

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

IRRC Number: 2598

(1) Agency

Environmental Protection

(2) I.D. Number (Governor's Office Use)

7-408

(3) Short Title

Permit Streamlining

(4) Pa. Code Cite

25 Pa. Code Chapter 127

(5) Agency Contacts & Telephone Numbers

Primary Contact: Michele Tate, 783-8727

Secondary Contact: Kelly J. Heffner, 783-8727

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

This final-form rulemaking amends 25 Pa. Code Chapter 127, Subchapter B, relating to plan approval requirements. The final-form rulemaking adds provisions relating to completeness determinations for applications for plan approval, revises certain public notice and public comment provisions related to plan approval applications and extends from 120 days to 180 days the duration for temporary operation of the source to permit compliance testing and "shakedown" of new sources and air cleaning devices subject to the plan approval requirements.

The proposed rulemaking, when adopted as a final-form regulation, will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

(9) State the statutory authority for the regulation and any relevant State or Federal court decisions.

This action is being taken under the authority of Section 5 of the Pennsylvania Air Pollution Control Act (APCA) (35 P.S. § 4005). Section 5(a)(1), 35 P.S. § 4005(a)(1), of the APCA grants the Environmental Quality Board (Board) the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in the Commonwealth. Section 6.1(b.3) of the APCA, 35 P.S. § 4006.1(b.3), also requires the Board by regulation to establish adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete and for expeditious review of applications.

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(10) Is the regulation mandated by any Federal or State law or court order, or Federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

The final-form rulemaking is not specifically mandated by Federal law, court order or regulation. However, Section 6.1(b.3) of the APCA, 35 P. S. § 4006.1(b.3), explicitly states that 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 final-form rulemaking is part of the Department of Environmental Protection's (DEP or Department) efforts to streamline the pre-construction permitting process.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The final-form rulemaking include provisions extending the term of temporary operations authorized under § 127.12b from 120 days to 180 days; add criteria related to completeness determinations for plan approval applications in a new § 127.12d; revise public notice requirements in §§ 127.44 and 127.45 to minimize delays in issuing minor source plan approvals, while assuring adequate opportunity for public input; and revise § 127.48 relating to conferences and hearings.

The final-form rulemaking amendment extending the term of temporary operations will reduce administrative costs for the Department and for source operators who might otherwise have to request an extension of temporary operations authorized under the Plan Approval to complete shakedown or testing of a new source.

These changes to the public notice provisions will result in expedited permitting for new and modified stationary air contamination sources, especially those with minimal potential for adverse environmental impact, while assuring the public has an opportunity to thoroughly review and comment on the proposals. This expedited permitting will enable manufacturers to respond more quickly to changing production demands and improve productivity and profitability. The adoption of this rulemaking will also afford permitting staff additional resources to process major source approvals, which generally will pose the most significant impacts on public health and the environment.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Because these final-form rulemaking changes are administrative changes pertaining mainly to administratively completeness determinations and notice requirements, there are no public health, safety, environmental or general welfare risks associated with non-regulation.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

The final-form rulemaking will benefit applicants for plan approval by providing for expedited review and issuance of approvals for minor sources and air clean devices where there is no public interest. The amendments will continue to assure that citizens receive adequate notice of all potential plan approval/permitting actions to enable timely comment on issues of concern to the public. The owners and operators of potentially affected sources and the Department will benefit from the extended term of temporary operations during the shakedown period. Both the public and private sector will experience reduced administrative costs associated with requests for extensions of the temporary operations authorized under the Plan Approval.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)

While environmental groups contend that public involvement in permitting actions will be curtailed, the Department does not anticipate that there will be any adverse effects related to these amendments. In the event that there is substantial public interest in an application for a minor source, the Department will adhere to the notice procedures specified for certain major sources including sources subject to the new source review and prevention of significant deterioration requirements.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

The final-form rulemaking will affect operators and owners of air contamination sources subject to the permitting requirements of 25 *Pa. Code* Chapter 127. There are approximately 700 major facility operator/owners and 1200 minor facility operator/owners.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

The Department has received numerous requests from industry to find ways to expedite the issuance of permits for minor sources. There have also been a number of discussions with members of the Pennsylvania Chamber of Commerce and with the Department's Air Quality Technical Advisory Committee (AQTAC) regarding more timely actions on permits. A comment and response document has been prepared to address comments received from the general public and the Independent Regulatory Review Committee. In addition, the PA Senate Environmental Resources and Energy Committee is supportive of the regulation.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures, which may be required.

The primary cost savings to industry is the addition of potential production time on a new or modified permit that qualifies for the reduced public notice time. Savings can be very significant if the permitting time reductions translate into additional market share due to early roll-out of a product. There will also be reduced fees paid due to the reduction in the number of plan approval extensions required, due to the increased length of time for the plan approval extensions. This regulatory change could result in cost savings estimates ranging from several hundreds of dollars to tens of thousands of dollars.

An estimate of the specific savings is not practical at this time. The savings will vary from activity to activity depending on the value of the facility production and other variables.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures, which may be required.

The final-form rulemaking is expected to impose no additional direct costs on local governments.

(19) Provide a specific estimate of the costs and/or savings to State government associated with the implementation of the regulation, including any legal, accounting or consulting procedures, which may be required.

To the extent that State government agencies are subject to the provisions of Chapter 127, cost savings would be commensurate with those the private sector will experience.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and State government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Savings	0.00	0.00	0.00	0.00	0.00	0.00
COSTS:	0.00	0.00	0.00	0.00	0.00	0.00
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Costs	0.00	0.00	0.00	0.00	0.00	0.00
REVENUE LOSSES:						
Regulated Community	0.00	0.00	0.00	0.00	0.00	0.00
Local Government	0.00	0.00	0.00	0.00	0.00	0.00
State Government	0.00	0.00	0.00	0.00	0.00	0.00
Total Revenue Losses	0.00	0.00	0.00	0.00	0.00	0.00

(20a) Explain how the cost estimates listed above were derived.

Because of the significant variability in production cost savings and product value, no estimation of the specific cost savings is practical.

