

<h1 style="margin: 0;">Regulatory Analysis Form</h1> <p style="margin: 0;">(Completed by Promulgating Agency)</p> <p style="margin: 0;">(All Comments submitted on this regulation will appear on IRRC's website)</p>	<p>INDEPENDENT REGULATORY REVIEW COMMISSION</p>
<p>(1) Agency Environmental Protection</p>	
<p>(2) Agency Number: 7 Identification Number: 549</p>	<p>IRRC Number: 3215</p>
<p>(3) PA Code Cite: 25 Pa. Code § 127.621(b)</p>	
<p>(4) Short Title: Electronic Submission of Air Quality General Plan Approval and General Operating Permit Applications</p>	
<p>(5) Agency Contacts (List Telephone Number and Email Address):</p> <p>Primary Contact: Laura Edinger, 783-8727, ledinger@pa.gov Secondary Contact: Jessica Shirley, 783-8727, jesshirley@pa.gov</p>	
<p>(6) Type of Rulemaking (check applicable box):</p> <p><input type="checkbox"/> Proposed Regulation <input type="checkbox"/> Final Regulation <input checked="" type="checkbox"/> Final Omitted Regulation</p>	<p><input type="checkbox"/> Emergency Certification Regulation; <input type="checkbox"/> Certification by the Governor <input type="checkbox"/> Certification by the Attorney General</p>
<p>(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)</p> <p>This final-omitted rulemaking adds to 25 Pa. Code § 127.621(b) (relating to application for use of general plan approvals and general operating permits) the option of electronic means for the delivery of applications to the Department of Environmental Protection (the Department) for the use of applicable air quality general plan approvals (GPA) and general operating permits (GP). Currently, § 127.621(b) specifies that the application for the use of an air quality GPA or GP shall be either hand delivered or transmitted by certified mail return receipt requested to the Department. Adding an electronic means of submission will provide flexibility to the regulated community and enhance Department efficiency through the timely processing and potential approval of these air quality GPAs and GPs.</p>	
<p>(8) State the statutory authority for the regulation. Include specific statutory citation.</p> <p>Section 204(3) of the CDL provides that an agency may omit the notice of proposed rulemaking if “the agency for good cause finds... that the public notice and comment procedures specified in sections 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.”</p> <p>Public notice and solicitation of public comments are unnecessary and contrary to the public interest for the amendment included in this final-omitted rulemaking. A public comment period is unnecessary because, the final-omitted rulemaking does not diminish or replace any existing rights under § 127.621(b) related to how an application is required to be submitted; rather, it provides applicants the option of submitting an application for the use of an applicable GPA or GP through electronic means. This additional means of submission is a beneficial expansion of an existing regulatory requirement and</p>	

is supported by the regulated community as providing for a more efficient and effective means of submitting GPA and GP applications. The amendment in this final-omitted rulemaking is solely procedural in nature and does not change any regulatory requirements related to the Department's technical review of these applications or change any other regulatory requirements related to the Department's activities for GPA or GP applications. Therefore, a public comment period is unnecessary.

A public comment period is also contrary to the public interest because it will delay the implementation of the purely beneficial amendment in this final-omitted rulemaking, which authorizes the electronic submission of GPA and GP application to the Department. Providing for electronic submission enables the effective and efficient use of Commonwealth resources. The Department will likely realize savings in costs related to review and issuance of permit applications, as well as postage savings through the reduced use of paper documents. This amendment is also supported by the regulated community because it will result in the expedited review of air quality GPA and GP applications, and result in savings associated with postage costs and hand delivery. This change does not impact the rights of third parties related to a decision on a GPA or GP application. Further, this amendment does not adversely impact the Department's ability to perform its mission of protecting the environment and public health and welfare. Therefore, a public comment period is not in the public interest.

As a result, the use of the final-omitted rulemaking process to amend § 127.621(b) to include electronic means as an option for submitting applications for the use of an applicable air quality GPA or GP is for good cause.

The development and use of a general permit program to regulate air contamination sources is authorized under section 504(d) of the Clean Air Act (CAA) (42 U.S.C.A. § 7661c(d)), and under section 6.1(f) of the Air Pollution Control Act, (APCA) (35 P.S. § 4006.1(f)). This final-omitted rulemaking is also authorized under section 5(a)(1) of the APCA (35 P.S. § 4005(a)(1)), which grants the Environmental Quality Board (Board) the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth; and section 5(a)(8) of the APCA (35 P.S. § 4005(a)(8)), which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the CAA.

(9) 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.

No. This final-omitted rulemaking, which adds the option of electronic submission for the delivery of applications for the use of air quality GPAs and GPs, is not statutorily mandated. However, section 504(d) of the CAA (42 U.S.C.A. § 7661c(d)), and section 6.1(f) of the APCA (35 P.S. § 4006.1(f)), authorize the use of a general permit program to regulate air contamination sources.

(10) 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.

The regulation that governs the process of applying for the use of an applicable air quality GPA and GP specifies that the application shall be either hand delivered or transmitted by certified mail return receipt requested to the Department. See § 127.621(b). The Department is amending § 127.621(b) to include the

use of electronic means as an additional way of delivering an application for the use of an air quality GPA or GP to the Department.

The final-omitted rulemaking does not diminish or replace any existing rights under the regulation related to how an application is required to be delivered, but provides applicants the option of submitting an air quality GPA or GP application through electronic means. This additional means of delivery is a beneficial expansion of an existing regulatory requirement. Further, the amendment does not adversely affect the Department's ability to perform its mission of protecting the environment and public health and welfare. Adding the option of electronic means of delivery is in the public interest because it enables the effective and efficient use of Commonwealth resources. The regulated industry is supportive of this change because it will likely result in the expedited review of GPA and GP applications. This amendment also does not diminish the rights of third parties in any manner.

An owner or operator of a regulated air contamination source or process for which an air quality GPA or GP is available will benefit from this amendment to § 127.621(b) through the opportunity to submit applications for the use of applicable air quality GPAs and GPs by electronic means rather than being limited to hand delivering the application or mailing the application by certified mail with a return receipt requested.

Currently, the Department has developed and issued 19 separate air quality GPAs and GPs that regulate air contamination sources and processes in several industrial categories. The owner or operator of a stationary source proposing to use an applicable GPA or GP is required to notify the Department on a form provided by the Department and receive prior written approval from the Department prior to operating under the applicable GPA or GP. Within the past 5 years, the Department has received and approved 1,922 first-time applications for the use of an applicable air quality GPA or GP and 204 applications for the renewal of the use of a previously approved applicable air quality GPA or GP for a total of 2,126 Department-approved uses of applicable air quality GPAs and GPs. The Department also expects a surge of new applications for the use of a GP for the recently revised GP-5 for compression stations, processing plants, and transmission stations and for the new GP-5a for unconventional natural gas well site operations and remote pigging stations. Adding the option for electronic means of delivery is expected to greatly enhance Department efficiency by enabling faster review of these permit applications. Faster review and decision-making related to applications for the use of applicable air quality GPAs and GPs will benefit the regulated industry by facilitating timely implementation of the permitted activities.

(11) 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.

Section 504(d) of the CAA (42 U.S.C.A. § 7661c(d)) authorizes the use of a general permit program to regulate air contamination sources as long as any general permit complies with all requirements applicable to permits under sections 501—507 of the CAA (42 U.S.C.A. §§ 7661—7661f). The Department's air quality GPA and GP program was established in 25 Pa. Code Chapter 127, Subchapter H (relating to general plan approvals and operating permits) in 1994 at 24 Pa.B. 5899 (November 26, 1994). Chapter 127, Subchapter H was approved into the Commonwealth's State Implementation Plan, effective August 29, 1996. See 61 FR 39594 (July 30, 1996).

