

# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

INDEPENDENT REGULATORY  
REVIEW COMMISSION

2010 JAN 27 PM 2:16

RECEIVED

## SECTION I: PROFILE

(1) Agency:

Environmental Protection

(2) Agency Number:

Identification Number: #7-450

IRRC Number: 2818

(3) Short Title:

Nonattainment new source review for fine particulate

(4) PA Code Cite:

25 Pa. Code Chapters 121 and 127

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: Michele Tate, 717.783.8727

Secondary Contact: Kelly J. Heffner, 717.783.8727

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:

Environmental Quality Board

PO Box 8477

Harrisburg, PA 17105-8477

Phone: 717.787.4526

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation:

Certification by the Governor

Certification by the Attorney General

## Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The proposed rulemaking would amend the existing nonattainment new source review (NSR) requirements in *25 Pa. Code* Chapter 127, Subchapter E (relating to new source review), to incorporate recently promulgated Federal requirements for particulate matter equal to and less than 2.5 micrometers in diameter (PM<sub>2.5</sub>) and PM<sub>2.5</sub> precursors. The proposal would add requirements to *25 Pa. Code* Chapter 127, Subchapter E, § 127.203a (relating to applicability determination) and other sections of Subchapter E to expand the applicability of the nonattainment NSR program to include emissions of PM<sub>2.5</sub> and sulfur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) precursors. Other clarifying amendments for *25 Pa. Code* Chapter 127 (relating to construction, modification, reactivation, and operation of sources) would also be proposed.

The proposed rulemaking, if adopted by the Environmental Quality Board (Board) as final-form rulemaking, would be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

(9) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: March 2010
- B. The date or dates on which public meetings or hearings will be held: February 2010
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: 2<sup>nd</sup> Quarter 2011
- D. The expected effective date of the final-form regulation: 2<sup>nd</sup> Quarter 2011
- F. The date by which compliance with the final-form regulation will be required: 2<sup>nd</sup> Quarter 2011
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

## SECTION II: STATEMENT OF NEED

(10) 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.

(11) State the statutory authority for the regulation. Include specific statutory citation.

The proposed rulemaking is authorized under section 5(a)(1) of the Air Pollution Control Act (APCA) (35 P.S. § 4005(a)(1)), which grants the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

## Regulatory Analysis Form

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as any deadlines for action.

Yes. On May 16, 2008, the EPA published its final rule for the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)," (73 FR 28321). This Federal regulation requires states with PM<sub>2.5</sub> nonattainment areas to submit revised nonattainment NSR programs to the EPA for SIP approval within three years from the date of publication of the final rule, or by May 16, 2011.

If the EPA Administrator finds that a state has failed to submit an acceptable implementation plan or has failed to implement the requirements of an approved plan, sanctions will be imposed, though sanctions cannot be imposed until 18 months after the Administrator makes the determination, and sanctions cannot be imposed if a deficiency has been corrected within the 18-month period.

Section 179 of the CAA authorizes the EPA to use two types of sanctions: 1) withholding of certain Federal highway funds; and 2) imposing what are called "2:1 offsets" on new or modified sources of emissions. 42 U.S.C. § 7509. Under § 179 and its implementing regulations, the Administrator first imposes offsets, and then, if the deficiency has not been corrected within 6 months, also applies highway sanctions. 40 CFR 52.31. Withholding Federal highway funds could have a deleterious impact on the Governor's Accelerated Building Bridges Program.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Implementation of the proposed requirements for new source review for PM<sub>2.5</sub> would benefit the health and welfare of the approximately 12 million human residents of this Commonwealth. The health effects associated with exposure to elevated levels of PM<sub>2.5</sub> are significant. Epidemiological studies have shown a significant correlation between elevated PM<sub>2.5</sub> levels and premature mortality. Other important effects associated with PM<sub>2.5</sub> exposure include aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems. Individuals particularly sensitive to PM<sub>2.5</sub> exposure include older adults, people with heart and lung disease, and children. Environmental effects of PM<sub>2.5</sub> pollution include visibility impairment, soiling and materials damage.

Section 109(b) of the CAA provides that the Administrator of the EPA must set National Ambient Air Quality Standards (NAAQS) for air pollutants at levels that protect public health and the environment. 42 U.S.C § 7409(b). Section 109(d) of the CAA provides that the NAAQS be reviewed at periodic intervals to ensure the standards reflect the latest scientific knowledge on the effects of air pollutants. 42 U.S.C. § 7409(d).

On July 18, 1997, the EPA revised the NAAQS for particulate matter (PM) to add new standards for fine particles, using PM<sub>2.5</sub> as the indicator. The EPA set the health-based (primary) and welfare-based (secondary) PM<sub>2.5</sub> annual standard at a level of 15 micrograms per cubic meter (µg/m<sup>3</sup>) and the 24-hour standard at a level of 65 µg/m<sup>3</sup> (62 FR 38652). Subsequently, on October 17, 2006, the EPA revised the

## Regulatory Analysis Form

primary and secondary 24-hour NAAQS for PM<sub>2.5</sub> to 35 µg/m<sup>3</sup> from 65 µg/m<sup>3</sup> (71 FR 61236). The health-based primary standard is designed to protect human health from elevated levels of PM<sub>2.5</sub>, which have been linked to premature mortality and other important health effects. The secondary standard is designed to protect against major environmental effects of PM<sub>2.5</sub> such as visibility impairment, soiling, and materials damage.

The proposed rulemaking would help assure that the citizens of this Commonwealth will benefit from reduced emissions of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors from regulated sources. Attaining and maintaining levels of PM<sub>2.5</sub> below the health- and welfare-based NAAQS is important to reduce premature mortality and other health and environmental effects associated with PM<sub>2.5</sub> exposure.

(14) If scientific data, studies or references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

None.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The owners and operators of new or modified major facilities would be affected by adoption of the proposed amendments as final-form rulemaking. There are approximately 700 major facilities in this Commonwealth that may be subject to the existing NSR rules if major modifications to those facilities are proposed. The majority of those facilities affected by these regulatory changes are already subject to the existing NSR provisions in 25 *Pa. Code* Chapter 127, Subchapter E, and also to the requirements of 40 CFR Part 51, Appendix S (relating to emission offset interpretative ruling). It is not anticipated that significant additional costs would be incurred by the affected companies. These proposed amendments would provide increased flexibility for the owners and operators of affected facilities by allowing exchanges of interpollutant offsets.

(16) 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 proposed rulemaking would affect owners and operators of air contamination sources affected by the special permitting requirements of 25 *Pa. Code* Chapter 127. There are approximately 700 major facility owners and operators in this Commonwealth that may be subject to the existing NSR rules if major modifications are proposed.

## SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

It is not anticipated that any significant additional costs will be incurred by the regulated community. If a facility triggers NSR, the owner or operator of the facility will have the cost of procuring offsets required under the Federal regulation. The proposed amendments affect the same major source facilities

## Regulatory Analysis Form

that are affected by the Federal regulation, therefore the owners or operators will not have additional costs as a result of this proposal.

(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. Explain how the dollar estimates were derived.