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(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY-3 2004/2005	FY-2 2005/2006	FY-1 2006/2007	Current FY 2007/2008 (estimated)
Clean Air Fund - Major Emissions Facilities (#20077)	\$ 24,533,000	\$ 24,290,000	\$ 26,218,000	\$ 24,434,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

There is no additional cost associated with this final-form rulemaking. Source operators and the Department should experience cost savings, but quantification of these costs is not practical. In addition, the cost of notices published by the applicant in newspapers of general circulation will decrease substantially because notice of each condition in the Plan Approval will no longer be required if the Board adopts the final-form regulation.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

These regulatory changes supplement a comprehensive strategy to expedite the issuance of plan approvals for new or modified air contamination sources and air cleaning devices. Non-regulatory options implemented include the issuance of additional general permits for sources that can be regulated under standard conditions and modifications to the Money-Back Guarantee Policy to provide an alternative timelines for the issuance of plan approvals for major sources.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Because these regulatory changes are administrative in nature, there are no other regulatory schemes available.

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(24) Are there any provisions that are more stringent than Federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no provisions in the final-form rulemaking that are more stringent than Federal requirements.

(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

These final-form rulemaking provisions should not put the Commonwealth at a "competitive disadvantage with other states." In fact, the provisions are designed to expedite permitting activities and should result in cost savings to both the regulated community and to the Department.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other State agencies? If yes, explain and provide specific citations.

Yes. The final-form regulation amends the existing plan approval requirements in *25 Pa. Code* Chapter 127. The final rulemaking will increase the limited temporary operation periods for shakedowns from 120 days to 180 days. In addition, publication of the entire plan approval will no longer be necessary. The notice will include a brief summary of conditions and relevant information including the type of source, pollutants and quantity of contaminants being emitted and the type of control technology required including best available technology.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

Three public hearings and a sixty-day public comment period were scheduled for the proposed rulemaking.

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

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

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

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports, which will be required as a result of implementation, if available.

No. The final-form rulemaking will not change existing reporting, record keeping or other paperwork requirements. However, the cost of notices published by the applicant in newspapers of general circulation will decrease substantially because notice of each condition in the Plan Approval would no longer be required.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Because these regulatory changes are administrative in nature, there are no special provisions. The existing provisions in Chapter 127, Subchapter B, authorize the Department to provide additional information and notice if there is substantial public interest in a proposed new or modified air contamination source.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective on the date of publication as final-form rulemaking in the *Pennsylvania Bulletin* and compliance will be required as of the effective date of publication as final-form rulemaking.

No special permits or licenses are required.

(31) Provide the schedule for continual review of the regulation.

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

2598

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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Copy below is hereby approved as to form and legality.
Attorney General

By: (Deputy Attorney General)

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections attached.

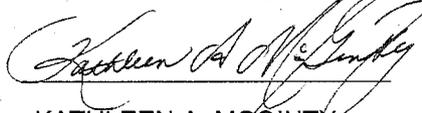
Copy below is hereby certified to be true and
correct copy of a document issued, prescribed or
promulgated by:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-408

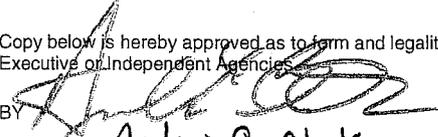
DATE OF ADOPTION February 19, 2008

BY 

TITLE KATHLEEN A. MCGINTY
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality
Executive of Independent Agencies

BY 
Andrew C. Clark

MAR 5 2008
DATE OF APPROVAL

(Deputy General Counsel)
(~~Chief Counsel - Independent Agency~~)
(~~Strike inapplicable title~~)

Check if applicable. No Attorney General Approval
or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Air Quality Permit Streamlining

25 Pa. Code, Chapter 127, Subchapter B



FINAL RULEMAKING
Environmental Quality Board
Air Quality Permit Streamlining
25 Pa. Code Chapter 127

Order

The Environmental Quality Board (Board) amends Chapter 127 (relating to construction, modification, reactivation and operation of sources) to read as set forth in Annex A.

This notice is given under the Board's order at its meeting of February 19, 2008.

A. Effective Date

These amendments will be effective upon final-form publication in the *Pennsylvania Bulletin*.

B. Contact Persons

For further information, contact Virendra Trivedi, Chief, New Source Review Section, Division of Permits, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 772-3979; or Robert "Bo" Reiley, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. Statutory Authority

This final rulemaking is promulgated under the authority in section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution, and section 6.1(b.3) of the APCA (35 P. S. § 4006.1(b.3)), which requires the Board by regulation to establish adequate, streamlined and reasonable procedures for expeditiously determining when applications are complete and for expeditious review of applications.

D. Background and Summary

As part of an effort to streamline the air quality permitting process, the Department of Environmental Protection (Department) investigated ways to reduce the plan approval application time, reduce unnecessary costs to industry and continue to ensure that citizens receive adequate notice of potential plan approval/permitting actions to enable timely comment on issues of public concern. The Department wanted to employ faster response times for minor permitting actions for needed product improvements, which allows industry to be responsive to free market changes, while at the same time ensuring that those changes do not degrade existing air quality. In addition, the Department wanted to ensure that the permit streamlining effort benefited the Department, as well, by allowing it to focus scarce administrative resources on evaluating major source permit applications that have the potential to have more significant environmental impacts than minor sources. As part of this effort, the Board finalizes amendments to extend the authorization of a source to temporarily operate to facilitate shake-

down and to revise the public notice provisions which address receipt of applications for plan approval and intent to issue certain plan approvals. In addition, the Board is finalizing provisions regarding completeness criteria for applications for plan approval. The Board believes that these final-form amendments will continue to protect air quality, allow business to respond to market changes and allow for adequate public participation.

The final-form regulations contain several amendments to the Department's air quality regulations. The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) during the development of this final rulemaking. At its July 26, 2007, meeting, the AQTAC concurred with the Department's recommendation that the Board consider the final amendments on October 16, 2007. The Department also consulted with the Citizens Advisory Council during the development of the final-form regulation.

E. Summary of the Final-Form Rulemaking

The final-form rulemaking amends § 127.12b (relating to plan approval terms and conditions) to extend from 120 days to 180 days the duration for temporary "shake-down" operation of new air contamination sources and air cleaning devices subject to the plan approval requirements. This section was not modified between proposed and final-form rulemaking.