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

This final-omitted rulemaking amendment will not adversely affect Pennsylvania's ability to compete with other states. This final omitted rulemaking simply adds the option to submit applications for the use of air quality GPAs and GPs by electronic means in addition to hand delivery or certified mail with return receipt requested. This amendment may improve Pennsylvania's ability to attract businesses by making the Pennsylvania GPA and GP application process faster and easier. States that allow for the electronic submission of air quality permit applications include – Arizona, Arkansas, Florida, Georgia, Hawaii, Massachusetts, Minnesota, New Hampshire, New Jersey, Ohio, Oklahoma, Texas, West Virginia, and Wyoming.

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

No other regulations promulgated by this agency or other state agencies are affected.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

This final-omitted rulemaking was discussed with, and received the support of, the Air Quality Technical Advisory Committee (AQTAC) on June 14, 2018, the Small Business Compliance Advisory Committee (SBCAC) on July 25, 2018 and the Citizens Advisory Council (CAC) Policy and Regulatory Oversight Committee on June 15, 2018. The CAC Policy and Regulatory Oversight Committee briefed the members of the CAC on June 19, 2018. The CAC provided the Board with a letter of concurrence supporting the final-omitted amendment, but included a comment suggesting that the Board consider revising the regulatory language to include the option for the use of 'reputable express service providers.' See June 19, 2018, letter from Donald S. Welsh, Chair, CAC, to Patrick McDonnell, Secretary, DEP and Chairperson of the Board. The Department appreciates the comment and will take it under advisement for consideration for future rulemakings.

The AQTAC, SBCAC, and CAC meetings are advertised and open to the public.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

A GPA is a pre-approved plan approval and a GP is a pre-approved operating permit which applies to a specific class of sources or processes that can be built and operated using standardized specifications and conditions. This final-omitted rulemaking applies to any owner or operator of a regulated air contamination source or process for which an air quality GPA or GP is available under Chapter 127, Subchapter H, that meets the conditions for applying for the GPA or GP. Currently, the Department has developed and issued 19 separate air quality GPAs and GPs that regulate various types of air contamination sources and processes in several industrial categories, including small boilers, burn off ovens, lithographic printing presses, mineral processing, storage tanks for volatile organic liquids, powder metal sintering furnaces, natural gas production, pharmaceutical and specialty chemical production, and petroleum dry cleaning. The complete list of sources and processes for which air quality GPAs and GPs are available is posted on

the Department's web site at

<http://www.dep.pa.gov/Business/Air/BAO/Permits/Pages/GeneralPermits.aspx>.

The owner or operator of a regulated source proposing to use an applicable air quality GPA or GP is required to notify the Department on a form provided by the Department and receive prior written approval from the Department prior to operating under the applicable GPA or GP. Within the past 5 years, the Department has received and approved 1,922 first-time applications for the use of an applicable air quality GPA or GP and 204 applications for the renewal of the use of a previously approved use of an applicable air quality GPA or GP for a total of 2,126 Department-approved uses of applicable GPAs and GPs. Air quality GP-5 for compression stations, processing plants, and transmission stations is probably the most used by industry out of the 19 available air quality GPAs and GPs. Of the total 2,126 air quality GPAs and GPs approved by the Department for use by the applicant over the past 5 years, there have been 408 first-time applications to use GP-5 and 66 applications for the renewal of the use of GP-5. The Department expects a surge of new applications for the use of a GP for the recently revised GP-5 for compression stations, processing plants, and transmission stations and the new GP-5a for unconventional natural gas well site operations and remote pigging stations.

This final-omitted rulemaking amendment is expected to be noncontroversial and cost-neutral to the regulated industry. The regulated industry will benefit from this amendment to § 127.621(b) through the opportunity to submit applications for air quality GPAs and GPs by electronic means rather than being limited to hand delivering the application or mailing the application by certified mail with a return receipt requested.

Adding the option for electronic submission is expected to greatly enhance Department efficiency by enabling faster review of these permit applications. Faster review and decision-making related to applications for new and renewed air quality GPAs and GPs will benefit the regulated industry by facilitating timely implementation of the permitted activities.

A GPA is a pre-approved plan approval and a GP is a pre-approved operating permit which applies to a specific class of sources or processes that can be built and operated using standardized specifications and conditions. If a source or process can be regulated using an air quality GPA or GP, then any person or business is eligible to apply for and use the applicable GPA or GP. As a result, this final-omitted rulemaking could impact any business (irrespective of size) in Pennsylvania. However, this final-omitted rulemaking is noncontroversial and cost-neutral and all persons, businesses, and small businesses eligible to apply for and use an air quality GPA or GP will benefit from the addition of the option to electronically submit applications for air quality GPAs and GPs.

Further, no new legal, accounting, recordkeeping and reporting, or consulting procedures will be required.

(16) List the persons, groups or entities, including small businesses, which will be required to comply with the regulation. Approximate the number that will be required to comply.

Currently, the Department has developed and issued 19 separate air quality GPAs and GPs that regulate various types of air contamination sources and processes in several industrial categories, including small boilers, burn off ovens, lithographic printing presses, mineral processing, storage tanks for volatile organic liquids, powder metal sintering furnaces, natural gas production, pharmaceutical and specialty chemical production, and petroleum dry cleaning.

Within the past 5 years, the Department has received and approved 1,922 first-time applications for the use of an applicable air quality GPA or GP and 204 applications for the renewal of the use of a previously approved use of an applicable air quality GPA or GP for a total of 2,126 Department-approved uses of applicable air quality GPAs and GPs. If a source or process can be regulated using an air quality GPA or GP, then any person or business (irrespective of size) is eligible to apply for and use the applicable GPA or GP. As a result, this final-omitted rulemaking could impact any business in Pennsylvania.

Affected persons will have the option to submit electronic applications for first-time use of an applicable air quality GPA or GP and for renewed use of previously approved air quality GPAs and GPs in addition to the existing regulatory options of hand delivering the application or mailing the application by certified mail with a return receipt requested. The addition of the option to submit applications by electronic means is a beneficial expansion of an existing regulatory requirement.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

This final-omitted rulemaking amendment is expected to be noncontroversial and cost-neutral to the regulated industry. The regulated industry will benefit from this amendment to § 127.621(b) through the opportunity to submit applications for the use of applicable air quality GPAs and GPs by electronic means rather than being limited to hand delivering the application or mailing the application by certified mail with a return receipt requested. Additionally, the regulated community requested that electronic submission of air quality GPA and GP applications become an available option.

Adding the option for electronic submission is expected to greatly enhance Department efficiency by enabling faster review and decisions related to these applications for the use of an applicable air quality GPA or GP. Faster review and potential issuance of new and renewed air quality GPAs and GPs will benefit the regulated industry by facilitating timely implementation of the permitted activities.

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

Adding the option for electronic submission is expected to greatly enhance Department efficiency by enabling faster review and decisions related to these applications for the use of an applicable air quality GPA or GP. Faster review and potential approval of these applications will benefit the regulated industry by facilitating timely implementation of the permitted activities. The Department does not anticipate any costs or adverse effects associated with this final-omitted rulemaking. The addition of the option to submit applications by electronic means is a beneficial expansion of an existing regulatory requirement.

(19) 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.

This final-omitted rulemaking amendment is expected to be cost-neutral or produce savings to affected entities. Submission of applications by electronic means is expected to be less costly than using the hand delivery or certified mail with return receipt requested options. An entity that already has a computer system for business purposes will be able to use the computer system to access and complete the application for the use of an applicable air quality GPA or GP online. The time and resources spent to fill out the application will be the same whether it is completed online electronically or a paper copy is

completed. The savings will accrue from the difference in cost to submit the completed application online versus hand delivering a paper copy to a regional DEP office or mailing a paper copy by certified mail with return receipt requested, multiplied by how many applications an entity submits in a year.

