Title V facilities that are not in compliance with the applicable requirements at the time of the permit applications. This compliance schedule shall resemble and be at least as stringent as that contained in a judicial consent decree or administrative order to which the source is subject. This schedule of compliance will be supplemental to, and will not sanction noncompliance with, the applicable requirements on which it is based.
(iv) A schedule for submission of certified progress reports at least every 6 months for Title V facilities required to have a schedule of compliance to remedy a violation.
(9) The compliance plan content requirements in this section shall apply and be included in the acid rain portion of a compliance plan for an affected Title V facility, except as specifically superseded by regulations promulgated under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642) with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.
(10) A requirement for compliance certification, including the following:
(i) A certification of compliance with applicable requirements by a responsible official consistent with § 127.513 (relating to compliance certification) and section 114(a)(3) of the Clean Air Act (42 U.S.C.A. § 7414(a)(3)).
(ii) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping and reporting requirements and test methods.
(iii) A schedule for submission of compliance certification during the

permit term, to be submitted at least annually or more frequently if specified by the underlying applicable requirement or by the Department.
(iv) A statement indicating the Title V facility's compliance status with applicable enhanced monitoring and compliance certification requirements of the Clean Air Act, the act or the regulations thereunder.
(11) A requirement for the use of Nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Clean Air Act.

§ 127.504. Source category exemptions.

(a) A source located at a facility that is not a Title V facility, that is not an affected source or that is not a solid waste incineration unit required to obtain a permit under section 129(e) of the Clean Air Act (42 U.S.C.A. § 7429(e)) is exempted from the obligation to obtain a Title V permit until the Administrator of the EPA completes a rulemaking to determine how the program should be structured for the sources and the appropriateness of permanent exemptions.
(b) In the case of nonmajor sources subject to a standard or other requirement under section 111 or 112 of the Clean Air Act (42 U.S.C.A. §§ 7411 and 7412), the Administrator of the EPA will determine whether to exempt the applicable sources from the requirement to obtain a Title V permit at the time that the new standard is promulgated.
(c) A source exempt from the requirement to obtain a permit under this section may opt to apply for a permit under the Title V program.
(d) The following source categories are exempted from the obligation to obtain a Title V permit:
(1) Sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA (relating to standards of performance for new residential wood heaters).
(2) Sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M (relating to National emission standard for asbestos) including 61.145 (relating to demolition and renovation).

§ 127.505. Initial application submittal for Title V facilities.

(a) The owner or operator of a Title V facility shall submit the Title V operating permit application within 120 days after the Department provides notice to the owner or operator that the application is due or by November 27, 1995, whichever is earlier.
(b) The Department will make a completeness determination within the timeframe established under § 127.421(a) (related to review of applications).
(c) If the applicant submits a complete application within the time frames required by this section and the Department fails to issue a permit through no fault of the applicant, the Title V facility may continue to operate if the fees required by Subchapter I (relating to plan approval and operating permit fees) have been paid and the source is operated in conformance with the act, the Clean Air Act and the regulations thereunder.
(d) The terms and conditions of an existing operating permit issued to the source shall continue pending issuance of a permit under Title V.
(e) An applicant meeting the requirements of subsections (a) and (c) shall have an application shield. The application shield shall cease if the source fails to provide information requested by the Department which is necessary to evaluate the Title V permit application.

PERMIT CONDITIONS

§ 127.511. Monitoring and related recordkeeping and reporting requirements.

(a) Each permit shall contain the following requirements with respect to monitoring:

(1) Emissions monitoring and analysis procedures or test methods required under the applicable requirements, including procedures and methods under sections 114(a)(3) or 504(b) of the Clean Air Act (42 U.S.C.A. §§ 7414(a)(3) and 7661c(b)).

(2) When the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring, which may consist of recordkeeping designed to serve as monitoring, periodic monitoring sufficient to yield accurate and reliable data from the relevant time that are representative of the source's compliance with the permit, as reported under subsection (c). The monitoring requirements shall assure use of terms, test methods, units, averaging periods and other statistical conventions are consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this subsection.

(3) Requirements concerning the use, maintenance and, when appropriate, installation of monitoring equipment or methods, as necessary.

(b) With respect to recordkeeping, the permit shall incorporate applicable recordkeeping requirements and require, when applicable, the following:

(1) Records of required monitoring information that include the following:

(i) The date, place as defined in the permit, and time of sampling or measurements.

(ii) The dates the analyses were performed.

(iii) The company or entity that performed the analyses.

(iv) The analytical techniques or methods used.

(v) The results of the analyses.

(vi) The operating conditions as existing at the time of sampling or measurement.

(2) Retention of records of the required monitoring data and supporting information for at least 5 years from the date of the monitoring sample, measurement, report or application. Supporting information includes calibration and maintenance records and original strip-chart recordings for continuous monitoring instrumentation, and copies of reports required by the permit.

(c) With respect to reporting, the permit shall incorporate the applicable reporting requirements and require the following:

(1) Submittal of reports of required monitoring at least every 6 months. Instances of deviations from permit requirements shall be clearly identified in the reports. Required reports shall be certified by a responsible official.

(2) Reporting of deviations from permit requirements within the time required by the terms and conditions of the permit including those attributable to upset conditions as defined in the permit, the probable cause of the deviations and corrective actions or preventive measures taken, except that sources with continuous emission monitoring systems shall report according to the protocol established and approved by the Department for the source.