Section 127.12d (relating to completeness determination) sets forth the criteria the Department will use to determine if an application for plan approval is complete. This section was modified between proposed and final-form rulemaking to provide that the Department would make an administrative completeness determination within 30 days of receipt of the application. This section was also modified to require an applicant to provide supplemental information to the Department within 10 working days of receipt of a written request for supplemental information. The supplemental information must be provided within 10 working days of receipt of the Department's written request for additional information for the administrative completeness determination. The Department will return an application if an applicant fails to provide the requested information. Other minor clarifying changes were made as well.

Section 127.44 (relating to public notice) has been amended to, among other things, require the Department to publish in the *Pennsylvania Bulletin* a notice of receipt and intent to issue certain minor plan approvals. This section was modified between proposed and final-form rulemaking to provide that the Department will prepare a notice of receipt and intent to issue in accordance with the requirements of § 127.45 (relating to contents of notice). The information elements to be included in the public notice were deleted from this section and moved to § 127.45. In addition other minor clarifying changes were made as well.

Section 127.45 (relating to contents of notice) was amended between proposed and final-form rulemaking to include the information elements in the public notice of receipt and intent to issue that were originally under § 127.44. In addition, other clarifying changes were made as well.

Section 127.48 (relating to conferences and hearings) is amended to require, in certain instances, that the Department publish notice of hearings or conferences in a newspaper of general circulation and the *Pennsylvania Bulletin*. This section was not modified between proposed and final-form rulemaking.

The final rulemaking will be submitted to the United States Environmental Protection Agency as a revision to Pennsylvania's State Implementation Plan codified in 40 CFR Section 52.2020

F. Summary of Comments and Responses

Twelve commentators submitted comments during the public comment period. In addition, the Independent Regulatory Review Commission and the Senate Environmental Resources and Energy Committee submitted comments during the extended comment periods authorized by the Regulatory Review Act. Below is a summary of the major comments that were received.

Several commentators support the Board's efforts to streamline the air quality permitting process. The Board agrees that the proposed changes will improve the overall permitting process by reducing both the plan approval application processing time and unnecessary costs to the applicants and the Department, while still providing timely notice to the public for comment on all complete plan approval applications submitted to the Department.

Several commentators support the proposed change to § 127.12b that extends the temporary shakedown period for a facility for additional limited periods from 120 days to 180 days. The Board believes that extending the temporary shakedown period from 120 days to 180 days will allow companies adequate time to test newly permitted sources in accordance with the more complicated stack test requirements, rather than reapply for another extension for "shakedown" purposes.

Several commentators recommend that the Board adopt a deadline for issuance of the "completeness determination" under § 127.12d. The Board agrees and has revised § 127.12d(a) to provide that the Department will provide written notice of the completeness determination to the applicant "within 30 days of receipt of an application."

The commentator requests that the term "other documents" in § 127.12d(b) be expanded to be more specific. The Board agrees. Subsection (b) of § 127.12d of the final-form regulation has been revised to clarify that the minimum requirements for documentation to be submitted with a plan approval application include the "other documents requested in the plan approval application."

Several commentators urge the Board to reject the proposed revisions because several aspects of the proposed rulemaking will severely curtail opportunities for effective citizen participation in air permitting. The primary objective of the APCA is the protection of public health, safety, and well-being of the citizens of Pennsylvania. 35 P.S. § 4002(a)(i). The commentators submit that this objective is furthered by continuing to provide Commonwealth citizens with information about all plan approvals, including all permit conditions, by publication in the *Pennsylvania Bulletin*. The commentators urge the Board to reject the Department's proposal in derogation of this fundamental objective of the APCA.

The Board disagrees with the commentators that public participation in the plan approval application process will be severely curtailed by the proposed changes to the plan approval requirements. Rather, the proposed changes to § 127.44 (relating to public notice) clarify the Department's current practice in publishing notices of receipt for plan approval applications for

sources for which there is little to no public interest or concern. As a result, all plan approval actions will have at least a 30-day public comment period. The amendatory provisions in the final-form regulation are consistent with Section 6.1(b.3) of the APCA, which requires the Board to establish adequate, streamlined and reasonable procedures by regulation for expeditiously determining when applications are complete and for expeditious review of applications. 35 P.S. § 4006.1(b.3). In addition, the changes to § 127.45 (relating to contents of notice) merely clarify the Department's general practice in publishing a brief description of the proposed action. Section 2 of the APCA provides, in part, that it is "... the policy of the Commonwealth of Pennsylvania to protect the air resources of this Commonwealth to the degree necessary for the (i) protection of public health, safety, and well-being of the citizens of Pennsylvania..." 35 P.S. § 4002(a)(i). The permit streamlining amendments set forth in the final-form regulation will not adversely impact the protection of public health and the environment nor curtail public involvement in the permitting process.

One commentator requests that the Board amend the regulations to allow for a reasonable time period for approval of trial burns of "opportunity fuels" of previously known characteristics. The Board disagrees. The Department is taking a number of steps to provide operational flexibilities for approval of trial burns of "opportunity fuels." Section 127.14 (relating to exemptions) provides an exemption from the permit requirements for approval of trial burns of "opportunity fuels." Exemptions can be determined from the existing list of sources or through the use of a request for determination.

A commentator noted that as amended, § 127.45(b)(5) would no longer require a "description of the reasons" for including conditions and is concerned with this change. The Board notes that while the requirements of existing paragraph (5) of § 127.45 could be interpreted as requiring that the entire plan approval conditions need to be published in the notice of action to be taken, to do so presents significant costs to the Department as well as the applicant. Consequently, new paragraph (b)(5) of § 127.45 has been clarified to require a brief description of the conditions being placed in the plan approval with reference to applicable State and Federal requirements. The entire plan approval will be available for review at the location specified in the notice and will also be provided upon request.

G. Benefits, Costs and Compliance

Benefits

Overall, the citizens of this Commonwealth will benefit from this final-form regulation because the Department's air quality program staff will be afforded additional time for evaluating major source permit applications that will likely have significant environmental impacts. In addition, the final-form amendments will allow industry to be responsive to free market changes while at the same time ensuring that those changes do not degrade existing air quality.

Compliance Costs

This final-form rulemaking will reduce compliance costs for industry by reducing the number of authorizations requested to extend the temporary operation period to facilitate the shakedown

of sources and air cleaning devices. In addition, the cost of complying with the notice provisions will be reduced substantially because publication of the plan approval will no longer be required.

Compliance Assistance

The Department plans to educate and assist the public and regulated community with understanding the amendments to the plan approval requirements. This outreach effort will be accomplished through the Department's ongoing compliance assistance program.