Regulated entities that operate air contamination sources permitted under air quality GPAs and GPs that choose to submit their applications for the use of an applicable air quality GPA or GP by electronic means may experience savings in postage, fuel, and staff time spent on hand delivering paper applications to Department offices or mailing the paper applications by certified mail with a return receipt requested. A specific estimate of savings to regulated entities depends on how many applications an entity submits via hand delivery or certified mail with return receipt requested. Once the option for a Department-authorized electronic means of submission is available, an applicant will have a choice of three methods for delivery of an application.

New legal, accounting, recordkeeping and reporting, or consulting procedures will not be required.

(20) 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.

This final-omitted rulemaking amendment is expected to be cost-neutral or produce savings to affected entities. Submission of applications by electronic means is expected to be less costly than using the hand delivery or certified mail with return receipt requested options. An entity that already has a computer system for business purposes will be able to use the computer system to access and complete the application for the use of an applicable air quality GPA or GP online. The time and resources spent to fill out the application will be the same whether it is completed online electronically or a paper copy is completed. The savings will accrue from the difference in cost to submit the completed application online versus hand delivering a paper copy to a regional DEP office or mailing a paper copy by certified mail with return receipt requested, multiplied by how many applications an entity submits in a year. Local governments that operate air contamination sources permitted under air quality GPAs and GPs that choose to submit their applications for the use of an applicable air quality GPA or GP by electronic means may experience savings in postage, fuel, and staff time spent on hand delivering paper applications to Department offices or mailing the paper applications by certified mail with a return receipt requested. A specific estimate of savings to local governments is not feasible, since the costs depend on how many applications an entity submits via hand delivery or certified mail with return receipt requested. Once the option for a Department-authorized electronic means of submission is available, a local government applicant will have a choice of three methods for delivery of an application.

New legal, accounting, recordkeeping and reporting, or consulting procedures will not be required.

(21) 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.

Adding the option for electronic submission of applications for the use of applicable air quality GPAs and GPs is expected to greatly enhance Department efficiency by enabling faster review and decisions related to these permit applications. The Department will also likely realize savings in staff and resource costs related to review and approval of these applications, as well as postage savings from not mailing the approval notice to the applicant. A specific estimate of savings to state government is not feasible, since

that would be based on how many applications an entity submits via hand delivery or certified mail with return receipt requested. Once the option for a Department-authorized electronic means of submission is available, an applicant will have a choice of three methods for delivery of an application. However, it is presumed that industry will avail itself of the electronic submission method more frequently than the other options, because industry has been supportive of this final-omitted rulemaking.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

No additional legal, accounting, recordkeeping and reporting, or consulting procedures are required for the groups identified in the responses to Questions #19-21 above.

(22a) Are forms required for implementation of the regulation?

No new forms are required to implement the regulation. Paper forms currently exist that are used to apply for the use of applicable air quality GPAs and GPs. These forms will be made available electronically in addition to paper format.

(22b) If forms are required for implementation of the regulation, attach copies of the forms here. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.

Not applicable, because no new forms are required.

(23) 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 18/19	FY+1 Year 19/20	FY+2 Year 20/21	FY+3 Year 21/22	FY+4 Year 22/23	FY+5 Year 23/24
SAVINGS:	\$	\$	\$	\$	\$	\$

The Department anticipates that affected entities will accrue savings, but a specific estimate is not available, since that would be based on how many applications an entity submits via hand delivery or certified mail with return receipt requested. Once the option for a Department-authorized electronic means of submission is available, an applicant will have a choice of three methods for delivery of an application. However, it is presumed that industry will avail itself of the electronic submission method more frequently than the other options, because industry has been supportive of this final-omitted rulemaking.

Regulated Community						
Local Government						
State Government						

Public Consumers						
Total Savings						
COSTS:	\$	\$	\$	\$	\$	\$
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
Public Consumers	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

(23a) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY-3 (15/16)	FY-2 (16/17)	FY-1 (17/18)	Current FY (18/19)
Environmental Program Management (161-10382)	\$28,277,000	\$26,885,000	\$29,413,000	\$30,932,000
Clean Air Fund Major Emission Facilities (215-20077)	\$17,373,000	\$16,931,000	\$16,358,000	\$17,878,000
Clean Air Fund Mobile and Area Facilities (233-20084)	\$10,142,000	\$8,228,000	\$8,078,000	\$9,369,000

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

(a) An identification and estimate of the number of small businesses subject to the regulation.

This final-omitted rulemaking is not expected to have an adverse impact on small businesses. The addition of the option to submit applications for the use of applicable air quality GPAs and GPs by electronic means is a beneficial expansion of an existing regulatory requirement and is expected to be cost-neutral.

(b) The projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.

There are no projected reporting, recordkeeping, or other administrative costs required for compliance with this final-omitted rulemaking. The type of professional skills necessary for preparation and submission of the electronic application are the same as businesses currently exercise.

(c) A statement of probable effect on impacted small businesses.

Implementation of this final-omitted rulemaking amendment should have no adverse economic impact on the owners and operators of affected small business-sized air contamination sources and processes. The addition of the option to submit applications for the use of applicable air quality GPAs and GPs by electronic means is a beneficial expansion of an existing regulatory requirement and is expected to be cost neutral.

(d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

There are no less intrusive or less costly alternative methods available. The addition of the option to submit applications for the use of applicable air quality GPAs and GPs by electronic means is a beneficial expansion of an existing regulatory requirement. Moreover, the regulated industry is supportive of this change, because it will likely result in the expedited review and approval of these applications.

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

Minorities, the elderly, small businesses, and farmers who are not owners or operators of a regulated air contamination source or process for which an air quality GPA or GP may be issued will not be adversely affected by this final-omitted rulemaking. For those that might be owners or operators that would apply for the use of an applicable air quality GPA or GP to operate a regulated air contamination source or process, no special provisions are necessary. The addition of the option to submit applications for the use of applicable air quality GPAs and GPs by electronic means is a beneficial expansion of an existing regulatory requirement and is expected to be cost-neutral.

(26) 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.

No alternative regulatory provisions were considered. The addition of the option to submit applications for the use of applicable air quality GPAs and GPs by electronic means is a beneficial expansion of an existing regulatory requirement.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

(a) The establishment of less stringent compliance or reporting requirements for small businesses.

No adverse impact on small businesses is expected from this final-omitted rulemaking. The addition of the option to submit applications for the use of applicable air quality GPAs and GPs by electronic means is a beneficial expansion of an existing regulatory requirement and is expected to be cost-neutral.

(b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

Less stringent schedules or deadlines are not needed. The addition of the option to submit applications for the use of applicable air quality GPAs and GPs by electronic means is a beneficial expansion of an existing regulatory requirement. Implementing this amendment as quickly as possible will provide flexibility to the regulated community and enhance Department efficiency through the timely processing and potential approval of these applications for the use of air quality GPAs and GPs.

(c) The consolidation or simplification of compliance or reporting requirements for small businesses.

No consolidation or simplification of compliance or reporting requirements for small business is necessary. The addition of the option to submit applications for the use of applicable air quality GPAs and GPs by electronic means is a beneficial expansion of an existing regulatory requirement. Affected small business owners and operators will have the option to submit an application by electronic means rather than being limited to delivery of the application to the Department by hand delivery or mailing by certified mail with return receipt requested.

(d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation.