It is not anticipated that any significant additional costs will be incurred by 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. Explain how the dollar estimates were derived.

It is not anticipated that any significant additional costs will be incurred by state government.

(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 08/09	FY +1 Year 09/10	FY +2 Year 10/11	FY +3 Year 11/12	FY +4 Year 12/13	FY +5 Year 13/14
<b>SAVINGS:</b>						
<b>Regulated Community</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>Local Government</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>State Government</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Savings</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>COSTS:</b>						
<b>Regulated Community</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>Local Government</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>State Government</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Costs</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>Local Government</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>State Government</b>	0.00	0.00	0.00	0.00	0.00	0.00
<b>Total Revenue Losses</b>	0.00	0.00	0.00	0.00	0.00	0.00

## Regulatory Analysis Form

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

Program	FY-3 (05/06)	FY-2 (06/07)	FY-1 (07/08)	Current FY (08/09)
Environmental Program Management (161-10382)	\$37,049,000	\$36,868,000	\$39,909,000	\$41,800,000
Clean Air Fund Major Emission Facilities (215-20077)	\$24,290,000	\$26,218,000	\$23,872,000	\$24,053,000
Clean Air Fund Mobile and Area Facilities (233-20084)	\$8,231,000	\$12,863,000	\$8,505,000	\$9,613,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

It is not anticipated that any significant additional costs to the regulated community will be incurred as a result of these proposed amendments. The effectiveness of the proposed amendments would be demonstrated by reduced levels of PM<sub>2.5</sub> in nonattainment areas of this Commonwealth. Effectiveness would also be demonstrated through reduced incidence of respiratory and cardiovascular disease (as indicated by reduced hospital admissions, emergency room visits, absences from school and work, and restricted activity days) and reduced incidence of lung disease, decreased lung function, asthma attacks and certain cardiovascular problems. Other indicators of effectiveness would be improved visibility, decreased soiling and decreased materials damage.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The concepts and draft regulatory language of the proposed rulemaking were discussed with the Air Quality Technical Advisory Committee (AQTAC) at its September 18 and December 11, 2008, and March 12, 2009, meetings. The proposed rulemaking was discussed with the AQTAC at its meeting of May 28, 2009. The AQTAC concurred with the Department's recommendation to seek Board approval of the proposed rulemaking. In addition, the proposed rulemaking was discussed with the Citizens Advisory Council on July 21, 2009.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

These regulatory changes are mandated under the Federal CAA and its implementing regulations, therefore, non-regulatory options are not available.

(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 regulations.

No.

## Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

A number of neighboring states with PM2.5 nonattainment areas are also currently working on amendments to their NSR programs to meet the requirements published by the EPA on May 16, 2008, for implementation of the NSR program for PM2.5 (73 FR 28321). To date, none of those states have proposed their drafts. It is not anticipated that these regulations will place this Commonwealth at a competitive disadvantage.

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

No.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

None.

(28) 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.

There are no special provisions.



**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU**

**(Pursuant to Commonwealth Documents Law)**

RECEIVED

2010 JAN 27 PM 2:16

INDEPENDENT REGULATORY  
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

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

By: Amy M. Elliott  
(Deputy Attorney General)

**JAN 12 2010**

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. 7-450

DATE OF ADOPTION November 17, 2009

BY John Hanger

TITLE JOHN HANGER  
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY Andrew C. Clark

DATE OF APPROVAL

**DEC 10 2009**

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

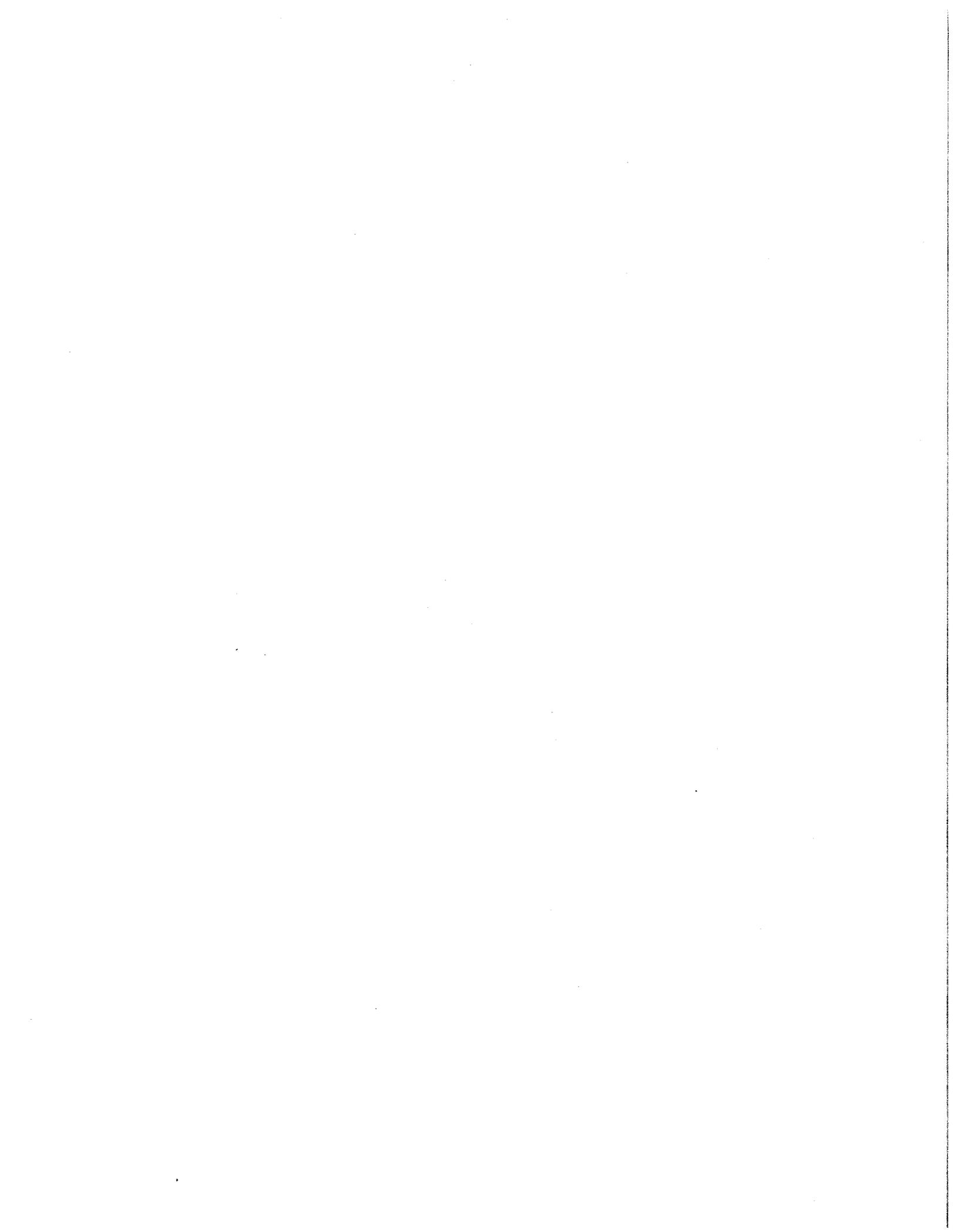
Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

**NOTICE OF PROPOSED RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**New Source Review**

**25 Pa. Code, Chapters 121 and 127**



**Notice of Proposed Rulemaking**  
**Department of Environmental Protection**  
**Environmental Quality Board**  
**25 Pa. Code Chapters 121 and 127**

The Environmental Quality Board (Board) proposes to amend Chapters 121 and 127 (relating to general provisions; and construction, modification, reactivation, and operation of sources) as set forth in Annex A.