Paperwork Requirements

The final-form amendments will not increase the paperwork that is already generated during the normal course of business.

H. Pollution Prevention

The Pollution Prevention Act of 1990 (42 U.S.C.A. §§ 13101--13109) established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally friendly materials, more efficient use of raw materials and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This final-form rulemaking will allow industry to be responsive to free market changes, while at the same time ensuring that those changes do not degrade existing air quality.

I. Sunset Review

The final-form regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the intended goals.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 9, 2007, the Department submitted a copy of the notice of proposed rulemaking, published at 37 *Pa.B.* 1317) to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on _____, 2008, these final-form regulations were deemed approved by the House and Senate Committees. Under section

5.1(e) of the Regulatory Review Act, IRRC met on _____, 2008, and approved the final-form regulations.

K. Findings of the Board

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§7.1 and 7.2.
- (2) At least a 60-day public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at 37 *Pa.B.*1317 (March 24, 2007).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

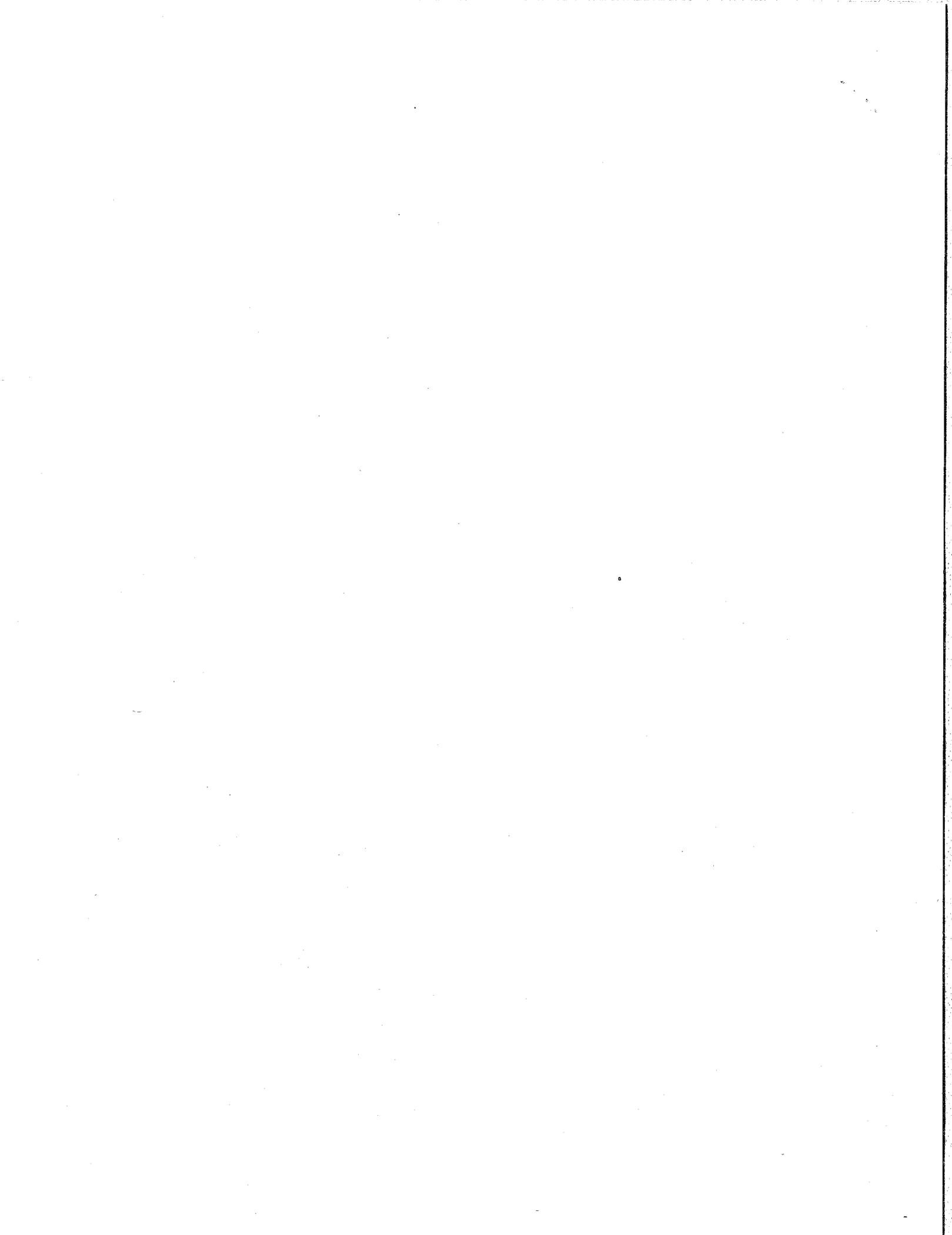
L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapter 127 are amended by amending §§ 127.12b, 127.12d, 127.44, 127.45, and 127.48 to read as set forth in Annex A.
- (b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (c) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (e) These final-form amendments will be submitted to the U.S. EPA as an amendment to the Pennsylvania State Implementation Plan.
- (e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

BY:

KATHLEEN A. MCGINTY
Chairperson
Environmental Quality Board



Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

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

Subchapter B. PLAN APPROVAL REQUIREMENTS

§ 127.12b. Plan approval terms and conditions.

* * * * *

(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] 180 days.

* * * * *

§ 127.12d. Completeness determination.

(a) The Department will determine if an application for plan approval is administratively complete and will provide written notice of the completeness determination to the applicant WITHIN 30 DAYS OF RECEIPT OF AN APPLICATION.

(b) For purposes of this section, an application is administratively complete if it contains the necessary information, maps, fees and other documents REQUESTED IN THE PLAN APPROVAL APPLICATION, regardless of whether the information, maps and documents would be sufficient to justify issuance of the plan approval.

(c) If the Department determines that the application is not administratively complete, the Department will [~~return the application and fees to~~] SEND the applicant [~~along with~~] a written statement of the specific information, maps, fees and documents that are required to make the application administratively complete. IF THE APPLICANT DOES NOT PROVIDE THE REQUESTED INFORMATION TO THE

DEPARTMENT WITHIN 10 WORKING DAYS OF RECEIPT OF THE REQUEST, THE DEPARTMENT WILL RETURN THE APPLICATION AND FEES TO THE APPLICANT.

§ 127.44. Public notice.