The establishment of performance standards for small businesses is not necessary. The addition of the option to submit applications for the use of applicable air quality GPAs and GPs by electronic means is a beneficial expansion of an existing regulatory requirement. This final-omitted rulemaking amendment to § 127.621(b), if promulgated, will provide flexibility in submitting applications for the use of applicable air quality GPAs and GPs by adding the option to submit the application through electronic means.

(e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

An exemption of small business owners and operators is not necessary. The addition of the option to submit applications for the use of applicable air quality GPAs and GPs by electronic means is a beneficial expansion of an existing regulatory requirement for the owners and operators of regulated air contamination sources that may qualify to apply for and use an air quality GPA or GP.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Data was not the basis for this regulation.

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

- A. The length of the public comment period: NA
- B. The dates on which public meetings or hearings were held: NA
- C. The expected date of delivery of the final-omitted regulation: 3rd Quarter 2018
- D. The expected effective date of the final-omitted regulation: Upon publication in the Pennsylvania Bulletin as a final-omitted rulemaking.
- E. The date by which compliance with the final-omitted regulation will be required: NA
- F. The date by which required permits, licenses or other approvals must be obtained: NA

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board is not establishing a sunset date for this final-omitted regulation, since it is needed for the Department to carry out its statutory authority. The Department will closely monitor this final-omitted rulemaking after promulgation for its effectiveness and recommend updates to the Board as necessary.

Air Quality Technical Advisory Committee

to the Pennsylvania Department of Environmental Protection

PO Box 8468

Harrisburg, PA 17105-8468

June 14, 2018

Honorable Patrick McDonnell
Secretary
Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: Final-omitted Rulemaking for the Electronic Submission of Air Quality General Plan Approval and General Operating Permit Applications (25 Pa. Code Chapter 127, Subchapter H)

Dear Secretary McDonnell:

On June 14, 2018, the Air Quality Technical Advisory Committee (Committee) discussed the final-omitted rulemaking for electronic submission of air quality general plan approvals (GPA) and general operating permits (GP). Currently, 25 Pa. Code § 127.621(b) (relating to application for use of general plan approvals and general operating permits) specifies that the application for an air quality GPA or GP shall be either hand delivered or transmitted by certified mail return receipt requested to the Department.

This final-omitted rulemaking amends § 127.621(b) to add the option of electronic means as authorized by the Department as another method for the delivery of applications for air quality GPAs and GPs. Adding an electronic means of submission as authorized by the Department will provide flexibility to the regulated community and enhance Department efficiency through the timely processing and potential issuance of these air quality GPAs and GPs. This additional means of submission is a beneficial expansion of an existing regulatory requirement.

The Committee voted 9-0-0 to concur with the Department's recommendation to present the final-omitted rulemaking amendments to the Environmental Quality Board for consideration for adoption and publication as a final rulemaking.

Sincerely,



Patrick K. O'Neill Esq.
Chair

Hon. Patrick McDonnell

2

June 14, 2018

cc: Krishnan Ramamurthy, Director, PA DEP BAQ
Kirit Dalal, PA DEP BAQ
Susan Hoyle, PA DEP BAQ



June 19, 2018

Allegheny County
Cynthia Carrow
John J. Walliser, Esq

Bedford County
William Fink

Chester County
Donald S. Welsh

Cumberland County
Duane E. Mowery
James Welty
R. Timothy Weston, Esq

Delaware County
James A. Schmid

Fayette County
John R. Over, Jr.

Greene County
Terry L. Dayton

Indiana County
John St. Clair

Lancaster County
James Sandoe

Philadelphia County
David Dunphy
Jerome Shabazz

Tioga County
Thaddeus K. Stevens

Washington County
Mark Caskey

Secretary Patrick
McDonnell, Ex-officio

Honorable Patrick McDonnell
Secretary
Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: Draft Air Quality Final-Omitted Rulemaking: Electronic Submission of
General Permit Applications (25 Pa. Code Chapter 127)

Dear Secretary McDonnell:

On June 19, 2018, the Citizens Advisory Council ("CAC" or "Council") discussed the draft final-omitted rulemaking Annex A to amend 25 Pa. Code Chapter 127 (relating to general plan approvals and operating permits). The draft Annex A adds a phrase to § 127.621, which provides for general plan approvals and general permits for stationary sources, to allow the Department to accept electronic applications.

While the CAC certainly supports expedited adoption of language allowing for electronic submission of applications, it also recommends that the Department and Environmental Quality Board consider amending §127.261 (and other regulatory sections providing for submission of various types of applications) to allow for submission of hard copies via reputable express services. The current language suggests that applications can only be received "by hand" or by "certified mail." The fact is that a number of applications are submitted via services such as Federal Express and UPS, and the current rule language might be misread to indicate that if materials are received in this fashion, the applications are defective. Reflecting common practice, all sections that provide for application submission should allow for submission via reputable express service providers.

At the meeting on June 19, 2018, the Council voted to concur with the Department's recommendation to present the final-omitted rulemaking to the Environmental Quality Board for consideration and adoption, with the suggested amendment noted above.

Sincerely,

A handwritten signature in cursive script that reads "Donald S. Welsh".

Donald S. Welsh, Chair
Citizens Advisory Council

cc: Krishnan Ramamurthy, Director, PA DEP BAQ
Kirit Dalal, PA DEP BAQ
Viren Trivedi, PA DEP BAQ
Susan Hoyle, PA DEP BAQ
Elizabeth Davis, PA DEP BRC

Small Business Compliance Advisory Committee

to the Pennsylvania Department of Environmental Protection

PO Box 8468

Harrisburg, PA 17105-8468

July 25, 2018

Honorable Patrick McDonnell
Secretary
Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: Final-omitted Rulemaking for the Electronic Submission of Air Quality General Plan Approval and General Operating Permit Applications (25 Pa. Code Chapter 127, Subchapter H)

Dear Secretary McDonnell:

On July 25, 2018, the Small Business Compliance Advisory Committee (Committee) discussed the final-omitted rulemaking for electronic submission of air quality general plan approvals (GPA) and general operating permits (GP). Currently, 25 Pa. Code § 127.621(b) (relating to application for use of general plan approvals and general operating permits) specifies that the application for an air quality GPA or GP shall be either hand delivered or transmitted by certified mail return receipt requested to the Department.

This final-omitted rulemaking amends § 127.621(b) to add the option of electronic means as authorized by the Department as another method for the delivery of applications for air quality GPAs and GPs. Adding an electronic means of submission as authorized by the Department will provide flexibility to the regulated community and enhance Department efficiency through the timely processing and potential issuance of these air quality GPAs and GPs. This additional means of submission is a beneficial expansion of an existing regulatory requirement.

The Committee voted 4-0-0 to concur with the Department's recommendation to present the final-omitted rulemaking amendments to the Environmental Quality Board for consideration for adoption and publication as a final rulemaking.

Sincerely,



Dale I. Kaplan
Chair

cc: Krishnan Ramamurthy, Director, PA DEP BAQ
Susan Hoyle, PA DEP BAQ
Susan Foster, PA DEP BAQ
Nancy Herb, PA DEP BAQ

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE
BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

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. 7-549

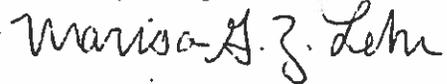
DATE OF ADOPTION AUGUST 21, 2018

By: 

TITLE PATRICK MCDONNELL
CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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

BY 

SEP 06 2018
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-OMITTED RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD

Electronic Submission of Air Quality General Plan Approval
and General Operating Permit Applications

25 Pa. Code Chapter 127

**NOTICE OF FINAL-OMITTED RULEMAKING
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ENVIRONMENTAL QUALITY BOARD**

[25 PA CODE CH. 127]

**Electronic Submission of Air Quality General Plan Approval
and General Operating Permit Applications**

The Environmental Quality Board (Board) amends Chapter 127 (relating to construction, modification, reactivation and operation of sources), Subchapter H (relating to general plan approvals and operating permits) to include electronic means as an option for submitting applications to the Department of Environmental Protection (the Department) for the use of air quality general plan approvals (GPA) and general operating permits (GP). This amendment is made to § 127.621(b) (relating to application for use of general plan approvals and general operating permits). Notice of proposed rulemaking is omitted under section 204(3) of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204(3)), known as the Commonwealth Documents Law (CDL).