This notice is given under Board order at its meeting of November 17, 2009.

**A. Effective Date**

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

These amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the Pennsylvania State Implementation Plan (SIP) upon final rulemaking.

**B. Contact Persons**

For further information, contact Krishnan Ramamurthy, Chief, Division of Permits, Bureau of Air Quality, 12<sup>th</sup> Floor, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, telephone: (717) 783-9476 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, telephone: (717) 787-7060.

Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available electronically through the Department of Environmental Protection's (Department) Web site at <http://www.depweb.state.pa.us> (Quick Access: Public Participation).

**C. Statutory Authority**

This action is being taken under the authority of 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.

**D. Background and Summary**

On July 18, 1997, the EPA revised the National Ambient Air Quality Standard (NAAQS) for particulate matter (PM) to add a new standard for fine particles, using fine particulates equal to and less than 2.5 micrometers in diameter (PM<sub>2.5</sub>) as the indicator. The EPA set the health-based (primary) and welfare-based (secondary) PM<sub>2.5</sub> annual standard at a level of 15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) and the 24-hour standard at a level of 65  $\mu\text{g}/\text{m}^3$  (62 FR 38652). The health-based primary standard is designed to protect human health from elevated levels of PM<sub>2.5</sub>, which have been linked to premature mortality and other important

health effects. The secondary standard is designed to protect against major environmental effects of PM<sub>2.5</sub> such as visibility impairment, soiling and materials damage. The following counties in this Commonwealth have been designated nonattainment for the 1997 fine particulate annual NAAQS: Allegheny (Liberty-Clairton), Allegheny (remainder), Armstrong, Berks, Beaver, Bucks, Butler, Cambria, Chester, Cumberland, Dauphin, Delaware, Greene, Indiana, Lancaster, Lawrence, Lebanon, Montgomery and Philadelphia.

Subsequently, on October 17, 2006, the EPA revised the primary and secondary 24-hour NAAQS for PM<sub>2.5</sub> to 35 µg/m<sup>3</sup> from 65 µg/m<sup>3</sup> (71 FR 61236). The following counties or portions thereof are expected to be designated shortly by the EPA as nonattainment for the 2006 fine particulate 24-hour NAAQS: Allegheny, Armstrong, Beaver, Bucks, Butler, Cambria, Chester, Cumberland, Dauphin, Delaware, Greene, Indiana, Lancaster, Lawrence, Lebanon, Lehigh, Montgomery, Northampton, Philadelphia, Washington, Westmoreland and York.

On May 16, 2008, the EPA published its final rule for the "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM<sub>2.5</sub>)," (73 FR 28321). This Federal regulation requires states with PM<sub>2.5</sub> nonattainment areas to submit revised nonattainment NSR programs to the EPA for SIP approval within three years from the date of publication of the final rule, or by May 16, 2011.

The proposed rulemaking would amend the existing nonattainment NSR requirements in Chapter 127, Subchapter E (relating to new source review), to incorporate recently promulgated Federal requirements for PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors. The proposal would add requirements to Chapter 127, Subchapter E, § 127.203a (relating to applicability determination) and other sections of Subchapter E to expand the applicability of the nonattainment NSR program to include emissions of PM<sub>2.5</sub> and sulfur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) precursors. Because the EPA determined that there is considerable uncertainty related to ammonia as a precursor for PM<sub>2.5</sub>, the proposal does not require ammonia to be regulated as a PM<sub>2.5</sub> precursor. Other clarifying amendments for Chapter 127 would also be proposed.

The proposed rulemaking applies to construction of major stationary sources and major modifications at major stationary sources. A stationary source is a "major source" if its actual emissions or its potential to emit for a specific pollutant equals or exceeds the major source threshold for that pollutant. The PM<sub>2.5</sub> threshold for new sources is 100 tons per year of PM<sub>2.5</sub>. The PM<sub>2.5</sub> threshold for major modifications at existing sources is 10 tons per year of PM<sub>2.5</sub>.

The proposed rulemaking would help assure that the citizens of this Commonwealth will benefit from reduced emissions of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors from regulated sources. Attaining and maintaining levels of PM<sub>2.5</sub> below the health- and welfare-based NAAQS is important to reduce premature mortality and other health and environmental effects associated with PM<sub>2.5</sub> exposure. To the extent that any of the proposed revisions are more stringent than any Federal requirements, these revisions are reasonably necessary in order to attain and maintain the PM<sub>2.5</sub> NAAQS.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of this proposed rulemaking. At its May 28, 2009, meeting, the AQTAC concurred with the Department's recommendation to seek Board approval of the proposed

rulemaking. The Department also consulted with the Citizens Advisory Council on July 21, 2009.

#### **E. Summary of Regulatory Revisions**

The proposed amendments add a new term and definition, "PM2.5," under § 121.1 (relating to definitions). The proposed amendments amend the definitions of the following existing terms under § 121.1 to include the requirements for PM2.5: "regulated NSR pollutant" and "significant." In addition the proposed amendments delete an existing term and definition, "maximum allowable emissions," under § 121.1.

Section 127.201 (relating to general requirements) is proposed to be amended to include a new subsection (g). Under subsection (g), gaseous emissions that condense to form PM at ambient temperatures will be included in PM2.5 and PM-10 emissions in accordance with the following requirements: beginning January 1, 2011, or earlier date established by the Administrator, condensable PM shall be accounted for in applicability determinations and in establishing emissions limitations for PM2.5 and PM-10 in permits issued under this subchapter; compliance with emissions limitations for PM2.5 and PM-10 issued prior to January 1, 2011, or earlier date established by the Administrator, shall not be based on condensable PM unless required by the terms and conditions of a plan approval, operating permit or the SIP; and applicability determinations made prior to January 1, 2011, or earlier date established by the Administrator, without accounting for condensable PM shall not be considered in violation of this subchapter unless the applicable plan approval, operating permit or SIP includes requirements for condensable PM.

Section 127.201a (relating to measurements, abbreviations and acronyms) is proposed to be amended to include the following acronyms: "PM2.5" and "PM-10." In addition, other minor editorial changes are proposed for this section.

Section 127.202 (relating to effective date) is proposed to be amended to include references to PM2.5.

Section 127.203 (relating to facilities subject to special permit requirements) is proposed to be amended under subparagraph (b)(1)(i) to provide that the aggregated VOC or NOx emissions shall meet the applicability requirements of paragraph (2) or (3). Paragraphs (2) and (3) of subsection (b) are proposed to be amended to clarify that emissions from a proposed project are included in the applicability provisions.