(a) The Department will publish in the *Pennsylvania Bulletin* a notice of receipt and intent to issue for each plan approval application, except plan approval applications subject to the notice requirements of subsection (b). **THE DEPARTMENT WILL PREPARE A NOTICE OF RECEIPT AND INTENT TO ISSUE IN ACCORDANCE WITH THE REQUIREMENTS OF § 127.45(a) (RELATING TO CONTENTS OF NOTICE).** ~~[The notice of receipt and intent to issue must include the following:~~

~~—(1) The name and address of the applicant.~~

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

~~—(3) A brief description of the proposed action, including a general description of the equipment to be installed or modified along with the anticipated pollutant emission increases or decreases.~~

~~—(4) The name and telephone number of a person to contact for additional information.~~

~~—(5) The location of the regional office where the application will be reviewed.]~~

(b) The Department will prepare a notice, **IN ACCORDANCE WITH THE REQUIREMENTS OF § 127.45(b),** of action to be taken on applications for plan approvals for the following:

* * * * *

(5) [Other sources required to obtain plan approval.

(6) Other sources [~~including synthetic minor permit applications,~~] for which the Department has determined there is substantial public interest or for which the Department invites public comment.

[(b)] (c) The notice required by subsection [(a)] (b)(1)--(4) will be completed and sent **BY THE DEPARTMENT** to the applicant, the EPA, any state within 50 miles of the facility and any state whose air quality may be affected and that is contiguous to this Commonwealth. 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)] (d) If the Department denies a plan approval, the requirements of subsection [(b)] (c) do not apply. Written notice of a denial will be given to requestors and to the applicant in accordance with § 127.13c (relating to notice of basis for certain plan approval decisions).

[(d)] (e) In each case, the Department will publish notices required in [subsection (a)] this section in the *Pennsylvania Bulletin*.

[(e)] (f) The notice will state, at a minimum, the following:

* * * * *

(3) Plan approvals issued to sources identified in subsection [(a)] (b)(1)--(4) or plan approvals issued to sources with limitations on the potential to emit may become part of the SIP and will be submitted to the EPA for review and approval.

§ 127.45. Contents of notice.

(a) THE NOTICE OF RECEIPT AND INTENT TO ISSUE FOR EACH PLAN APPROVAL REQUIRED BY § 127.44(a) (RELATING TO PUBLIC NOTICE) SHALL INCLUDE THE FOLLOWING:

(1) THE NAME AND ADDRESS OF THE APPLICANT.

(2) THE LOCATION AND NAME OF THE SOURCE OR FACILITY AT WHICH THE CONSTRUCTION, MODIFICATION, REACTIVATION OR INSTALLATION IS PROPOSED.

(3) A BRIEF DESCRIPTION OF THE PROPOSED ACTION, INCLUDING A BRIEF DESCRIPTION OF THE:

(i) AIR CONTAMINATION SOURCE TO BE CONSTRUCTED, MODIFIED, REACTIVATED OR INSTALLED.

(ii) AIR CLEANING DEVICE OR CONTROL TECHNOLOGY REQUIRED INCLUDING BEST AVAILABLE TECHNOLOGY.

(iii) TYPE OF CONDITIONS BEING PLACED IN THE PLAN APPROVAL WITH REFERENCE TO APPLICABLE STATE AND FEDERAL REQUIREMENTS.

(4) THE TYPE AND QUANTITY OF AIR CONTAMINANTS BEING EMITTED.

(5) THE NAME AND TELEPHONE NUMBER OF A PERSON TO CONTACT AT THE DEPARTMENT FOR ADDITIONAL INFORMATION.

(6) A STATEMENT THAT A PERSON MAY OPPOSE THE PROPOSED PLAN APPROVAL BY FILING A WRITTEN PROTEST WITH THE DEPARTMENT, AT THE APPROPRIATE REGIONAL OFFICE DESCRIBED IN § 121.4 (RELATING TO REGIONAL ORGANIZATION OF THE DEPARTMENT).

(b) The ~~{notice}~~ **[notices]** of proposed plan approval issuance required by § 127.44(a)(b) ~~[(relating to public notice)]~~ ~~{shall}~~ **[must]** include the following:

* * * * *

(2) The location and name of the **[plant] SOURCE** or facility at which construction **[or]**, modification, **REACTIVATION** or installation is **[taking place] proposed**.

* * * * *

(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] SOURCE** or facility.

(5) **[The] A brief description of 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 comments** or written protests.

* * * * *

(7) The name and telephone number of a person to contact **AT THE DEPARTMENT** for additional information.