Section 204(3) of the CDL provides that an agency may omit the notice of proposed rulemaking if “the agency for good cause finds... that the public notice and comment procedures specified in sections 201 and 202 are in the circumstances impracticable, unnecessary, or contrary to the public interest.”

Public notice and solicitation of public comments are unnecessary and contrary to the public interest for the amendment included in this final-omitted rulemaking. A public comment period is unnecessary because, the amendment in this final-omitted rulemaking does not diminish or replace any existing rights under § 127.621(b) related to how an application is required to be submitted; rather, the amendment provides applicants with the additional option of submitting an application for the use of an applicable GPA or GP through electronic means. This additional means of submission is a beneficial expansion of an existing regulatory requirement and is supported by the regulated community as providing for a more efficient and effective means of submitting GPA and GP applications. The amendment in this final-omitted rulemaking is solely procedural in nature and does not change any regulatory requirements related to the Department’s technical review of these applications or change any other regulatory requirements related to the Department’s activities for GPA or GP applications. Therefore, a public comment period is unnecessary.

A public comment period is also contrary to the public interest because it will delay the implementation of the purely beneficial amendment in this final-omitted rulemaking, which authorizes the electronic submission of GPA and GP application to the Department. Providing for electronic submission enables the effective and efficient use of Commonwealth resources. The Department will likely realize savings in costs related to review and issuance of permit applications, as well as postage savings through the reduced use of paper documents. This amendment is also supported by the regulated community because it will result in the expedited review of air quality GPA and GP applications, and result in savings associated with postage costs and hand delivery. This change does not impact the rights of third parties related to a decision on a GPA or GP application. Further, this amendment does

not adversely impact the Department's ability to perform its mission of protecting the environment and public health and welfare. Therefore, a public comment period is not in the public interest.

As a result, the Board finds that the use of the final-omitted rulemaking process to amend § 127.621(b) to include electronic means as an option for submitting applications for the use of an applicable air quality GPA or GP is for good cause.

This final-omitted rulemaking was adopted by the Board at its meeting of August 21, 2018.

A. *Effective Date*

This final-omitted rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Viren Trivedi, Chief, Division of Permits, Bureau of Air Quality, Rachel Carson State Office Building, P.O. Box 8468, Harrisburg, PA 17105-8468, (717) 717-783-9476; or Robert "Bo" Reiley, Assistant Director, Bureau of Regulatory Counsel, Rachel Carson State Office Building, P.O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-omitted rulemaking is available on the Department's web site at www.dep.pa.gov (select "Public Participation," then "Environmental Quality Board (EQB)").

C. *Statutory Authority*

This final-omitted rulemaking is made under the authority of section 6.1(f) of the Air Pollution Control Act (APCA) (35 P.S. § 4006.1(f)) and section 504(d) the Clean Air Act (CAA), (42 U.S.C.A. § 7661c(d)), which authorize the establishment of a general permit program to regulate air contamination sources. This final-omitted rulemaking is also authorized under section 5(a)(1) of the 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; and section 5(a)(8) of the APCA (35 P.S. § 4005(a)(8)), which grants the Board the authority to adopt rules and regulations designed to implement the provisions of the CAA.

D. *Background and Purpose*

The Department's air quality GPA and GP program was established in Chapter 127, Subchapter H in 1994 at 24 Pa.B. 5899 (November 26, 1994). This program was subsequently approved by the U.S. Environmental Protection Agency as part of Pennsylvania's State Implementation Plan. See 61 FR 39594 (July 30, 1996). The regulations under this program limit the submission of an air quality GPA or GP application to either hand delivery or certified mail return receipt requested. See § 127.621(b).

In 1999, the Pennsylvania Electronic Transactions Act, the act of December 16, 1999 (P.L. 971, No. 69) (Act 69) was enacted which allows Commonwealth government agencies to accept

electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use and rely upon electronic records and electronic signatures. See 73 P.S. § 2260.502. Since the passage of Act 69, electronic means of delivery is becoming the norm within the Department because it reduces errors, improves processing and review times, and allows for electronic payment of fees.

This final-omitted rulemaking amends § 127.621(b) to include the use of electronic means as an additional way of submitting an air quality GPA or GP application to the Department.

Currently, the Department has 19 air quality GPAs and GPs that regulate air contamination sources in several industrial categories. These air quality GPAs and GPs are available for use to an applicant who demonstrates to the Department that their operations can be regulated through an applicable air quality GPA or GP. Within the past 5 years, the Department has issued 1,922 new authorizations to use an applicable air quality GPA or GP and 204 renewals for a total issuance of 2,126 authorizations to use applicable air quality GPAs and GPs. Adding the option for electronic means of application delivery is expected to enhance Department efficiency by enabling more timely review of these general plan approval and general permit applications.

This final-omitted rulemaking was discussed with, and received the support of, the Air Quality Technical Advisory Committee (AQTAC) on June 14, 2018; the Small Business Compliance Advisory Committee (SBCAC) on July 25, 2018; and the Citizens Advisory Council (CAC) Policy and Regulatory Oversight Committee on June 15, 2018. The Policy and Regulatory Oversight Committee briefed the members of the CAC on June 19, 2018. The CAC provided the Board with a letter of concurrence supporting the final-omitted amendment, but included a comment suggesting that the Board consider revising the regulatory language to include the option for the use of ‘reputable express service providers.’ See June 19, 2018, letter from Donald S. Welsh, Chair, CAC, to Patrick McDonnell, Secretary, DEP and Chairperson of the Board. The Board appreciates the comment and will take it under advisement for consideration for a future rulemaking.

The AQTAC, SBCAC and CAC meetings are advertised and open to the public.

E. Summary of the Final-Omitted Rulemaking

Subsection 127.621(b) is amended to establish that the application required by this section shall be hand delivered, transmitted by certified mail return receipt requested or submitted electronically.

F. Benefits, Costs and Compliance

Benefits

An owner or operator of a regulated air contamination source or process for which an air quality GPA or GP is available will benefit from this amendment to § 127.621(b) through the opportunity to submit applications for the use of an applicable air quality GPA or GP by

electronic means authorized by the Department rather than being limited to hand delivering the application or mailing the application by certified mail with a return receipt requested.

Further, adding the option for electronic means of application delivery is expected to enhance Department efficiency by enabling faster review of these general plan approval and general permit applications. Faster review may also benefit the regulated industry by facilitating timely implementation of the approved permitted activities.

Compliance Costs

This amendment is expected to be noncontroversial and cost-neutral to the regulated industry. As noted above, the regulated industry will benefit from this amendment to § 127.621(b) through the opportunity to submit applications for the use of applicable air quality GPAs and GPs by electronic means authorized by the Department rather than being limited to hand delivering the application or mailing the application by certified mail with a return receipt requested.