Section 127.203a (relating to applicability determination) is proposed to be amended to include the following requirements under subsection (a): the owner or operator of the facility shall include in the plan approval application the estimate of an emissions increase in a regulated NSR pollutant from the project; the owner or operator shall calculate an emissions increase in a regulated NSR pollutant from a project in accordance with paragraph (1); if the emissions increase from a project equals or exceeds the applicable emissions rate that is significant, the owner or operator shall calculate a net emissions increase in accordance with subparagraph (1)(ii); and if the emissions increase from a project does not exceed the listed applicable

emissions rate that is significant, the owner or operator shall calculate the net emissions increase in accordance with paragraph (2).

In addition, minor editorial changes are proposed to be made to this section as well.

Section 127.204 (relating to emissions subject to this subchapter) is proposed to be amended to include some minor editorial changes.

Section 127.206 (relating to ERC general requirements) is proposed to be amended to clarify under subsection 127.206(o) that an emission reduction credit (ERC) created for a regulated criteria pollutant may be used for interpollutant offsetting authorized under this subchapter. The "amnesty period" dates under subsection 127.206(r) relating to when emission reductions may be used to generate ERCs are proposed to be amended to specify that emission reductions occurring at a facility after April 5, 2005, but prior to the effective date of adoption of this proposed rulemaking may be used to generate ERCs in accordance with this subchapter, if a complete ERC registry application is submitted to the Department by the date 12 months after the effective date of this proposed rulemaking. In addition, other minor editorial changes are proposed for this section.

Section 127.210 (relating to offset ratios) is proposed to be amended to include, among other things, interpollutant offsetting ratios for SO<sub>2</sub> and NO<sub>x</sub>. This section is further proposed to be amended to provide that the emissions offsets shall be of the same NSR regulated pollutant unless interpollutant offsetting is authorized for a particular pollutant as specified. The offset requirements for PM<sub>2.5</sub> emissions or emissions of a PM<sub>2.5</sub> precursor may be satisfied by offsetting PM<sub>2.5</sub> emissions or emissions of PM<sub>2.5</sub> precursors. The emissions offset ratio for PM<sub>2.5</sub> is one ton per year (tpy) of PM<sub>2.5</sub> to one tpy of PM<sub>2.5</sub>. The emissions offset ratio for PM<sub>2.5</sub> precursors is one tpy of SO<sub>2</sub> to one tpy of SO<sub>2</sub> and one tpy of NO<sub>x</sub> to one tpy of NO<sub>x</sub>. The PM<sub>2.5</sub> interpollutant trading ratio is 40 tpy of SO<sub>2</sub> to one tpy of PM<sub>2.5</sub>, and 200 tpy of NO<sub>x</sub> to one tpy of PM<sub>2.5</sub>.

## **F. Benefits, Costs and Compliance**

### **Benefits**

Overall, the citizens of this Commonwealth will benefit from this proposed rulemaking because it would help to reduce emissions of PM<sub>2.5</sub> from major stationary sources. Attaining and maintaining levels of PM<sub>2.5</sub> below the health- and welfare-based NAAQS is important to reduce premature mortality and other health effects associated with PM<sub>2.5</sub> exposure. Reductions in ambient levels of PM<sub>2.5</sub> would also promote improved animal health and welfare, improved visibility, decreased soiling and materials damage and decreased damage to plants and trees.

### **Compliance Costs**

The owners and operators of new or modified major facilities would be affected by adoption of the proposed amendments as final-form rulemaking. There are approximately 700 major facilities in this Commonwealth that may be subject to the existing NSR rules if major modifications to those facilities are proposed. The majority of those facilities affected by these regulatory changes are already subject to the existing NSR provisions in Chapter 127,

Subchapter E, and also to the requirements of 40 CFR Part 51, Appendix S (relating to emission offset interpretative ruling). It is not anticipated that significant additional costs would be incurred by the affected companies. These proposed amendments would provide increased flexibility for the owners and operators of affected facilities by allowing exchanges of interpollutant offsets.

### **Compliance Assistance Plan**

The Department plans to educate and assist the public and regulated community in understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing compliance assistance program.

### **Paperwork Requirements**

There are no additional paperwork requirements associated with this proposed rulemaking that industry would need to comply with.

### **G. Pollution Prevention**

The Federal Pollution Prevention Act of 1990 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. The proposed rulemaking does not directly promote a multi-media approach. The reduced levels of PM2.5, however, would benefit water quality through reduced soiling and quantities of sediment that may run off into waterways. Reduced levels of PM2.5 would therefore promote improved aquatic life and biodiversity, as well as improved animal and plant life on land.

### **H. Sunset Review**

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.

### **I. Regulatory Review**

Under section 5(a) of the Regulatory Review Act, 71 P.S. § 745.5(a), on January 27, 2010, the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided the IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, the IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

## **J. Public Comments**

**Written Comments** - Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16<sup>th</sup> Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Board by April 12, 2010. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by the Board by April 12, 2010. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

**Electronic Comments** - Comments may be submitted electronically to the Board at [RegComments@state.pa.us](mailto:RegComments@state.pa.us) and must also be received by the Board by April 12, 2010. A subject heading of the proposal and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within 2 working days, the comments should be retransmitted to the Board to ensure receipt.

## **K. Public Hearings**

The Environmental Quality Board will hold public hearings in Pittsburgh, Norristown, and Harrisburg for the purpose of accepting comments on this proposal. The hearings will be held as follows:

Department of Environmental Protection Southwest Regional Office Waterfront Conference Room A and B 400 Waterfront Drive Pittsburgh, PA 15222-4745	March 9, 2010 1:00 p.m.
--	----------------------------

Department of Environmental Protection Southeast Regional Office Delaware Conference Room 2 East Main Street Norristown, PA 19401	March 10, 2010 1:00 p.m.
---	-----------------------------

Department of Environmental Protection Southcentral Regional Office Susquehanna A Conference Room 909 Elmerton Avenue Harrisburg, PA 17110	March 12, 2010 1:00 p.m.
--	-----------------------------

Persons wishing to present testimony at a hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least 1 week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 10 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the Americans With Disabilities Act of 1990 should contact the Environmental Quality Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD) or (800) 654-5988 (voice users) to discuss how the Board may accommodate their needs.

JOHN HANGER  
Chairperson



Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

\* \* \* \* \*

***Maximum allowable emissions***—The emission rate calculated using the maximum rated capacity of the source unless the source is subject to enforceable permit conditions which limit operating rate or hours of operation, or both, and the most stringent of the following:

- (i) Applicable new source performance standards or standards for hazardous pollutants in 40 CFR Parts 60 and 61.
- (ii) Applicable emission limitation under this title.
- (iii) The emission rate specified as an enforceable permit.]

\* \* \* \* \*

**PM<sub>2.5</sub>**—Particulate matter with an aerodynamic diameter of less than or equal to a nominal 2.5 micrometer body as measured by the applicable reference method or an equivalent method.

\* \* \* \* \*

*Regulated NSR pollutant*—

- (i) NO<sub>x</sub> or VOCs.
- (ii) A pollutant for which the EPA has promulgated a NAAQS.