§ 127.512. Operating permit terms and conditions.

(a) Each permit issued to a Title V facility shall, at a minimum, contain the permit terms and conditions required by this section.

(b) The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to a portion of the permit.

(c) The permit shall contain provisions stating the following:
(1) The permittee shall comply with conditions of the operating permit. Noncompliance with the permit constitutes a violation of the Clean Air Act and the act and is grounds for one or more of the following:
(i) Enforcement action.
(ii) Permit termination, revocation and reissuance or modification.
(iii) Denial of a permit renewal application.
(2) The need to halt or reduce activity is not a defense. It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this permit.
(3) The permit may be modified, revoked, reopened and reissued or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay a permit condition.
(4) The permit does not convey property rights of any sort, or an exclusive privilege.
(5) The permittee shall furnish to the Department, within a reasonable time, information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish the records directly to the Administrator of the EPA along with a claim of confidentiality.
(d) The permit shall contain a provision to ensure that a Title V facility pays fees to the Department consistent with Subchapter I (relating to plan approval and operating permit fees).
(e) The permit shall contain a provision stating that a permit revision is not required, under approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.
(f) The permit shall contain terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and approved by the Department. The terms and conditions:
(1) Shall require the source, when operating under the permit and contemporaneously with making a change from one operating scenario to another, to record in a permitting log at the permitted facility a record of the scenario under which it is operating.
(2) Shall extend the permit shield described in § 127.516 (relating to permit shield) to the terms and conditions under each operating scenario unless precluded by the Clean Air Act or the regulations thereunder.
(3) Shall ensure that the terms and conditions of each alternative scenario meet the applicable requirements and the requirements of this part.
(g) The permit shall contain terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading the increases and decreases. The terms and conditions:
(1) Shall include the terms required by this article to determine compliance.
(2) Shall extend the permit shield described in § 127.516 to the terms and conditions that allow the increases and decreases in emissions unless precluded by the Clean Air Act and the regulations thereunder.
(3) Shall meet the applicable requirements and requirements of this article.
(h) The permit shall contain emission limits and standards, including those operational requirements and limitations that assure compliance with the applicable

requirements at the time of permit issuance.
(i) The permit shall contain a requirement that the permittee develop an accident release program consistent with the Clean Air Act and the regulations thereunder.
(j) Except when precluded by the Clean Air Act, the regulations thereunder or of this title, if the permit contains emission limitations for VOCs or PM_{10} but does not specifically limit the emissions of pollutants regulated under section 112 of the Clean Air Act (42 U.S.C.A. § 7412) the permit shall contain a requirement that the permittee can modify the mixture of pollutants regulated under section 112 which are VOCs or PM_{10} so long as the emission limitations of the permit are not violated. The permittee shall keep a log which identifies the mixture of pollutants regulated under section 112 and report the changes in the mixture of pollutants regulated under section 112 with the next report required to be provided to the Department.

§ 127.513. Compliance certification.

Title V permits shall contain the following elements with respect to compliance:
(1) Consistent with this article, compliance certification, testing, monitoring, reporting and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Documents, including reports, required by a Title V permit shall contain a certification by a responsible official.
(2) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the Department or an authorized representative of the Department to perform the following:
(i) Enter at reasonable times upon the permittee's premises where a Title V source is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit.
(ii) Have access to and copy or remove, at reasonable times, records that are kept under the conditions of the permit.
(iii) Inspect at reasonable times facilities, equipment, including monitoring and air pollution control equipment, practices or operations regulated or required under the permit.
(iv) Sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements as authorized by the Clean Air Act, the act or the regulations adopted under the Clean Air Act or the act.
(3) A schedule of compliance consistent with § 127.445 (relating to operating permit compliance schedules).
(4) Progress reports consistent with the applicable schedule of compliance to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Department. The progress reports shall contain the following:
(i) The dates for achieving the activities, milestones or compliance required in the schedule of compliance, and dates when the activities, milestones or compliance were achieved.
(ii) An explanation of why dates in the schedule of compliance were not or will not be met, and the preventive or corrective measures adopted or proposed to be adopted.
(5) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards or work practices. Permits shall include the following:
(i) The frequency, not less than annually or more frequent periods as specified in the applicable requirement or by the Department, of submissions of compliance certifications.

(ii) A means of monitoring the compliance of the source with its emissions limitations, standards and work practices, consistent with the requirements of this article.
(iii) A requirement that the compliance certification include the following:
(A) The identification of each term or condition of the permit that is the basis of the certification.
(B) The compliance status.
(C) The methods used for determining the compliance status of the source, currently and over the reporting period.
(D) Whether compliance was continuous or intermittent.
(E) Other facts the Department may require to determine the compliance status of the source.
(iv) A requirement that compliance certifications be submitted to the Administrator of the EPA, as well as to the Department.
(v) Additional requirements as may be specified under sections 114(a)(3) and 504(b) of the Clean Air Act (42 U.S.C.A. §§ 7414(a)(3) and 7661(c).
(6) Other provisions the Department may require.

Cross References

This section cited in 25 Pa. Code § 127.503 (relating to application information).

§ 127.514. General operating permits at Title V facilities.