A specific estimate of the savings to the regulated industry is not feasible because an applicant can currently choose between hand delivery and certified mail with return receipt requested options for submitting an application for an air quality GPA or GP. When the option for a Department-authorized electronic means of submission is available, an applicant will have a choice of three methods for delivery of an application. The regulated industry may experience savings in postage, fuel and staff time spent on hand delivering applications to Department offices or mailing the applications by certified mail return receipt requested versus staff time spent on filing the application electronically.

Adding the option for electronic submission of applications for the use of air quality GPAs and GPs is expected to greatly enhance Department efficiency by enabling faster review and decision-making related to these general plan approval and general permit applications. The Department will also likely realize savings in costs related to review and issuance of permit applications, as well as postage savings through the reduced use of paper documents. Additionally, support staff assistance will no longer be needed to handle paper files, which will also reduce costs.

New legal, accounting, recordkeeping and reporting, or consulting procedures will not be required.

Compliance Assistance Plan

The Department does not anticipate that compliance assistance will be required, as this final-omitted rulemaking provides the option under § 127.621(b) for the regulated industry to use electronic means authorized by the Department to submit applications for the use of air quality GPAs and GPs as an additional delivery method. Most regulated entities already use computer and electronic recordkeeping methods and have the technical capacity to implement this option. The Department will, however, answer questions and provide guidance as needed through the Department's ongoing compliance assistance program.

Paperwork Requirements

This final-omitted rulemaking does not require additional paperwork or forms.

G. 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 requirements. Implementation of this final-omitted rulemaking may reduce paper waste by allowing applicants to submit applications for the use of air quality GPAs and GPs by electronic means authorized by the Department rather than submitting paper copies by hand delivery or certified mail with return receipt requested. Reductions in vehicle tailpipe emissions may be a cobenefit as well because this regulation provides an additional option that does not involve travelling to a Department office to hand deliver an application.

H. Sunset Review

The Board is not establishing a sunset date for these regulations since they are needed for the Department to carry out its statutory authority. The Department will continue to closely monitor these regulations for their effectiveness and recommend updates to the Board as necessary.

I. Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), on September 14, 2018, the Department submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P.S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on DATE, 2018, the final-omitted rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on DATE, 2018, and approved the final-omitted rulemaking.

J. Findings

The Board finds that:

(1) The amendments are appropriate to implement the Air Quality General Plan Approvals and General Permits Application Program.

(2) Use of the omission of notice of proposed rulemaking procedure is appropriate because the proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P.S. §§ 1201 and 1202) are, in this instance, unnecessary and contrary to the public interest.

(3) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in section C of this preamble and in the public interest.

K. Order

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

(a) The regulations of the Department, 25 Pa. Code Chapter 127, Subchapter H, are amended by amending § 127.621(b) 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 IRRC and the Senate and House Environmental Resources and Energy Committees as required under the Regulatory Review Act (71 P.S. §§ 745.1—745.14).

(d) The Chairperson of the Board shall certify this order and Annex A, as approved for legality and form, and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the Pennsylvania Bulletin.

Patrick McDonnell
Chairperson

FINAL-OMITTED RULEMAKING
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 H. GENERAL PLAN APPROVALS AND OPERATING PERMITS

USE OF GENERAL PLAN APPROVALS AND PERMITS

§ 127.621. Application for use of general plan approvals and general operating permits.

(a) A stationary source proposing to use a general plan approval or general operating permit shall notify the Department on a form provided by the Department and receive prior written approval from the Department prior to operating under the general plan approval or general operating permit.

(b) The application required by this section shall be ~~[either]~~ hand delivered ~~[or]~~, transmitted by certified mail return receipt requested or submitted electronically.

(c) The Department will take action on the application within 30 days of receipt.



September 14, 2018

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

Re: Final-Omitted Rulemaking: Electronic Submission of Air Quality General Plan Approval and General Operating Permit Applications (#7-549)
Final Rulemaking: Administration of the Storage Tank and Spill Prevention Program (#7-530)
Final Rulemaking: Noncoal Mining Program Fees (#7-523)

Dear Mr. Sumner:

Pursuant to Section 5(a) of the Regulatory Review Act, please find enclosed copies of one final-omitted rulemaking and two final-form rulemakings for review by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (Board) adopted these rulemakings at its August 21, 2018 meeting.

The Electronic Submission of Air Quality General Plan Approval and General Operating Permit Applications (#7-549) amends 25 Pa. Code § 127.621(b) (relating to application for use of general plan approvals and general operating permits) to add the option of electronic means for delivery of applications to the Department of Environmental Protection (Department) for air quality general plan approvals (GPA) and general operating permits (GP).

The existing regulation that governs the air quality GPA and GP application process, § 127.621(b), specifies that the application shall be either hand delivered or transmitted by certified mail return receipt requested to the Department. Adding an electronic means of submission as another method for submitting an air quality GPA or GP application to the Department will provide flexibility to the regulated community and will enhance Department efficiency through the timely processing and potential issuance of these air quality GPAs and GPs.

The owner or operator of a regulated air contamination source or process for which an air quality GPA or GP is available will be affected by this rulemaking. Currently, the Department has 19 air quality GPAs and GPs available that regulate various types of air contamination sources and processes in several industrial categories, including small boilers, burn off ovens, lithographic printing presses, mineral processing, storage tanks for volatile organic liquids, powder metal sintering furnaces, natural gas production, pharmaceutical and specialty chemical production, and petroleum dry cleaning. Within the past five years, the Department has issued 1,922 new air quality GPAs and GPs and 204 renewals for a total issuance of 2,126 GPAs and GPs. The Department expects a surge of new applications once it finalizes the revised GP-5 for

compression stations, processing plants, and transmission stations and the new GP-5a for unconventional natural gas well site operations and remote pigging stations.

An owner or operator of a regulated air contamination source or process for which an air quality GPA or GP is available will benefit by having the option to submit applications for GPAs and GPs by electronic means rather than being limited to hand delivering the application or mailing the application by certified mail with a return receipt requested. Adding the option for electronic means of application delivery is expected to enhance Department efficiency by enabling faster review of these plan approval and permit applications. Faster review may also benefit the regulated industry by facilitating timely implementation of the approved permitted activities.

This final-omitted rulemaking was discussed with, and received the support of, the Air Quality Technical Advisory Committee on June 14, 2018, the Small Business Compliance Advisory Committee on July 25, 2018, and the Citizens Advisory Council (CAC) Policy and Regulatory Oversight Committee on June 15, 2018. The CAC Policy and Regulatory Oversight Committee briefed the members of the CAC on June 19, 2018.

The **Administration of the Storage Tank and Spill Prevention Program (#7-530)** final-form rulemaking amends 25 Pa. Code Chapter 245. The U.S. Environmental Protection Agency (EPA) has codified comprehensive Federal regulations for underground storage tanks (USTs) at 40 CFR Part 280 (relating to technical standards and corrective action requirements for owners and operators of USTs. EPA initially promulgated these regulations in 1988 and published final revisions to 40 CFR Part 280 at 80 FR 41566 (July 15, 2015). These revisions, among other things, added secondary containment requirements for new and replaced tanks and piping, added operator training requirements, added periodic operation and maintenance requirements for UST systems, removed certain deferrals, added new release prevention and detection technologies, updated codes of practice, and made editorial and technical corrections. Secondary containment (November 10, 2007) and operator training (December 26, 2009) requirements that meet the Federal requirements into Chapter 245 were incorporated through prior rulemakings.

In its July 15, 2015, Final Rule, the EPA also updated the State Program Approval requirements in 40 CFR Part 281 (relating to approval of state underground storage tank programs). The EPA is requiring that states amend their UST regulations and apply for initial or revised State Program Approval within three years of the effective date of the final EPA rule published at 80 FR 41566.