(iii) A pollutant that is a constituent or precursor of a pollutant listed under subparagraph (i) or (ii), if the constituent or precursor pollutant may only be regulated under NSR as part of regulation of the pollutant listed under subparagraph (i) or (ii).  
Precursors identified by the Administrator for purposes of NSR are the following:

(A) VOCs and NOx are precursors to ozone in all ozone nonattainment areas.

(B) SO<sub>2</sub> and NOx are precursors to PM<sub>2.5</sub> in all PM<sub>2.5</sub> nonattainment areas.

(iv) PM<sub>2.5</sub> and PM-10 emissions, including gaseous emissions from a facility or activity that condense to form particulate matter at ambient temperatures, as specified in § 127.201(g) (relating to general requirements).

\* \* \* \* \*

*Significant—*

(i) In reference to a net emissions increase or the potential of a facility to emit one of the following pollutants at a rate of emissions that would equal or exceed the following emissions rates except as specified in subparagraphs (ii)—(v):

<i>Pollutant</i>	<i>Emissions Rate</i>
Carbon monoxide (CO):	100 TPY
Nitrogen oxides (NO <sub>x</sub> ):	40 TPY
Sulfur oxides (SO <sub>x</sub> ):	40 TPY
Ozone:	40 TPY of VOCs or NO <sub>x</sub>
Lead:	0.6 TPY
PM-10:	15 TPY
<u>PM<sub>2.5</sub>:</u>	<u>10 TPY of PM<sub>2.5</sub>; 40 TPY of SO<sub>2</sub>; 40 TPY of NO<sub>x</sub></u>

\* \* \* \* \*

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

**Subchapter E. NEW SOURCE REVIEW**

**§ 127.201. General requirements.**

\* \* \* \* \*

(g) PM<sub>2.5</sub> and PM-10 emissions shall include gaseous emissions from a facility or activity that condense to form PM at ambient temperatures, if present, in accordance with the following requirements:

**(1) Beginning January 1, 2011, or an earlier date established by the Administrator, condensable PM shall be accounted for in applicability determinations and in establishing emissions limitations for PM2.5 and PM-10 in permits issued under this subchapter.**

**(2) Compliance with emissions limitations for PM2.5 and PM-10 issued prior to January 1, 2011, or an earlier date established by the Administrator, shall not be based on condensable PM unless required by the terms and conditions of a plan approval, operating permit or the State Implementation Plan.**

**(3) Applicability determinations made prior to January 1, 2011, or an earlier date established by the Administrator, without accounting for condensable PM shall not be considered in violation of this subchapter unless the applicable plan approval, operating permit or State Implementation Plan includes requirements for condensable PM.**

**§ 127.201a. Measurements, abbreviations and acronyms.**

Measurements, abbreviations and acronyms used in this subchapter are defined as follows:

**[BAT—Best available technology]**

BACT—Best available control technology

**BAT—Best available technology**

CEMS—Continuous emissions monitoring system

CERMS—Continuous emissions rate monitoring system

**CO—Carbon monoxide**

CPMS—Continuous parametric monitoring system

**[CO—Carbon monoxide]**

ERC—Emission reduction credit

LAER—Lowest achievable emission rate

**lb—Pounds**

MACT—Maximum achievable control technology

**MERC—Mobile emission reduction credit**

**µg/m<sup>3</sup>—Micrograms per cubic meter**

**mg/m<sup>3</sup>—Milligrams per cubic meter**

**NO<sub>x</sub>—Nitrogen oxides**

NSPS—New source performance standard

NSR—New source review

**[PEMS—Predictive emissions monitoring system**

**lb—Pounds**

**µg/m<sup>3</sup>—Micrograms per cubic meter**

**MERC—Mobile emission reduction credit**

**mg/m<sup>3</sup>—Milligrams per cubic meter**

**NO<sub>x</sub>—Nitrogen oxides]**

O<sub>2</sub>—Oxygen

PAL—Plantwide Applicability Limit

**PEMS—Predictive emissions monitoring system**

PM—Particulate matter

**PM<sub>2.5</sub>—Particulate matter less than or equal to 2.5 micrometers**

**PM-10—Particulate matter less than or equal to 10 micrometers**

RACT—Reasonably available control technology

SO<sub>x</sub>—Sulfur oxides

TPY—Tons per year

VOC—Volatile organic compound

**§ 127.202. Effective date.**

(a) The special permit requirements in this subchapter apply to an owner or operator of a facility to which a plan approval will be issued by the Department after May 19, 2007.

**except for PM2.5, which shall apply after \_\_\_\_\_ [Editor's note: The blank refers to the effective date of adoption of this proposed rulemaking.]**

(b) For SOx, **PM2.5**, PM-10, lead and CO, this subchapter applies until a given nonattainment area is redesignated as an unclassifiable or attainment area. After a redesignation, special permit conditions remain effective until the Department approves a permit modification request and modifies the permit.

**§ 127.203. Facilities subject to special permit requirements.**

\* \* \* \* \*

(b) The following provisions apply to an owner or operator of a facility located in Bucks, Chester, Delaware, Montgomery or Philadelphia County or an area classified as a serious or severe ozone nonattainment area:

(1) The applicability requirements in § 127.203a (relating to applicability determination) apply except as provided by this subsection. The requirements of this subchapter apply if the aggregated emissions determined according to subparagraph (i) or (ii) exceed 25 TPY of NOx or VOCs.

(i) The proposed increases and decreases in emissions are aggregated with the other increases in net emissions occurring over a consecutive 5 calendar-year period, which includes the calendar year of the modification or addition which results in the emissions increase. **The aggregated VOC or NOx emissions shall meet the applicability requirements of paragraph (2) or (3).**

\* \* \* \* \*

(2) An increase in emissions of VOCs or NOx, other than a de minimis emission increase, from a discrete operation, unit or other pollutant emitting activity at a facility with a potential to emit less than 100 TPY of VOCs or NOx, **including the emissions from the proposed project**, is considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOCs or NOx from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not elect to offset at the required ratio, the increase is considered a modification and the BACT requirement is substituted for LAER. The owner or operator of the facility shall comply with all applicable requirements including the BAT requirement.

(3) An increase in emissions of VOCs or NOx, other than a de minimis emission increase, from a discrete operation, unit or other pollutant emitting activity at a facility with a potential to emit of 100 TPY or more, **including the emissions from the proposed project**, is considered a modification unless the owner or operator elects to offset the increase by a greater reduction in emissions of VOCs or NOx from other operations, units or activities within the facility at an internal offset ratio of at least 1.3 to

1. If the owner or operator elects to offset at the required ratio, the LAER requirement does not apply. The owner or operator of the facility shall comply with the applicable requirements including the BAT requirement.