(a) In addition to the requirements of Subchapter H (relating to general plan approvals and operating permits), a general permit shall comply with the requirements applicable to other Title V facilities and shall identify criteria by which sources may qualify for the general permit.
(b) The Department will grant the conditions and terms of the general permit to sources that qualify. Notwithstanding the shield provisions of § 127.516 (relating to permit shield), the source shall be subject to enforcement action for operation without a Title V permit if the source is later determined not to qualify for the conditions and terms of the general permit.
(c) A general permit will not be authorized for affected sources under the acid rain program unless otherwise provided in regulations promulgated under Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642).

§ 127.515. Operating permits for portable sources at Title V facilities.

(a) In addition to the requirements of Subchapter H (relating to general plan approvals and operating permits), the operation of a source operating at multiple temporary locations shall be temporary and involve at least one change of location during the term of the permit.
(b) A facility subject to the requirements of Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642), relating to acid deposition control, will not be permitted as a portable source.
(c) Permits for portable sources shall include the following:
(1) The conditions that will assure compliance with the applicable requirements at the authorized locations.
(2) The requirements that the owner or operator notify the Department at least 10 days in advance of each change in location.
(3) The conditions that assure compliance with the other provisions of this article.

§ 127.516. Permit shield.

(a) Compliance with the conditions of the permit shall be deemed in compliance with applicable requirements as of the date of permit issuance, if one of the following applies:
(1) The applicable requirements are included and are specifically identified

in the permit.
(2) The Department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.
(b) A Title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.
(c) Nothing in this section or in a Title V permit alters or affects the following:
(1) The provisions of section 303 of the Clean Air Act (42 U.S.C.A. § 7603) (emergency orders); including the authority of the Administrator of the EPA under that section.
(2) The liability of an owner or operator of a source for a violation of an applicable requirement prior to or at the time of permit issuance.
(3) The applicable requirements of the acid rain program, consistent with section 408(a) of the Clean Air Act (42 U.S.C.A. § 7651g(a)).
(4) The ability of the EPA to obtain information from a source under section 114 of the Clean Air Act (42 U.S.C.A. § 7414).

Cross References

This section cited in 25 Pa. Code § 127.447 (relating to alternate operating scenarios); 25 Pa. Code § 127.448 (relating to emissions trading at facilities with Federally enforceable emissions cap); 25 Pa. Code § 127.449 (relating to de minimis emission increases); 25 Pa. Code § 127.450 (relating to administrative operating permit amendments); 25 Pa. Code § 127.462 (relating to minor operating permit modifications); 25 Pa. Code § 127.512 (relating to operating permit terms and conditions); and 25 Pa. Code § 127.514 (relating to general operating permits at Title V facilities).

PUBLIC NOTICE

§ 127.521. Additional public participation provisions.

(a) In addition to the other requirements of this chapter, permit proceedings for Title V facilities shall follow the provisions of this section related to public notice.
(b) Notice shall be given by publication by the permit applicant in a newspaper of general circulation in the area where the source is located and by the Department in the *Pennsylvania Bulletin* and to persons on a mailing list developed by the Department, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public.
(c) The notice shall identify:
(1) The Title V facility.
(2) The name and address of the applicant or permittee.
(3) The name and address of the Department regional office processing the permit.
(4) The activity involved in the permit action.
(5) The emissions change involved in a permit modification.
(6) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, relevant supporting materials and other materials available to the Department that are relevant to the permit decision.
(7) A brief description of the comment procedures required by this article.
(8) The time and place of a hearing that may be held, including a statement of procedures to request a hearing, unless a hearing has already been scheduled.
(d) The Department will provide the notice and opportunity for participation by affected states as is provided by § 127.522 (relating to operating permit application review by the EPA and affected states).
(e) The Department will provide at least 30 days for public comment and will give notice of a public hearing at least 30 days in advance of the hearing.
(f) The Department will keep a record of the commentators and also of the issues raised during the public participation process so that the Administrator of

the EPA may fulfill his obligation under section 505(b)(2) of the Clean Air Act (42 U.S.C.A. § 7661d(b)(2)) to determine whether a citizen petition may be granted. The records will be available to the public.

§ 127.522. Operating permit application review by the EPA and affected states.

(a) The Department will provide to the Administrator of the EPA a copy of each permit application, including an application for permit modification, each proposed permit and each final Title V permit. The applicant may be required by the Department to provide a copy of the permit application, including the compliance plan, directly to the Administrator of the EPA. Upon agreement with the Administrator of the EPA, the Department may submit to the Administrator of the EPA a permit application summary form and relevant portions of the permit application and compliance plan, in place of the complete permit application and compliance plan. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with the EPA's National database management system.

(b) As authorized by the Clean Air Act and the regulations thereunder, the Administrator of the EPA may waive the requirements of subsections (a) and (d) for a category of sources, including a class, type or size within the category, other than Title V facilities according to one of the following:

(1) By regulation for a category of sources Nationwide.

(2) At the time of approval of the Commonwealth program for a category of sources covered by the operating permit program.

(c) The Department will keep the records for 5 years and submit to the Administrator of the EPA information the Administrator of the EPA may reasonably require to ascertain whether the Commonwealth's program complies with the Clean Air Act.

(d) The Department will give notice of each proposed permit to a State within 50 miles of the Title V facility and any contiguous State whose air quality may be affected on or before the time that the Department provides this notice to the public.