Currently, the Commonwealth has State Program Approval. The Commonwealth receives approximately \$2.3 million annually in Federal grant funding from the EPA under section 9014 of the Solid Waste Disposal Act (42 U.S.C.A. § 6991m) to aid in administering the UST program. This final-form rulemaking is necessary to ensure continued receipt of Federal grant funds. To comply, Chapter 245 must be updated to be no less stringent than the Federal requirements so the Department can apply for revised State Program Approval. The EPA has not codified companion aboveground storage tank (AST) regulations.

This rulemaking strengthens Pennsylvania's UST regulations by increasing the emphasis on properly operating and maintaining equipment. Lack of proper operation and maintenance of UST systems is the main cause of new releases. Information on sources and causes of releases

shows that in addition to releases from tanks, releases from piping and spills and overfills associated with deliveries have emerged as common problems. In addition, releases at the dispenser are one of the leading sources of contamination at UST facilities. Finally, according to EPA, data shows that release detection equipment at all UST facilities is only successfully detecting approximately 50 percent of releases it is designed to detect. These release detection problems are similarly due in part to improper operation and maintenance.

Finally, the Department is updating Chapter 245 to address a number of issues, especially those pertaining to ASTs, based on observations and experience in implementing and enforcing the regulations since the last comprehensive update.

The amendments included in this rulemaking require that UST equipment be operated and maintained properly. While the current UST regulations require owners and operators to have spill, overfill, and release detection equipment in place for their UST systems, the regulations do not require proper operation and maintenance for some of that equipment. For example, Chapter 245 does not currently require periodic testing of spill prevention equipment that captures drips and spills when a delivery hose is disconnected from the fill pipe.

The new operation and maintenance requirements include:

- A visual inspection of spill prevention equipment and release detection every 30 days.
- A visual inspection of containment sumps and handheld release detection devices annually.
- Testing of spill prevention equipment every three years.
- Inspection of overfill prevention equipment every three years.
- Testing of containment sumps used for interstitial monitoring every three years.
- Annual release detection equipment testing.

In addition to the new operation and maintenance requirements, two other important provisions are included in this final-form rulemaking:

- Requires release detection for emergency generator USTs. Previously, emergency generator USTs were deferred from having to meet release detection requirements.
- Prohibits flow restrictors (ball float valves) as an option for overfill prevention in new UST systems and when these devices need to be replaced.

This rulemaking also addresses some of the more significant issues that the Department has observed in its inspections, oversight and enforcement of Chapter 245 in the following manner:

- Revises current definitions such as "Aboveground storage tank," "Containment structure or facility," "Hazardous substance storage tank system," "Removal-from-service," "Storage tank system," and "Tank handling activities" to provide clarity, ensure consistent implementation, and to correct errors in the existing definitions. For example, the current definition of "Removal from service" implies that such activities only apply to UST systems. The final-form amendment clarifies that the term also applies to AST systems.
- Revises the definition of "Certification categories" to include a new certification category called "Underground storage tank system minor modification."
- Revises the definitions of "Motor fuel," "Pipeline facilities (including gathering lines)," and "Underground storage tank" to be consistent with the Federal definitions at 40 CFR § 280.12.

The Department is revising the definition of “Underground storage tank” to delete the exclusion for “Tanks containing radioactive materials or coolants that are regulated under The Atomic Energy Act of 1954 (42 U.S.C.A. §§ 2011—2297)” and “An underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A (relating to general design criteria for nuclear power plants).” The exclusion for “A wastewater treatment tank system” is revised to read “A wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act.”

- Adds definitions for “Aboveground storage tank system,” “Containment sump,” “Environmental covenant,” “Repair,” and “Spill prevention equipment.”
- Adds a definition for “Immediate threat of contamination” to clarify which spills from a storage tank into a containment structure or facility are “releases” that potentially require corrective action.
- Deletes the definitions “Actively involved,” “Interim certification,” and “Reportable release” as they are no longer needed.
- Adds a new certification category for minor modifications to allow individuals to perform tank handling activities such as repairs that do not involve excavation without having to obtain the (full) certification to install and modify storage tank systems, and to perform tests of UST systems required by this final-form rulemaking.
- Requires storage tank modification inspection reports to be submitted within 30 days from completion of the inspection.
- Requires overfill prevention for USTs to be permanently installed.
- Excludes USTs used solely for emergency generator purposes from the automatic pump shut-off requirement.
- Requires all ASTs in underground vaults that require an in-service inspection to be inspected within 6 and 12 months of installation and at least every 3 years thereafter due to their history of non-compliance. This mirrors the inspection requirement for USTs.
- Shortens the initial inspection requirement and in-service inspection cycle for small ASTs from 10 years to five years. Based on current in-service inspections, the compliance rate with regulatory requirements is less than 50 percent. Shortening the facility operations inspection cycle for USTs from five years to three years has resulted in increased regulatory compliance.
- Adds that all owners of facilities that are required to have a Spill Prevention Response Plan under current regulation must maintain a written or electronic log. Each log entry is to identify the name of the individual performing tank handling and inspection activities, the individual’s signature or equivalent verification of presence onsite, the company name, the date of work, start and end times, and a brief description of work performed, including tank identification.
- Removes the requirement for a 10-year lining inspection for small ASTs.

The proposed rulemaking was adopted by the Board on October 17, 2017, and published at 48 Pa.B. 1101 (February 24, 2018). Public comments on the proposed rulemaking were accepted through March 26, 2018. The Board received comments from 19 commentators during the

public comment period and the Independent Regulatory Review Commission (IRRC). All comments have been addressed and there are no unresolved issues relevant to this rulemaking.

The implementation of this rulemaking will be carried out as follows: the Department currently operates an extensive outreach program designed to assist owners and operators of storage tanks as well as individuals. This program includes a series of fact sheets that focus on single issues in the storage tank program; periodic seminars and conferences focusing on storage tank technical and administrative issues; training sessions presented by regional and central office training teams on a variety of issues; many guidance documents addressing technical and policy issues; and a great deal of information available on the Department's website. The Department will revise and update applicable fact sheets, guidance documents, forms and publications to reflect changes necessary as a result of the final-form rulemaking.

The Department expects these efforts to continue and to intensify after the effective date of the final-form rulemaking and as phase-in deadlines approach. The Department will also communicate directly with individuals, companies, associations, organizations and groups to assist in the understanding and implementation of the rulemaking.

This final-form rulemaking will affect approximately 7,000 storage tank owners at nearly 12,600 storage tank facilities. Industry sectors potentially affected by the final-form rulemaking include retail motor fuel sales, commercial, institutional, manufacturing, transportation, communications and utilities, and agriculture. Federal, state and local government owners of regulated storage tanks will also be affected.

Department-certified storage tank installers, inspectors and companies will also be required to comply with this final-form rulemaking. There are nearly 875 certified individuals and approximately 350 certified companies.

Owners of existing storage tank systems will be provided with adequate timeframes to adjust and comply with the new requirements. Owners of storage tank systems installed on or after the effective date of the final-form rulemaking must comply with the requirements immediately.

The Department worked with the Storage Tank Advisory Committee (STAC) during the development of this rulemaking. As required by section 105 of the Storage Tank and Spill Prevention Act (Act,) STAC was given the opportunity to provide feedback on rulemaking concepts and to review and comment on draft regulatory language at both the proposed and final-form stages. On March 7, 2017, the STAC voted to unanimously support the proposed amendments and recommended that the Board consider the amendments for publication as a proposed rulemaking. On May 17, 2018, revisions to the proposed rulemaking along with draft final-form regulatory language were reviewed and discussed with STAC. At that time, STAC voted unanimously to concur with the Department's recommendation to move the rulemaking forward in the regulatory review process. The Citizens Advisory Council was kept apprised of developments in the regulatory process on a monthly basis. In addition, final revisions to 40 CFR Part 280 and subsequent proposed changes to Chapter 245 were presented to Department-certified third-party installers and inspectors during annual technical training presented by the Department.