\* \* \* \* \*

**§ 127.203a. Applicability determination.**

(a) The Department will conduct an applicability determination during its review of a plan approval application for the construction of a new major facility or modification at an existing major facility under **[the following provisions:] this section. The owner or operator of the facility shall include in the plan approval application the estimate of an emissions increase in a regulated NSR pollutant from the project. The owner or operator shall calculate an emissions increase in a regulated NSR pollutant from a project in accordance with paragraph (1). The owner or operator shall calculate a net emissions increase in accordance with subparagraph (1)(ii), if the emissions increase from a project equals or exceeds the applicable emissions rate that is “significant” as defined in § 121.1 (relating to definitions). If the emissions increase from a project does not exceed the listed applicable emissions rate that is significant, the owner or operator shall calculate the net emissions increase in accordance with paragraph (2).**

(1) As part of the plan approval application, the owner or operator of the facility shall calculate whether a significant emissions increase and a significant net emissions increase will occur as a result of a physical change or change in the method of operation. The owner or operator of the facility shall use the procedures in subparagraph (i) to calculate the emissions increase in a regulated NSR pollutant due to the project, and the procedures in subparagraph (ii) to calculate the net emissions increase in a regulated NSR pollutant. A project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase and a significant net emissions increase. If the project causes a significant emissions increase, the project is a major modification if it also results in a significant net emissions increase.

(i) The emissions increase in a regulated NSR pollutant due to the project will be the sum of the following:

(A) For existing emissions units, an emissions increase of a regulated NSR pollutant is the difference between the projected actual emissions and the baseline actual emissions for each unit, as determined in paragraphs (4) and (5). **[Exclude, in] When** calculating an increase in emissions that results from the particular project, **exclude** that portion of the unit’s emissions following completion of the project that existing units could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that is also unrelated to the particular project, including all increased utilization due to product demand growth as specified in paragraph (5)(i)(C).

(B) For new emissions units, the emissions increase of a regulated NSR pollutant will be the potential to emit from each new emissions unit.

(ii) The net emissions increase for a regulated NSR pollutant emitted by a major facility will be the amount by which the sum of the following exceeds zero:

(A) The increase in emissions from a physical change or change in the method of operation at a major facility as calculated under subparagraph (i).

(B) Other increases and decreases in actual emissions at the major facility that are contemporaneous with the project and are otherwise creditable.

(I) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date 5 years before construction on the project commences and the date that construction on the project is completed.

(II) Baseline actual emissions for calculating increases are determined as specified under paragraph (4), except that paragraph (4)(i)(D) does not apply.

(2) As part of the plan approval application for a proposed de minimis emission increase, the owner or operator of the facility shall use subparagraphs (i) and (ii) to calculate the net emissions increase. For a proposed de minimis increase in which the net emissions increase calculated using subparagraphs (i) and (ii) meets or exceeds the emissions rate that is significant, only the emissions offset requirements [in § 127.205(3) (relating to special permit requirements)] of this subchapter apply to the net emissions increase.

\* \* \* \* \*

**§ 127.204. Emissions subject to this subchapter.**

(a) In determining whether a project exceeds the emission rate that is significant or the significance levels specified in § 127.203 (relating to facilities subject to special permit requirements), the potential to emit, actual emissions and actual emissions increase shall be determined by aggregating the emissions or emissions increases from contiguous or adjacent properties under the common control of a person or entity. **[This includes] The aggregation shall include** emissions resulting from the following: flue emissions, stack and additional fugitive emissions, material transfer, use of parking lots and paved and unpaved roads on the facility property, storage piles and other emission generating activities resulting from operation of the new or modified facility.

\* \* \* \* \*

§ 127.206. ERC general requirements.

\* \* \* \* \*

(o) An ERC created for a regulated criteria pollutant shall only be used for offsetting or netting an emissions increase involving the same criteria pollutant **except interpollutant offsetting authorized under this subchapter.**

(p) [A] **The owner or operator of a** source or facility which has registered ERCs with the Department may not exceed the emissions limitation or violate other permit conditions established in generating the ERCs.

\* \* \* \* \*

(r) Emission reductions occurring at a facility after [January 1, 2002] **April 5, 2005,** but prior to [May 19, 2007] \_\_\_\_\_ [Editor's note: The blank refers to the effective date of adoption of this proposed rulemaking.], may be used to generate ERCs in accordance with this subchapter, if a complete ERC registry application is submitted to the Department by [May 19, 2008] \_\_\_\_\_ [Editor's note: The blank refers to the date 12 months after the effective date of adoption of this proposed rulemaking.].

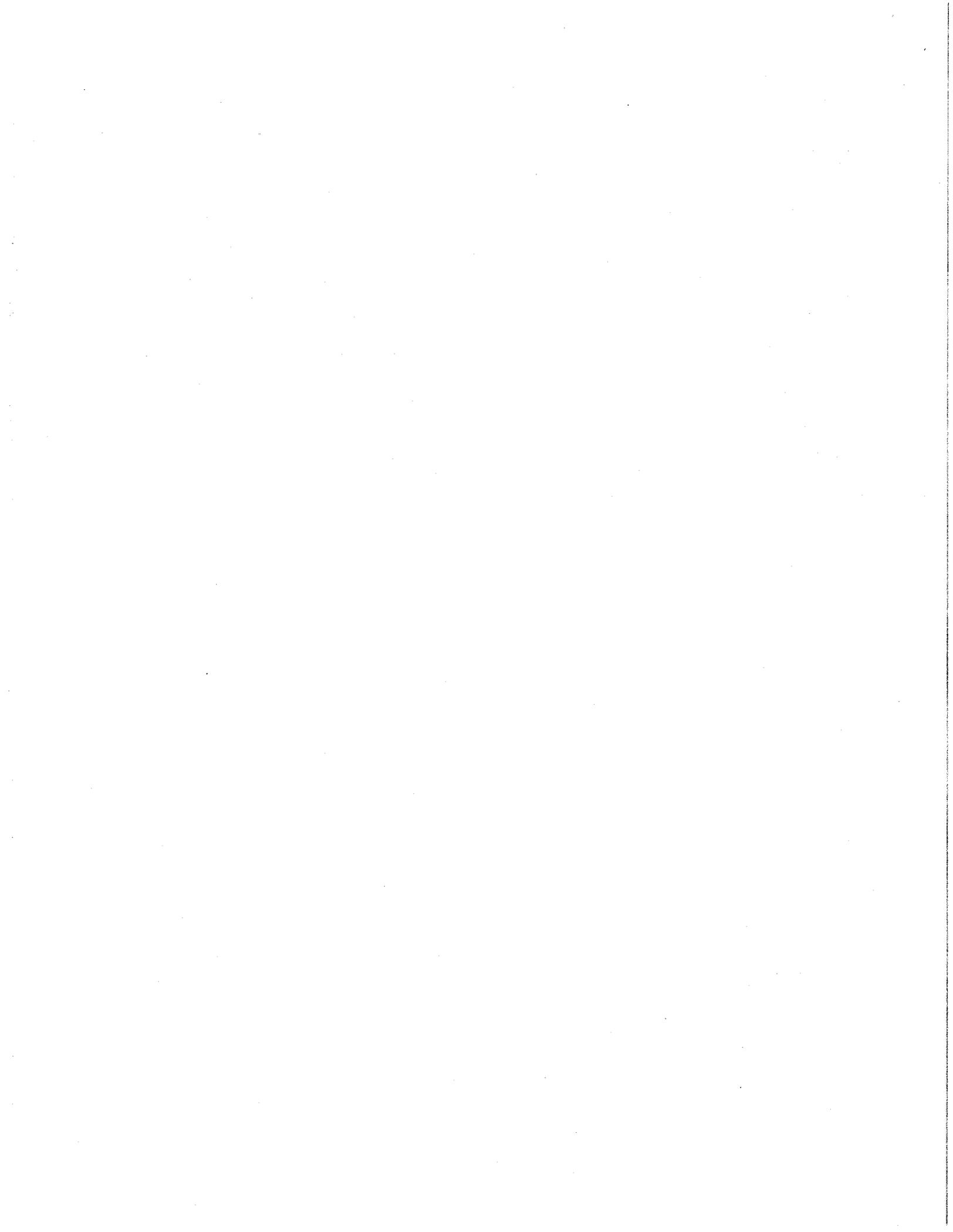
§ 127.210. Offset ratios.