(e) The Department, as part of the submittal of the proposed permit to the Administrator of the EPA, or as soon as possible after the submittal for minor permit modification, will notify the Administrator of the EPA and any state within 50 miles of the Title V facility and any contiguous State whose air quality may be affected in writing of the refusal by the Department to accept the recommendations for the proposed permit that the state within 50 miles of the Title V facility and any contiguous State whose air quality may be affected submitted during the public or state's review period. The notice shall include the Department's reasons for not accepting the recommendation. The Department is not required to accept recommendations that are not based on applicable requirements or the requirements of this part.

(f) As required by the Clean Air Act and the regulations thereunder, the Administrator of the EPA will object to the issuance of a proposed permit determined by the Administrator of the EPA not to be in compliance with applicable requirements. A permit for which an application shall be transmitted to the Administrator of the EPA under this section will not be issued if the Administrator of the EPA objects to its issuance in writing within 45 days of receipt of the proposed permit and the necessary supporting information. The final permit shall be provided to EPA upon issuance if material substantive changes are made to the proposed permit. If the EPA objects to issuance of the permit within 45 days, the permit will be revoked.

(g) As required by the Clean Air Act and the regulations thereunder, an EPA objection under this section shall include a statement of the Administrator of the EPA's reasons for objection and a description of the terms and conditions that the

permit shall include to respond to the objections. The Administrator of the EPA will provide the permit applicant a copy of the objection.
(h) The failure of the Department to do one or more of the following also constitutes grounds for an objection:
(1) Comply with subsections (a)—(e).
(2) Submit information necessary to review adequately the proposed permit.
(3) Process the permit under the procedures of this subchapter except for minor permit modifications.
(i) If the Department fails, within 90 days after the date of an objection under subsection (f), to revise and submit a proposed permit in response to the objection, the Administrator of the EPA will issue or deny the permit in accordance with the requirements of the Federal program promulgated under Title V of the Clean Air Act (42 U.S.C.A. §§ 7661—7661f).

Cross References

This section cited in 25 Pa. Code § 127.523 (relating to public petitioners to the administrator of the EPA).

§ 127.523. Public petitioners to the Administrator of the EPA.

(a) As provided by the Clean Air Act and the regulations thereunder, if the Administrator of the EPA does not object in writing under § 127.522(f)—(h) (relating to operating permit application review by the EPA and affected states), a person may petition the Administrator of the EPA within 60 days after the expiration of the Administrator of the EPA's 45-day review period to make the objection.
(b) The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise the objections within the period, or unless the grounds for the objection arose after the period.
(c) If the Administrator of the EPA objects to the permit as a result of a petition filed under this section, the Department will suspend the permit until the EPA's objection has been resolved, except that a petition does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection.
(d) If the Department has issued a permit prior to receipt of an EPA objection under this section, the Administrator of the EPA as authorized by the Clean Air Act and the regulations thereunder, may modify, terminate or revoke the permit and the Department may thereafter issue only a revised permit that satisfies the EPA's objection.
(e) In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

§ 127.524. Prohibition on default issuance.

An operating permit will not be issued to a Title V facility until the states within 50 miles of the Title V facility, any contiguous state whose air quality may be affected and the EPA have had an opportunity to review the proposed permit as required under this subchapter.

ACID RAIN

§ 127.531. Special conditions related to acid rain.

(a) This section describes the permit program for acid deposition control in accordance with Titles IV and V of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642 and 7661—7661f). The provisions of this section shall be interpreted in a manner consistent with the Clean Air Act and the regulations thereunder.
(b) The owner or operator or the designated representative of each affected source under section 405 of the Clean Air Act (42 U.S.C.A. § 7651d) shall submit a permit application and compliance plan for the affected source to the

Department within 120 days from notice by the Department to submit an application but no later than January 1, 1996, for sulfur dioxide, and no later than January 1, 1998, for NO_x, that meets the requirements of this chapter, the Clean Air Act and the regulations thereunder.
(c) In the case of affected sources for which an application and plan are timely received, the permit application and the compliance plan, including amendments thereto, shall be binding on the owner or operator or the designated representative of the owner or operator and shall be enforceable as a permit for purposes of this section until a permit is issued by the Department.
(d) A permit issued under this section shall require the source to achieve compliance as soon as possible but no later than the date required by the Clean Air Act or the regulations thereunder for the source.
(e) At any time after the submission of a permit application and compliance plan, the applicant may submit a revised application and compliance plan. In considering a permit application and compliance plan under this section, the Department will coordinate with the Pennsylvania Public Utility Commission consistent with the requirements established by the EPA.
(f) In addition to the other requirements of this chapter, permits issued under this section shall prohibit the following:
(1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator or designated representative holds for the unit.
(2) Exceeding applicable emission rates or standards, including ambient air quality standards.
(3) The use of an allowance prior to the year for which it is allocated.
(4) Contravention of other provisions of the permit.
(g) Each permit issued to a source under Title IV of the Clean Air Act shall contain a condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Clean Air Act or the regulations thereunder.
(1) A permit revision will not be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, if the increases do not require a permit revision under another applicable requirement.
(2) A limit will not be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with another applicable requirement.
(3) An allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Clean Air Act.

PERMIT MODIFICATIONS

§ 127.541. Significant operating permit modifications.

(a) Significant modification procedures shall be used for applications requesting permit modifications that do not qualify as minor permit modifications or as administrative amendments.
(b) Significant permit modifications shall meet the requirements of this article, including those for applications, public participation, review by affected and contiguous states and review by the EPA, as they apply to permit issuance and permit renewal. The Department will implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application.