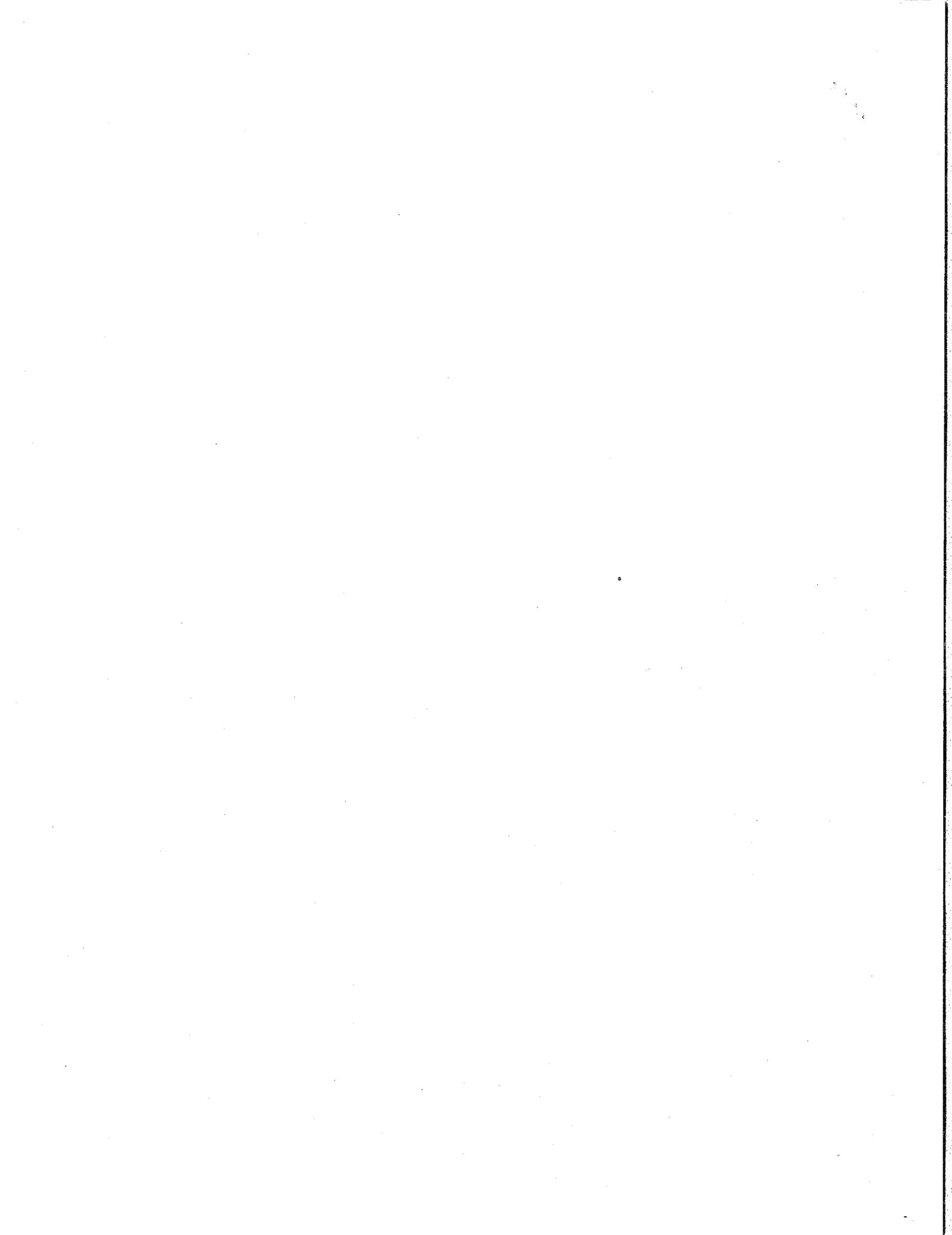
(8) A statement that a person may oppose the proposed plan approval by filing a written protest with the Department, at the appropriate regional office described in § 121.4 ~~[(relating to regional organization of the Department)]~~.

§ 127.48. Conferences and hearings.

* * * * *

(b) The applicant, the protestant, **commentators** and other participants will be notified of the **date**, time, place and purpose of a conference or hearing, in writing or by publication in

a newspaper [or] of **general circulation in the county in which the source is to be located and** the *Pennsylvania Bulletin*, except [where] **when** the Department determines that notification by telephone will be sufficient.



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

Comment/Response Document

Pennsylvania Air Quality Permit Streamlining

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

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

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

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

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

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

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

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

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

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

General Support

1. Comment:

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

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

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

Response: The Department appreciates the commentators' support of this rulemaking. The Department agrees that the proposed changes will improve the overall permitting process by reducing both the plan approval application processing time and unnecessary costs to the applicants and the Department, while still providing timely notice to the public for comment on all complete plan approval applications submitted to the Department.

2. Comment:

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

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

Response: The Department appreciates the commentators' support of this rulemaking. The Department agrees that the proposed changes will improve the overall permitting process by reducing both the plan approval application processing time and unnecessary costs to the applicants and the Department, while still providing timely notice to the public for comment on all complete plan approval applications submitted to the Department. The Department has carefully reviewed all of the comments and suggestions that were submitted. Each recommended change was considered for its impact on the program and incorporated when appropriate.

§ 127.12b. Plan approval terms and conditions.

3. Comment: The commentators support the proposed change to § 127.12b that extends the temporary shakedown period for a facility for additional limited periods from 120 days to 180 days. This will provide affected entities more time to ensure that equipment can be operated in accordance with the terms and conditions of a permit. (2, 3, 4)

Response: The Department appreciates the commentators' support of this revision. Current stack test requirements are more complicated than in the past, requiring more time both for the applicant to conduct the stack test and for the Department to review the test protocols. The Department believes that extending the temporary shakedown period from 120 days to 180 days will allow companies adequate time to test newly permitted sources in accordance with the more complicated stack test requirements. This streamlines the plan approval application process by eliminating the time that would be used to apply for an extension when the original 120 days has expired.

§ 127.12d. Completeness determination.

4. Comments on § 127.12d(a):

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

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

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

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

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

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

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

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

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

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

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

5. Comments on § 127.12d(b):

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

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

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

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

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

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

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

7. Comments on § 127.12d(c):

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

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

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

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

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

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

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

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

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

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

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

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

9. **Comment:** The commentators urge the Board to reject the proposed revisions because several aspects of the proposed rulemaking will severely curtail opportunities for effective citizen participation in air permitting.

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

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

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

The primary objective of the Air Pollution Control Act (APCA) is the protection of public health, safety, and well-being of the citizens of Pennsylvania. 35 P.S. § 4002(a)(i). The commentators submit that this objective is furthered by continuing to provide Commonwealth citizens with information about all plan approvals, including all permit conditions, by publication in the *Pennsylvania Bulletin*. The commentators urge the

Board to reject the Department's proposal in derogation of this fundamental objective of the APCA. (5, 6, 7, 8, 9, 10, 11, 12)

Response: The Department disagrees with the commentators that public participation in the plan approval application process will be severely curtailed by the proposed changes to the plan approval requirements. Rather, the proposed changes to the plan approval application notice requirements specify that the Department will continue to publish notice in the *Pennsylvania Bulletin* for all plan approval applications that it receives.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Sources located within a Title V facility.

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

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

(1) The name and address of applicant.

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

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

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

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

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

(i) The ending date for the receipt of written comments or written protests.

(ii) Procedures for requesting a hearing and the nature of that hearing.

(iii) Any other procedure by which the public may participate in the final decision.

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

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

While the requirements of existing paragraph (5) of § 127.45 could be interpreted as requiring that the entire plan approval conditions need to be published in the notice of action to be taken, to do so presents significant costs to the Department as well as the applicant. Consequently, new paragraph (b)(5) of § 127.45 has been clarified to require a brief description of the conditions being placed in the plan approval with reference to applicable State and Federal requirements. The complete plan approval conditions will be available for review at the location listed in the notice.