The **Noncoal Mining Program Fees (#7-523)** final-form rulemaking amends 25 Pa. Code Chapter 77. The Department is the agency responsible for implementing the Noncoal Surface Mining Conservation and Reclamation Act (the act). Section 7(a) of the act authorizes the Department to charge and collect a reasonable filing fee from noncoal permit applicants, provided the fees do not exceed the cost of reviewing, administering and enforcing the permit. These fees are used to administer the noncoal mining regulatory program. The Department implements the noncoal mining program through the review of permit applications for the various types of noncoal mining operations and the inspection of these operations to ensure operators' compliance with their permits. There are approximately 1,200 noncoal mining operators in Pennsylvania. These operations range from small quarries that produce less than 2,000 tons of material per year to large quarries that produce millions of tons of aggregate per year. The Department issues permits for the term of the expected mining activity, which also varies from a few years to decades. Operators can request modifications of their permits if their plans change, which require further staff review. The Department inspects permitted noncoal mines for compliance with permits, which require compliance with environmental and safety requirements included in the act, the Clean Streams Law (CSL), and Chapters 77 (Noncoal Mining) and 209a (Occupational Health and Safety: Surface Mining).

The final-form rulemaking includes amendments to 25 Pa. Code § 77.106 (fees) to provide additional funding to sustain the program. The current rate of revenues and expenditures will likely exhaust the reserves by 2020 in the Noncoal Surface Mining Fund, resulting in inadequate funding and potential curtailment of the program. Without the stable funding realized through the imposition of the increased fees, the Department will not be capable of timely issuance, administration, and enforcement of permits to 1,200 operators as required by the Noncoal Act and the CSL. As a result, applicants will not be able to conduct lawful mining activities, which will have a negative impact on the economy. Additionally, inadequate enforcement of existing permits will have a deleterious effect on public health and safety, and the environment.

Because the act prohibits noncoal mining without a permit issued by the Department, timely processing of noncoal operator permits (approximately 500 annually) is vital for Pennsylvania's economy as the noncoal industry is currently a \$20 billion dollar per year industry in the state, which consistently ranks among the top ten noncoal mineral producers in the nation. Citizens who live in affected areas will be protected by adequate inspections, enforcement, and oversight, and citizens across the Commonwealth will benefit from a healthy and protected natural environment.

This final-form rulemaking implements the Department's statutory authorization to collect a reasonable filing fee through two kinds of fees – the permit application fee and the annual administration fee. The permit application fee is intended to cover the Department's cost to review permit applications. The permit fees have been set according to the type of application submitted. The fee amounts are based on the number of hours typically required to review a specific type of permit application.

The annual administration fee is intended to cover the Department's costs to administer the permit. These include, among other things, the cost of performing inspections of the operations, compliance assistance, and other compliance related activities, as well as the tracking of required

reporting and monitoring by permittees. As with the permit fees, the annual administration fees are set based on workload analyses. The annual administration fee schedule reflects the differences between types of operations based on the Department's respective administrative workload. The assessment of the two kinds of fees is necessary to fairly represent the cost to the Department for reviewing, and administering, a noncoal mining permit.

The permit application fee schedule incrementally increases fee amounts. The first phase, to be effective January 1, 2020, includes an increase to reflect current wage and benefit rates resulting in about a 20% increase from current fees. The second phase, to be in effect January 1, 2022, adds about 25% to the fees to account for indirect costs (e.g. information technology, supplies and equipment). The third phase, scheduled to be in effect January 1, 2024, adds about 34% to the fee amounts to account for overhead (e.g. utilities, fuel and training). The phased-in structure will allow regulated entities time to prepare for the full impact of the increase. Beginning January 1, 2026, an adjustment factor will be applied every two years to account for increases in costs by using an index from the Bureau of Labor Statistics. It is anticipated that the fee schedule will close the gap between revenue and expenses.

The amendments increase the cost for permit application fees and annual administration fees. These will impose an added cost to the regulated community, which are approximately 1,200 small businesses. However, the amendments also benefit regulated entities by appropriately funding the regulatory program, which will allow them to continue their operations smoothly. A fully-staffed program can review and issue permits in a timely manner, provide technical assistance, and produce necessary technical guidance documents and policies. This funding also protects public health and the environment from spills or accidents by ensuring the appropriate inspection staff are available. Noncoal mining operations affect many members of the public, as they occur in every county in Pennsylvania except Philadelphia.

To mitigate the impacts on the noncoal operators, the Department introduced an approach that will incrementally increase the fees in three, two-year phases. Also, consistent with current practice, fees vary for different types of operations. For example, permit applications for large noncoal surface mining operations that propose to pump groundwater take significantly more time to review because of their potential hydrologic impact. Therefore, the permit application fee for these operations is higher than for an operation that does not include groundwater pumping. Similarly, if blasting is proposed, then the blasting inspector is involved in the review of the blast plan for the permit application. Therefore, the fee schedule includes a permit application fee for review of blast plans, based on the cost to review those plans. These strategies both account for the Department's workload and avoid charging smaller or simpler operations a higher fee than necessary. In addition, the first phase of the fees has an effective date of January 1, 2020, which provides time for permittees to plan for the increases.

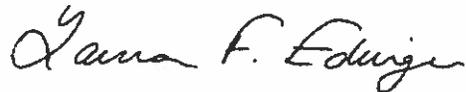
The proposed rulemaking was adopted by the Board on October 17, 2017, and published at 48 Pa.B. 733 (February 3, 2018). Public comments on the proposed rulemaking were accepted through March 5, 2018. Comments were received from one public commentator and from IRRC. All comments have been addressed and no unresolved issues remain.

During the proposed rulemaking process, the Department provided detailed information to the Aggregate Advisory Board. The draft fee report to the Aggregate Advisory Board was reviewed with the Board at their initial meeting on May 13, 2015. The information was provided through a series of meetings from May 2015 through November 2016, when the Board concurred with the Department's recommendation to proceed with the rulemaking process. This final-form rulemaking was reviewed with the Aggregate Advisory Board at its May 9, 2018 meeting. The Board, with the proviso that the actual dates be inserted in the language for when the various schedules come into effect, concurred with the Department's recommendation to proceed with the final-form rulemaking process.

The Department will provide assistance as necessary to facilitate IRRC's review of the enclosed rulemakings under Section 5.1(e) of the Regulatory Review Act.

Please contact me by e-mail at ledinger@pa.gov or by telephone at 717.783.8727 if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Laura F. Edinger".

Laura Edinger
Regulatory Coordinator

Enclosures



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

I.D. NUMBER: 7-549

SUBJECT: *Electronic Submission of Air Quality General Plan Approval and General Operating Permit Applications*

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 Tolerated Regulation
 - a. With Revisions
 - b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
9-14-18	<i>Shelly Weaver</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Representative John Maher</i>
9-14-18	<i>Sandy Natchaband</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Representative Mike Carroll</i>
9/14/18	<i>Sen. Cene Yaw</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Senator Cene Yaw</i>
9/14/18	<i>J. A. ...</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Senator John Yudichak</i>
9/14/18	<i>Sen. J. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION <i>David Sumner</i>
9-		ATTORNEY GENERAL (for Final Omitted only)
9-14-18	<i>Carolyn Jutto</i>	<i>Amy Elliott</i> LEGISLATIVE REFERENCE BUREAU (for Proposed only)