§ 127.542. Revising an operating permit for cause.

(a) Each issued permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be revised under one or more of the following circumstances:

(1) Additional applicable requirements under the Clean Air Act or the act become applicable to a Title V facility with a remaining permit term of 3 or more years. The revision shall be completed within 18 months after promulgation of the applicable requirement. The revision is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or its terms and conditions has been extended.
(2) Additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the Administrator of the EPA, excess emissions offset plans shall be deemed to be incorporated into the permit.
(3) The Department or the EPA determines that the permit contains a mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
(4) The Administrator of the EPA or the Department determines that the permit will be revised or revoked to assure compliance with the applicable requirements.
(b) Proceedings to revise a permit shall follow the same procedures as apply to initial permit issuance and shall affect only parts of the permit for which cause to revise exists. The revision shall be made as expeditiously as practicable.

§ 127.543. Reopening an operating permit for cause by the EPA.

(a) As required by the Clean Air Act and the regulations thereunder, if the Administrator of the EPA finds that cause exists to terminate, modify or revoke and reissue a permit, the Administrator of the EPA will notify the Department and the permittee of the findings in writing.
(b) The Department will, within 90 days after receipt of the notification, forward to the EPA a proposed determination of termination, modification or revocation and reissuance, as appropriate. The Administrator of the EPA may extend this 90-day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary or that the Department requires the permittee to submit additional information.
(c) As required by the Clean Air Act and the regulations thereunder, the Administrator of the EPA will review the proposed determination from the Department within 90 days of receipt.
(d) The Department has 90 days from receipt of an EPA objection to resolve an objection that the EPA makes and to terminate, modify or revoke and reissue the permit in accordance with the Administrator of the EPA's objection.
(e) If the Department fails to submit a proposed determination under subsection (b) or fails to resolve an objection under subsection (d), the Administrator of the EPA will terminate, modify or revoke and reissue the permit after taking the following actions:
(1) Providing at least 30 days notice to the permittee in writing of the reasons for the proposed action. This notice may be given during the procedures in subsections (a)—(d).
(2) Providing the permittee an opportunity for comment on the Administrator of the EPA's proposed action and an opportunity for a hearing.

Subchapter H. GENERAL PLAN APPROVALS AND OPERATING PERMITS

GENERAL

Sec.
127.601. Scope.

ISSUANCE OF GENERAL PLAN APPROVAL AND GENERAL OPERATING PERMITS

127.611. General plan approvals and general operating permits.
127.612. Public notice and review period.

Source

The provisions of this Subchapter H adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899, unless otherwise noted.

Cross References

This subchapter cited in 25 Pa. Code § 127.3 (relating to operational flexibility); 25 Pa. Code § 127.514 (relating to general operating permits of Title V facilities); and 25 Pa. Code § 127.515 (relating to operating permits for portable sources at Title V facilities).

GENERAL

§ 127.601. Scope.

This subchapter establishes the procedure for issuance of general plan approvals and operating permits and plan approval and operating permits for sources operating at multiple temporary locations.

ISSUANCE OF GENERAL PLAN APPROVAL AND GENERAL OPERATING PERMITS

§ 127.611. General plan approvals and general operating permits.

(a) The Department may issue or modify a general plan approval or general operating permit for any category of stationary air contamination source if the Department determines that sources in the category are similar and can be adequately regulated using standardized specifications and conditions.
(b) Prior to issuance or modification, the Department will provide an opportunity for public notice and comment as provided in § 127.612 (relating to public notice and review period).
(c) Upon issuance or modification of a general plan approval or general operating permit, the Department will publish a notice in the *Pennsylvania Bulletin* of the issuance of the new or modified general plan approval or permit.

§ 127.612. Public notice and review period.

(a) The Department will provide notice and an opportunity to comment on a proposed general plan approval or general operating permit. The notice will be published in the *Pennsylvania Bulletin* and in six newspapers of general circulation, one in the area of each Department regional office. The notice will also be sent to the EPA and to Ohio, West Virginia, Virginia, Maryland, Delaware, New Jersey and New York.
(b) The notice will, at a minimum, include the following:
(1) A description of the category of sources to which the general plan approval or general operating permit applies.

(2) The performance standards or emission limits applicable to each source.
(3) The monitoring, recordkeeping and reporting requirements applicable to each source.
(4) The fee required to be paid to operate under the general plan approval or general operating permit.
(5) The duration of the general plan approval or general operating permit.
(6) The name, address and telephone number of the individual from whom a copy of the general plan approval or general operating permit along with supporting documentation may be obtained.
(7) The time period for receipt of public comments, which shall be a minimum of 45 days.
(c) The Department will retain each comment received on a proposed general plan approval or general operating permit.
(d) The Department will publish notice of the issuance of each general plan approval and general operating permit in the *Pennsylvania Bulletin* after the following conditions have been met:
(1) The requirements for notice contained in subsections (a) and (b) have been met.
(2) A determination has been made by the Department that the sources in a category are similar and can be adequately regulated using standardized specifications and conditions.

Cross References

This section cited in 25 Pa. Code § 127.611 (relating to general plan approvals and general operating permits); 25 Pa. Code § 127.702 (relating to plan approval fees); 25 Pa. Code § 127.703 (relating to operating permit fees under Subchapter F); and 25 Pa. Code § 127.704 (relating to Title V operating permit fees under Subchapter G).