(a) The [emission] **emissions** offset ratios for **NSR purposes and** ERC transactions subject to the requirements of this subchapter shall be in an amount equal to or greater than the ratios specified in the following table:

Required Emission [Reductions From] Offsets For Existing Sources, Expressed in  
Tons per Year

<b>Pollutant/Area</b>	<b>Flue Emissions</b>	<b>Fugitive Emissions</b>
PM-10 and SOx	1.3:1	5:1
Volatile Organic Compounds Ozone Classification Areas Severe Areas Serious Areas Moderate Areas Marginal/Incomplete Data Areas Transport Region	 1.3:1 1.2:1 1.15:1 1.15:1 1.15:1	 1.3:1 1.3:1 1.3:1 1.3:1 1.3:1
NOx Ozone Classification Areas Severe Areas Serious Areas Moderate Areas Marginal/Incomplete Data Areas Transport Region	 1.3:1 1.2:1 1.15:1 1.15:1 1.15:1	 1.3:1 1.2:1 1.15:1 1.15:1 1.15:1
Carbon Monoxide Primary Nonattainment Areas	 1.1:1	 1.1:1
Lead	1.1:1	1.1:1
<u>PM2.5</u> <u>PM2.5 Nonattainment Area</u> <u>PM2.5</u> <u>PM2.5 Precursors</u> <u>SO<sub>2</sub></u> <u>NOx</u> <u>PM2.5 Interpollutant Trading</u> <u>Ratios</u> <u>SO<sub>2</sub></u> <u>NOx</u>	 1:1  1:1 1:1  40:1 200:1	 1:1  1:1 1:1  40:1 200:1

(b) In complying with the emissions offset requirements of this subchapter, the emissions offsets obtained shall be of the same NSR regulated pollutant unless interpollutant offsetting is authorized for a particular pollutant as specified in subsection (a). The offset requirements for PM2.5 emissions or emissions of a PM2.5 precursor may be satisfied by offsetting PM2.5 emissions or emissions of the PM2.5 precursors SO<sub>2</sub> or NOx.





Pennsylvania Department of Environmental Protection

---

Rachel Carson State Office Building  
P.O. Box 2063  
Harrisburg, PA 17105-2063  
January 27, 2010

Policy Office

717-783-8727

Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg, PA 17101

Re: Proposed Rulemaking: New Source Review  
(25 Pa. Code, Chapters 121 and 127)

Dear Mr. Kaufman:

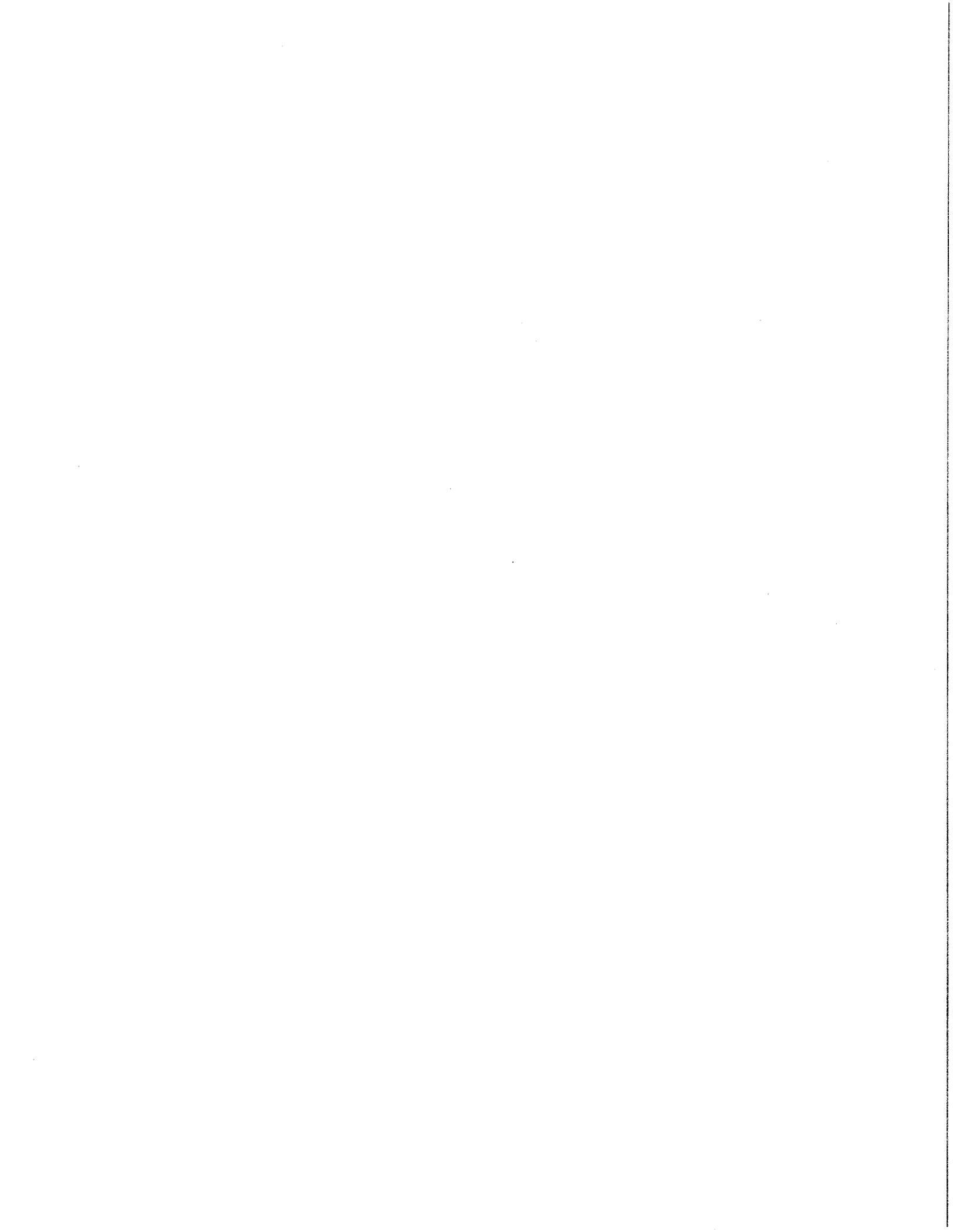
Enclosed is a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission pursuant to Section 5(a) of the Regulatory Review Act. The proposed rulemaking is scheduled for publication in the *Pennsylvania Bulletin* on February 6, 2010, with a 60-day public comment period and three public hearings scheduled in Pittsburgh, Harrisburg, and Norristown. The Environmental Quality Board (EQB) adopted this proposal on November 17, 2009.