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

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

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

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

10. Comment – Adequate Public Notice – Reasonableness; Need: The Preamble states that the Department of Environmental Protection (Department), as part of an effort to streamline the permitting process, investigated ways to "reduce the plan approval application time, reduce unnecessary costs to industry **and continue to ensure that citizens receive adequate notice of all potential plan approval/permitting actions to enable timely comment on issues of public concern.**" (Emphasis added.) We received two public comments in support of the amendments. However, a joint comment from eight organizations, dated May 25, 2007, was sent to the EQB urging rejection of the amendments. Specifically, the joint commentators cite concerns with the amendments in Sections 127.44, 127.44(b)(6) [sic] and 127.45(5), as they relate to public notice in the *Pennsylvania Bulletin*.

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

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

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

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

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

While the requirements of existing paragraph (5) of § 127.45 could be interpreted as requiring that the entire plan approval conditions need to be published in the notice of action to be taken, to do so presents significant costs to the Department as well as the applicant. Consequently, new paragraph (b)(5) of § 127.45 has been clarified to require a brief description of the conditions being placed in the plan approval with reference to applicable State and Federal requirements. The complete plan approval conditions will be available for review at the location listed in the notice.

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

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

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

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

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

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

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

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

Response: While the requirements of existing paragraph (5) of § 127.45 could be interpreted as requiring that the entire plan approval conditions need to be published in the notice of action to be taken, to do so presents significant costs to the Department as well as the applicant. Consequently, new paragraph (b)(5) of § 127.45 has been clarified to require a brief description of the conditions being placed in the plan approval with reference to applicable State and Federal requirements. The complete plan approval conditions will be available for review at the location listed in the notice.

Other

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

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

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

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

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

Response: The Department is taking a number of steps to provide operational flexibilities for approval of trial burns of "opportunity fuels." Section 127.14 (relating to exemptions) provides an exemption from the permit requirements for approval of certain trial burns of "opportunity fuels." Exemptions can be determined from the existing list of sources or through the use of a request for determination form. Many de minimis and trivial sources will be exempted through these provisions. If an exemption cannot be granted, then the Department has available, as described in § 127.611 (relating to general

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

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

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

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

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



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063
March 14, 2008

Policy Office

717-783-8727

Kim Kaufman, Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17120

Re: Final-Form Rulemaking – Air Quality Permit Streamlining (#7-408)

Dear Mr. Kaufmann:

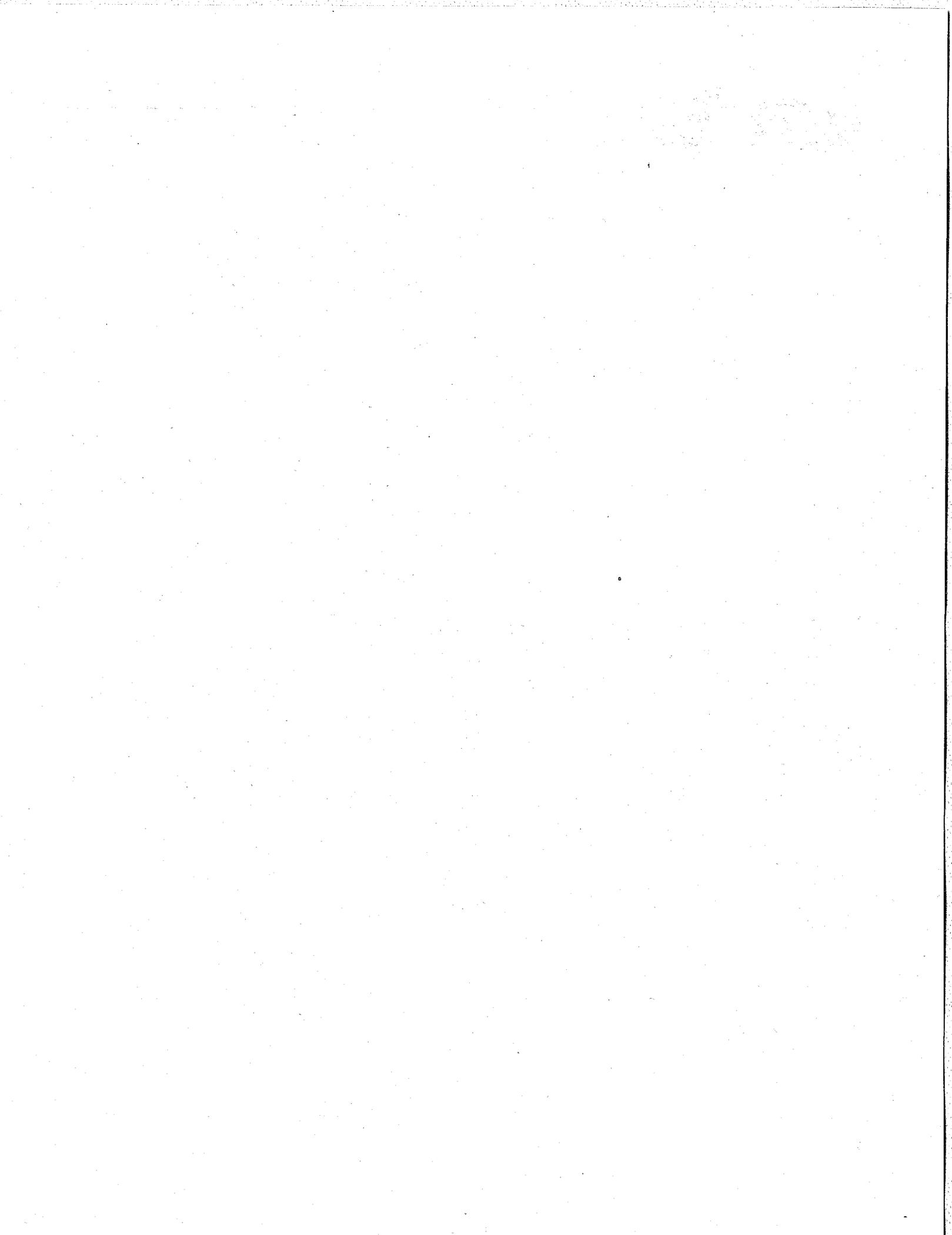
Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed a copy of a final-form rulemaking for review and comment by the Independent Regulatory Review Commission. The Environmental Quality Board (EQB) approved this final-form rulemaking at its February 19, 2008, meeting.