USE OF GENERAL PLAN APPROVALS AND PERMITS

§ 127.621. Application for use of general plan approvals and general operating permits.

(a) A stationary source proposing to use a general plan approval or general operating permit shall notify the Department on a form provided by the Department and receive prior written approval from the Department prior to operating under the general plan approval or general operating permit.
(b) The application required by this section shall be either hand delivered or transmitted by certified mail return receipt requested.
(c) The Department will take action on the application within 30 days of receipt.

§ 127.622. Compliance with general plan approvals and general operating permit conditions.

(a) A stationary source operating under a general plan approval or general operating permit shall comply with the terms and conditions of the general plan approval or general operating permit.
(b) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield shall apply to general operating permits approved for use at a Title V facility.

ISSUANCE OF PLAN APPROVALS AND OPERATING PERMITS FOR PORTABLE SOURCES

§ 127.631. General plan approvals and operating permits for portable sources.

(a) The Department may issue a plan approval or operating permit to a source or modify a plan approval or operating permit issued to a source operating at multiple temporary locations if the Department determines that the source can be adequately regulated using standardized specifications and conditions.
(b) Prior to issuance or modification, the Department will provide an opportunity for public notice and comment as provided in § 127.632 (relating to public notice and review period).
(c) Upon issuance of a plan approval or operating permit to a source or modification of a plan approval or operating permit issued to a source operating at multiple temporary locations, the Department will publish a notice in the *Pennsylvania Bulletin* of the issuance of the new or modified plan approval or permit to a source operating at multiple temporary locations.

§ 127.632. Public notice and review period.

(a) The Department will provide notice and an opportunity to comment on a proposed plan approval or operating permit to a source operating at multiple temporary locations. The notice will be published in the *Pennsylvania Bulletin* and in six newspapers of general circulation in the area of each Department regional office. The notice will also be sent to the EPA and to Ohio, West Virginia, Virginia, Maryland, Delaware, New Jersey and New York.
(b) The notice will, at a minimum, include the following:
(1) A description of the source to which the plan approval or operating permit to a source operating at multiple temporary locations applies.
(2) The performance standards or emission limits applicable to the source.
(3) The monitoring, recordkeeping and reporting requirements applicable to the source.
(4) The fee required to be paid to operate under the plan approval or operating permit to a source operating at multiple temporary locations.
(5) The duration of the plan approval or operating permit to a source operating at multiple temporary locations.
(6) The name, address and telephone number of the individual from whom a copy of the plan approval or operating permit to a source operating at multiple temporary locations along with supporting documentation may be obtained.
(7) The time period for receipt of public comments, which shall be a minimum of 45 days.
(c) The Department will retain each comment received on a proposed plan approval or operating permit to a source operating at multiple temporary locations.
(d) The Department will publish notice of the issuance of each plan approval and operating permit to a source operating at multiple temporary locations in the *Pennsylvania Bulletin* following the requirements for notice contained in subsections (a) and (b).

Cross References

This section cited in 25 Pa. Code § 127.631 (relating to general plan approvals and operating permits for portable sources); 25 Pa. Code § 127.702 (relating to plan approval fees); 25 Pa. Code § 127.703 (relating to operating permit fees under Subchapter F); and 25 Pa. Code § 127.704 (relating to Title V operating permit fees under Subchapter G).

USE OF PLAN APPROVALS AND OPERATING PERMITS FOR PORTABLE SOURCES

§ 127.641. Application for use of plan approvals and operating permits for portable sources.

(a) A source proposing to use a plan approval or an operating permit for a portable source shall notify the Department on a form provided by the Department and receive prior written approval from the Department prior to operating

under the plan approval and operating permit for portable sources.
(b) For applications for sources operating at multiple temporary locations the following apply:
(1) A separate application form and fee may be required to be submitted for each location.
(2) The applicant shall notify the Department and the municipality where the operation shall take place in advance of each change in location.
(c) The application required by this section shall be either hand delivered or transmitted by certified mail return receipt requested.
(d) The Department will take action on the application within 30 days of receipt.

§ 127.642. Compliance with general plan approvals and operating permits for portable sources.

(a) A portable source operating under a general plan approval or general operating permit for the portable source shall comply with the terms and conditions of the general plan approval or operating permit for the portable source.
(b) Unless precluded by the Clean Air Act or the regulations thereunder, the permit shield shall apply to general operating permits for portable sources approved for use at a Title V facility.

Subchapter I. PLAN APPROVAL AND OPERATING PERMIT FEES

Sec.

Source

The provisions of this Subchapter I adopted November 25, 1994, effective November 26, 1994, 24 Pa.B. 5899, unless otherwise noted.

Cross References

This subchapter cited in 25 Pa. Code § 127.403 (relating to permitting of sources operating lawfully without a permit; 25 Pa. Code § 127.446 (relating to operating permit duration); 25 Pa. Code § 127.503 (relating to application information); 25 Pa. Code § 127.505 (relating to initial application submittal for Title V facilities); and 25 Pa. Code § 127.512 (relating to operating permit terms and conditions).

§ 127.701. General provisions.