This proposed rulemaking includes amendments to existing nonattainment New Source Review requirements at 25 Pa Code Chapters 121 and 127 in order to incorporate recently promulgated Federal requirements for PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors. The amendments would limit the emissions of PM<sub>2.5</sub> and PM<sub>2.5</sub> precursors, including SO<sub>2</sub> and NO<sub>x</sub>, for new major air contamination sources or major air contamination sources being modified in certain counties and portions of counties of the Commonwealth that are designated as nonattainment for the PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS). The following counties or portions thereof have been designated by the EPA as nonattainment for the 2006 fine particulate 24-hour NAAQS: Allegheny, Armstrong, Beaver, Bucks, Butler, Cambria, Chester, Cumberland, Dauphin, Delaware, Greene, Indiana, Lancaster, Lawrence, Lebanon, Lehigh, Montgomery, Northampton, Philadelphia, Washington, Westmoreland and York.

There are approximately 700 major facilities in Pennsylvania that may be subject to the existing NSR rules if major modifications to those facilities are proposed. The majority of those facilities affected by these regulatory changes are already subject to the Commonwealth's existing NSR provisions in Chapter 127; therefore, it is not anticipated that significant additional costs would be incurred by the affected facilities to implement the provisions of this rulemaking. To provide increased flexibility to the owners and operators of sources in the Commonwealth, the rulemaking includes PM<sub>2.5</sub> precursor trading ratios to offset PM<sub>2.5</sub> emission increases in PM<sub>2.5</sub> nonattainment areas.

The Department worked with the Air Quality Technical Advisory Committee (AQTAC) in the development of this proposed rulemaking. At AQTAC's May 28, 2009, meeting, the committee concurred with the Department's recommendation to seek Board approval of the proposed rulemaking.



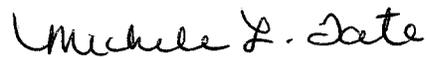


In addition to consultation with AQTAC, the Department presented the proposed rulemaking to the Citizens Advisory Council on July 21, 2009.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(d) of the Regulatory Review Act provides that the Commission may, within 30 days of the close of the comment period, convey its comments, recommendations and objections to the proposed regulation. The Department will consider any comments, recommendation or suggestions made by the Commission, as well as the Committees and public commentators, prior to final adoption of this rulemaking.

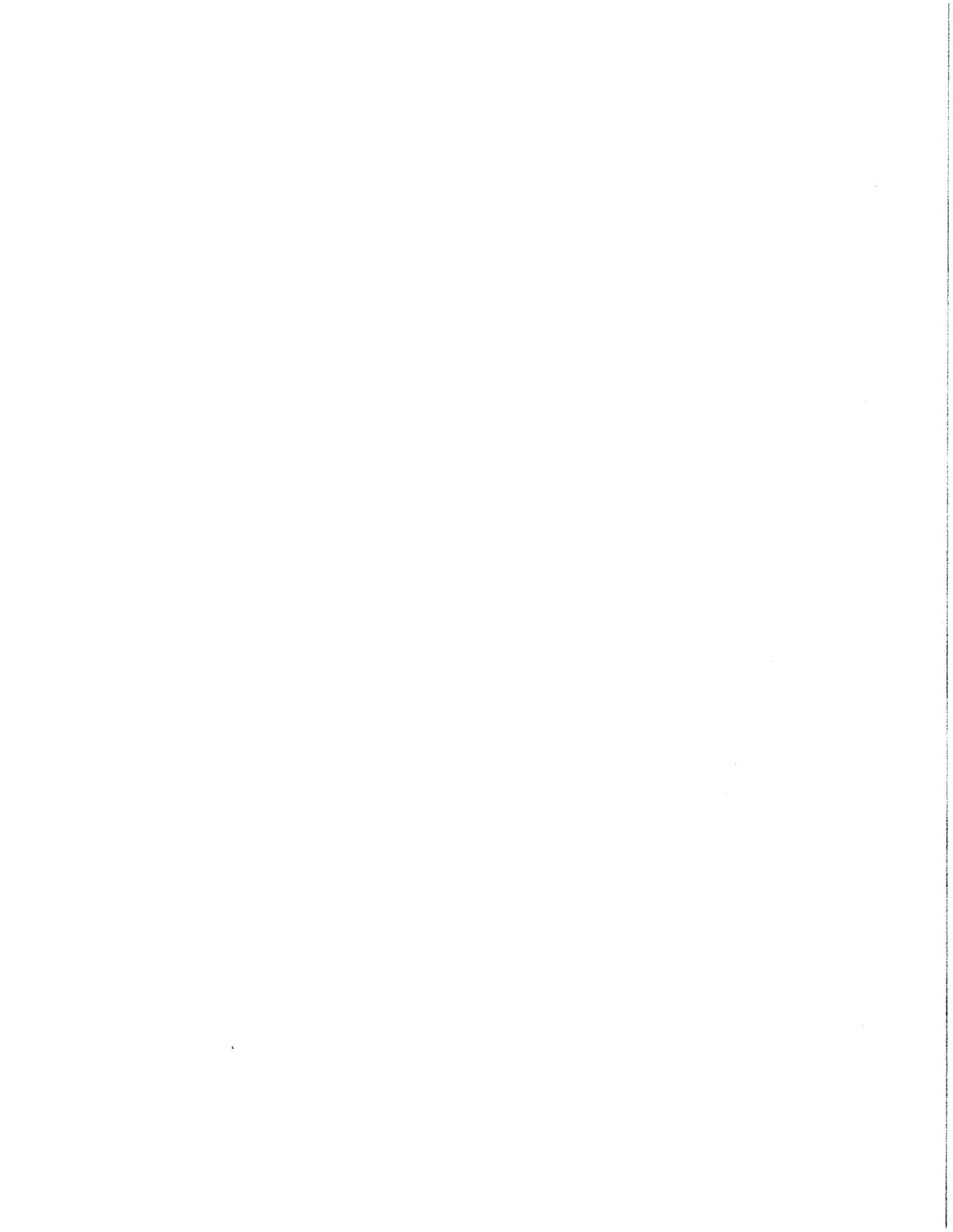
Please contact me at the number above if you have any questions or need additional information.

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: 7-450  
SUBJECT: *new source review*  
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 Tolled Regulation
  - a.  With Revisions
  - b.  Without Revisions

RECEIVED  
 2010 JAN 27 PM 2:16  
 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
<u>1/27/10</u>	<u>A.M. O'Leary</u>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Rep. Camille George</i>
<u>1-27-10</u>	<u>N. Watters</u>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>1-27-10</u>	<u>bcastello</u>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Senator mary jo white</i>
<u>1-27-10</u>	<u>A. Rybergyl</u>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
<u>1/27/10</u>	<u>Kathy Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
<u>1-27-10</u>	<u>Maya Garas</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