This final rulemaking is the culmination of the Department's efforts to streamline the air quality pre-construction permitting process in order to expedite the processing of plan approval applications, reduce unnecessary costs to industry and continue to ensure adequate citizen notice of all potential plan approval/permitting actions. The final-form rulemaking adds provisions to *25 Pa Code*, Chapter 127, Subchapter B concerning completeness determinations for applications for plan approval, revises certain public notice and public comment provisions related to plan approval applications and extends from 120 days to 180 days the duration for temporary operation of the source to permit compliance testing and "shakedown" of new sources and air cleaning devices subject to the plan approval requirements. These amendments facilitate the Department's prompt response to plan approval applications necessary for the construction and modification of air contamination sources and air cleaning devices needed for production improvements; reduce plan approval processing time to allow industry to be more responsive to market changes; and ensure the public has an opportunity to comment on concerns related to a project. The rulemaking will affect owners and operators of air contamination sources subject to the permitting requirements of *25 Pa Code*, Chapter 127, of which there are approximately 700 major facility operator/owners and 1,200 minor facility operator/owners.

The proposed rulemaking was published in the *Pennsylvania Bulletin* on March 24, 2007 (37 Pa.B. 1317), commencing a 60-day public comment period. Three public hearings were held on the proposal on April 24, 2007, in Pittsburgh, Harrisburg and Norristown, respectively. Fourteen commentators provided comments to the Department on the rulemaking. Comments received by the Department are addressed in the Comment and Response document which was developed as a part of the final rulemaking

The Air Quality Technical Advisory Committee reviewed the final rulemaking at its July 26, 2007, meeting and concurred with the Department's recommendation to present the proposal as final rulemaking

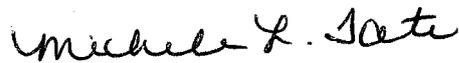




to the EQB. In addition, the final-form rulemaking was discussed with the Citizens Advisory Council. Upon promulgation of the final-form regulations, the rulemaking will be submitted to EPA as revision to the Commonwealth's State Implementation Plan.

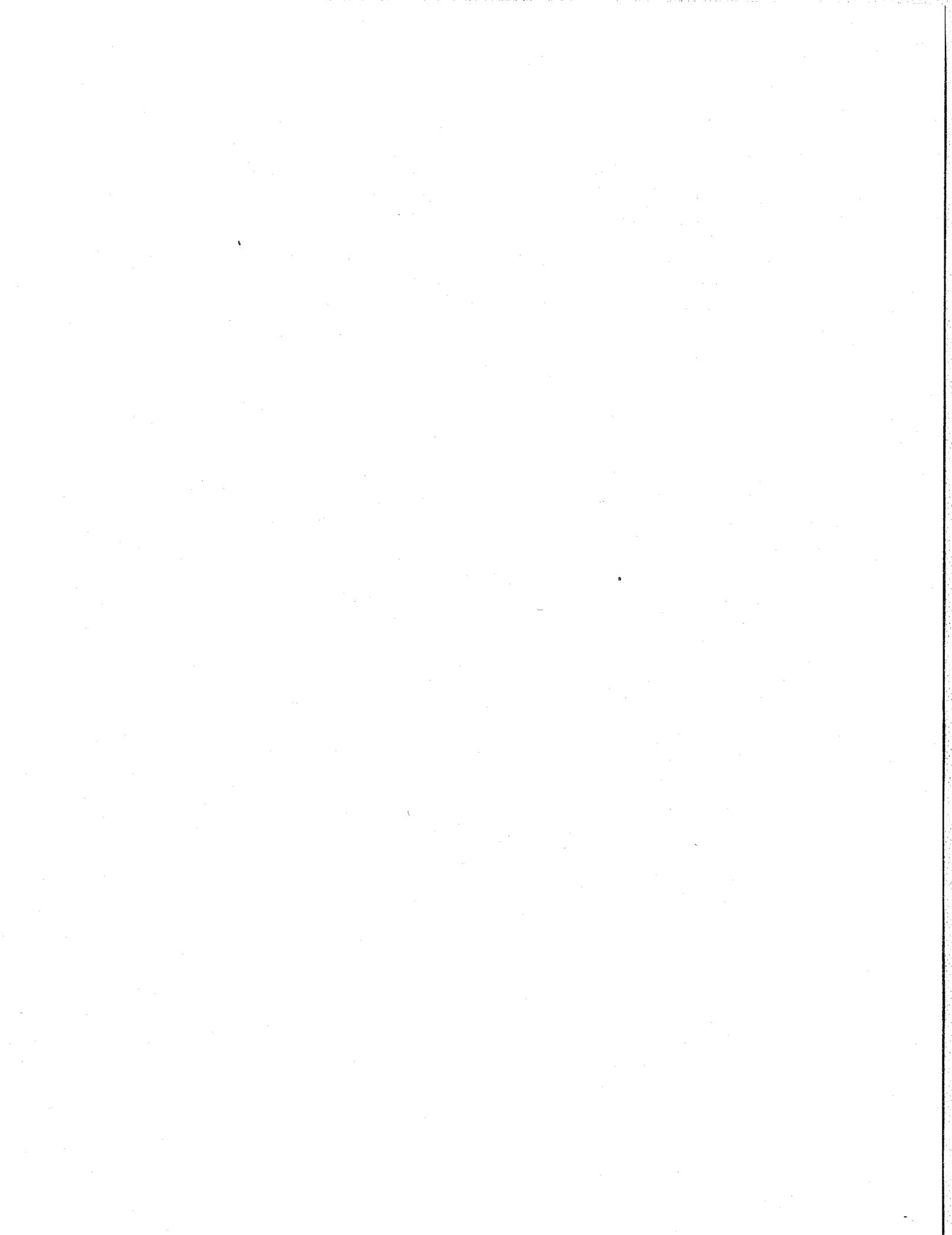
The Department will provide assistance as necessary to facilitate the Commission's review of this final-form rulemaking under Section 5.1(e) of the Regulatory Review Act. Please contact me at the number above if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Michele L. Tate".

Michele L. Tate
Regulatory Coordinator

Enclosures





**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO
THE REGULATORY REVIEW ACT**

I.D. NUMBER: 7-408
 SUBJECT: Air Quality Permit Streamlining
 AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolloed Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
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 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/14/08	<i>J. Neuh</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3/14/08	<i>x M. Beason</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3/14/08	<i>B. Gaster</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3-14-08	<i>x A. Rybarc</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
3-14-08	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