(a) This subchapter establishes fees to cover the direct and indirect costs of administering the air pollution control planning process, operating permit program required by Title V of the Clean Air Act (42 U.S.C.A. §§ 7661—7661f), other requirements of the Clean Air Act, the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and the Office of Small Business Ombudsman and the costs to support the air pollution control program authorized by the act.
(b) The fees collected shall be deposited into the Clean Air Fund established under section 9.2 of the act (35 P. S. § 4009.2).
(c) Fees collected to implement the requirements of Title V of the Clean Air Act and the Small Business Stationary Source Technical and Environmental Compliance Assistance, Compliance Advisory Committee and the Office of Small Business Ombudsman shall be deposited into a restricted revenue account within the Clean Air Fund.

§ 127.702. Plan approval fees.

(a) Each applicant for a plan approval shall, as part of the plan approval application, submit the application fee required by this section to the Department.
(b) Except as provided in subsections (c)—(g) a source requiring approval under Subchapter B (relating to plan approval requirements) shall pay a fee equal to:
(1) Seven hundred fifty dollars for applications filed during the 1995—1999 calendar years.
(2) Eight hundred fifty dollars for applications filed during the 2000—2004 calendar years.
(3) One thousand dollars for applications filed for the calendar years beginning in 2005.
(c) A source requiring approval under Subchapter E (relating to new source review) shall pay a fee equal to:
(1) Three thousand five hundred dollars for applications filed during the 1995—1999 calendar years.
(2) Four thousand three hundred dollars for applications filed during the 2000—2004 calendar years.
(3) Five thousand three hundred dollars for applications filed beginning in 2005.
(d) A source subject to standards adopted under Chapter 122 (relating to national standards of performance for new stationary sources) or to standards adopted under Chapter 124 (relating to national emission standards for hazardous air pollutants) shall pay a fee equal to:
(1) One thousand two hundred dollars for applications filed during the 1995—1999 calendar years.
(2) One thousand four hundred dollars for applications filed during the 2000—2004 calendar years.
(3) One thousand seven hundred dollars for applications filed beginning in 2005.
(e) A source subject to § 127.35(c), (d) or (h) (relating to maximum achievable control technology standards for hazardous air pollutants) shall pay a fee equal to:
(1) Five thousand five hundred dollars for applications filed during the 1995—1999 calendar years.
(2) Six thousand seven hundred dollars for applications filed during the 2000—2004 calendar years.
(3) Eight thousand dollars for applications filed beginning in 2005.
(f) A source requiring approval under Subchapter D (relating to prevention of significant deterioration of air quality) shall pay a fee equal to:
(1) Fifteen thousand dollars for applications filed during the 1995—1999 calendar years.
(2) Eighteen thousand five hundred dollars for applications filed during the 2000—2004 calendar years.
(3) Twenty-two thousand seven hundred dollars for applications filed beginning in 2005.
(g) Except as provided in subsection (h), the source proposing a minor modification of a plan approval, extension of a plan approval, and transfer of a plan approval due to a change of ownership, shall pay a fee equal to:
(1) Two hundred dollars for applications filed during the 1995—1999 calendar years.
(2) Two hundred thirty dollars for applications filed during the 2000—2004 calendar years.
(3) Three hundred dollars for applications filed beginning in 2005.
(h) The modification of a plan approval that includes the reassessment of a control technology determination or of the ambient impacts of the source will not be considered a minor modification of the plan approval.
(i) The Department may establish application fees for general plan approvals

and plan approvals for sources operating at multiple temporary locations which will not be greater than the fees established by subsection (b). These fees shall be established at the time the plan approval is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice and review period).

§ 127.703. Operating permit fees under Subchapter F.

(a) Each applicant for an operating permit, which is not a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department. These fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof.
(b) The fee for processing an application for an operating permit is:
(1) Two hundred fifty dollars for applications filed during the 1995—1999 calendar years.
(2) Three hundred dollars for applications filed during the 2000—2004 calendar years.
(3) Three hundred seventy-five dollars for applications filed for the calendar years beginning in 2005.
(c) The annual operating permit administration fee is:
(1) Two hundred fifty dollars for applications filed during the 1995—1999 calendar years.
(2) Three hundred dollars for applications filed during the 2000—2004 calendar years.
(3) Three hundred seventy-five dollars for applications filed during the years beginning in 2005.
(d) The Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations which will not be greater than the fees established by this section. These fees shall be established at the time the operating permit is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice and review period).

§ 127.704. Title V operating permit fees under Subchapter G.

(a) Each applicant for an operating permit, which is a Title V facility, shall, as part of the operating permit application and as required on an annual basis, submit the fees required by this section to the Department. These fees apply to the extension, modification, revision, renewal and reissuance of each operating permit or part thereof.
(b) The fee for processing an application for an operating permit is:
(1) Five hundred dollars for applications filed during the 1995—1999 calendar years.
(2) Six hundred fifteen dollars for applications during the 2000—2004 calendar years.
(3) Seven hundred fifty dollars for applications filed during the calendar years beginning in 2005.
(c) The annual operating permit administration fee to be paid by a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions) is:
(1) Six hundred fifteen dollars for applications filed during the 2000—2004 calendar years.
(2) Seven hundred fifty dollars for applications filed during the years beginning in 2005.
(d) The Department may establish application fees for general operating permits and operating permits for sources operating at multiple temporary locations

which will not be greater than the fees established by this section. These fees shall be established at the time the operating permit is issued and will be published in the *Pennsylvania Bulletin* as provided in §§ 127.612 and 127.632 (relating to public notice and review period).

§ 127.705. Emission fees.

(a) The owner or operator of a Title V facility including Title V facilities located in Allegheny County and Philadelphia County, except a facility identified in subparagraph (iv) of the definition of a Title V facility in § 121.1 (relating to definitions), shall pay an annual Title V emission fee of $37 per ton for each ton of a regulated pollutant actually emitted from the facility. The owner or operator will not be required to pay an emission fee for emissions of more than 4,000 tons of each regulated pollutant from the facility. Sources located in Philadelphia County and Allegheny County shall pay the emission fee to the county program if the county Title V program has received approval under section 12 of the act (35 P. S. § 4012) and § 127.706 (relating to Philadelphia County and Allegheny County financial assistance).

(b) From November 26, 1994, through 1999, the owner or operator of a phase I affected unit or an active substitution unit as defined by Title IV of the Clean Air Act (42 U.S.C.A. §§ 7641 and 7642) shall pay an annual emission fee of $14 per ton for each ton of a regulated pollutant actually emitted from the unit. The owner or operator will not be required to pay an emission fee for emissions of more than 4,000 tons of each regulated pollutant from the facility. Sources located in Philadelphia County and Allegheny County shall pay the emission fee to the county program if the county Title V program has received approval under section 12 of the act (35 P. S. § 4012), and § 127.706. Beginning in the year 2000, sources covered by this subsection shall pay the fees established in subsection (a). The other provisions of this subsection notwithstanding, the owner or operator of a phase I affected unit or an active substitution unit as defined by Title IV of the Clean Air Act will not be required to pay more than $148,000 plus the increase established by subsection (e) for each regulated pollutant emitted from a Title V facility. Substitution units identified as conditional substitution units by the owner or operator shall pay the emission fee established by subsection (a).

(c) The emissions fees required by this section shall be due on or before September 1 of each year for emissions from the previous calendar year. The fees required by this section shall be paid for emissions occurring in calendar year 1994 and for each calendar year thereafter.

(d) As used in this section, the term ‘‘regulated pollutant’’ means a VOC, each pollutant regulated under sections 111 and 112 of the Clean Air Act (42 U.S.C.A. §§ 7411 and 7412) and each pollutant for which a National ambient air quality standard has been promulgated, except that carbon monoxide shall be excluded from this reference.

(e) The emission fee imposed under subsection (a) shall be increased in each year after November 26, 1994, by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the previous calendar year. For purposes of this subsection:

(1) The Consumer Price Index for a calendar year is the average of the Consumer Price Index for All-Urban Consumers, published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

(2) The revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

§ 127.706. Philadelphia County and Allegheny County financial assistance.

(a) Philadelphia and Allegheny Counties shall submit their local air pollution control program including Title V operating permit program implementation plan to the Department for review and approval. The plan shall include the elements necessary for approval of a Title V program under the Clean Air Act and shall be consistent with the Department's regulations for implementation of the air pollution control program including Title V operating permit program.
(b) On an annual basis according to a schedule established by the Department, Philadelphia County and Allegheny County shall submit a description of the implementation of the local air pollution control program including the Title V operating permit program in the county along with a detailed accounting of the costs of implementation.
(c) On an annual basis according to a schedule established by the Department, the Department may provide payment of a portion of the Title V emission fees collected by the Department as necessary, appropriate and available to Philadelphia and Allegheny Counties to assist in implementation of the Title V operating permit program in the counties. The Department may withhold this financial assistance if the county has not implemented the Title V program in the manner required by this section.
(d) The fees imposed by Philadelphia and Allegheny Counties shall be deposited in a restricted account established by the governing body authorizing the local program for use by that program to implement the provisions of the act for which they are responsible. The governing body shall annually submit to the Department an audit of the account in order to insure that the funds were properly spent.

Cross References

This section cited in 25 Pa. Code § 127.705 (relating to emission fees).

§ 127.707. Failure to pay fee.

An air contamination source that fails to pay the fees within the time frame established by the act or by this chapter shall pay a penalty of 50% of the fee amount, plus interest on the fee amount computed in accordance with 26 U.S.C.A. § 6621(a)(2) (relating to determination of rate of interest) from the date the fee was required to be paid. In addition, the source may have its operating permit terminated or suspended. The fee, penalty and interest may be collected following the process for assessment and collection of a civil penalty contained in section 9.1 of the act (35 P. S. § 4009.1).

Subchapter J. GENERAL CONFORMITY

Sec.

Source

The provisions of this Subchapter J adopted November 8, 1996, effective November 9, 1996, 26 Pa.B. 5374, unless otherwise noted.

§ 127.801. Purpose.

This subchapter adopts the general conformity rule promulgated by the EPA under section 176(c) of the Clean Air Act (42 U.S.C.A. § 7506(c)) and the regulations codified at 40 CFR Part 93, Subpart B (relating to determining uniformity of general Federal actions to state or Federal implementation plans), with respect to the conformity of general Federal actions to the Commonwealth's State Implementation Plan.

§ 127.802. Adoption of standards.

The general conformity rule promulgated in 40 CFR Part 93, Subpart B (relating to determining conformity of general Federal actions to state or Federal implementation plans), by the Administrator of the EPA under section 176(c) of

the Clean Air Act (42 U.S.C.A. § 7506(c)) is adopted in its entirety by the Department and incorporated herein by reference.