



July 18, 2022

Independent Regulatory Review Commission
333 Market Street
Harrisburg, PA 17101

Re: Regulation #7-544: Control of VOC Emissions from Unconventional Oil and Natural Gas Sources

Dear Commissioners,

Clean Air Council urges the approval of final-form Regulation #7-544 (Control of VOC Emissions from Unconventional Oil and Gas Sources) at your upcoming public meeting on Thursday, July 21. This long overdue regulation is required by the federal Clean Air Act because Pennsylvania is a state in the Ozone Transport Region (OTR) with oil and gas (O&G) industry sources of smog-forming volatile organic compound (VOC) emissions. This regulation is also clearly in the public interest, consistent with the criteria established in section 5.2(b) of the Pennsylvania Regulatory Review Act.

Failure to promulgate this regulation in a timely manner will result in imposition of significant federal sanctions by the U.S. Environmental Protection Agency (EPA) under section 179 of the Clean Air Act. Pennsylvania is currently subject to emission offset sanctions affecting the new source review (NSR) program because this regulation (and a tandem regulation applicable to sources located at conventional O&G well sites) was not published as final and submitted to EPA as a State Implementation Plan (SIP) revision by June 16. If this submittal does not occur by December 16, EPA must impose significant highway sanctions, threatening the loss of hundreds of millions of dollars in annual federal highway funds for the Commonwealth.

As background, the Council strongly disagrees that Act 52 of 2016 affects this regulation. This argument prompted the Department of Environmental Protection (DEP) to withdraw a previous draft of the final-form rule from IRRC's agenda in May 2022 and to subsequently bifurcate the regulation to ostensibly address conventional wells and unconventional wells separately. This is an air pollution regulation with control measures that are common, cost-effective, and applicable across sources in both the conventional and unconventional industry. The Clean Air Act makes no distinction between conventional and unconventional wells. Those definitions are grounded in Pennsylvania state law, while federal law requires that states in OTRs must revise their SIPs to implement reasonably available control technology (RACT) for *all* existing VOC sources in the

state covered by a control techniques guidelines (CTG) document.¹ DEP did determine in three cases that RACT requirements more stringent than the recommendations in the 2016 CTG are cost-effective and necessary to continue the Commonwealth's progress in attaining and maintaining the federal standards for ground-level ozone.

In fact, DEP has clear and considerable authority under the Pennsylvania Air Pollution Control Act to regulate additional sources of VOC pollution beyond those expressly included in the 2016 CTG. Before, during, and after the public comment period for this regulation, Clean Air Council urged DEP to establish leak detection and repair (LDAR) requirements for wells that fall below the 2016 CTG's production threshold. DEP ultimately did not do so which, in practice, will exempt tens of thousands of Pennsylvania conventional wells from any inspection requirements for leaks.

Nevertheless, last year, the EPA proposed more stringent emission guidelines under section 111(d) of the Clean Air Act to reduce methane pollution from this same O&G source category.² It is critical to note that EPA announced in its proposal that it "no longer believes that production levels provide an appropriate threshold for any exemption" from LDAR requirements.³ This federal rule, once finalized, could potentially address the significant climate pollution and health impacts caused by these small wells with leak-prone equipment. Pennsylvania will then need to submit another SIP revision to reflect those EPA emission guidelines, which will raise similar questions of policy and law in the coming years.

For now, it is critical to understand that Pennsylvania is simply out of time. This regulation - part one of what is now a two-part O&G VOC package - is projected by DEP to reduce 2,864 tons per year (tpy) of VOC emissions with a co-benefit reduction of 45,278 tpy of methane. These control measures are in the public interest and highly achievable by Pennsylvania O&G operators. Again, this regulation and its forthcoming conventional well counterpart are required by federal law, and any additional delay in promulgation risks hundreds of millions of dollars in federal highway funds. We urge your approval. Thank you for your consideration.

Sincerely,

Joseph Otis Minott, Esq.
Executive Director and Chief Counsel
Clean Air Council

¹ The relevant CTG here was issued by EPA nearly six years ago on October 20, 2016:

<https://www.epa.gov/sites/default/files/2016-10/documents/2016-ctg-oil-and-gas.pdf>

² Methane is the primary constituent of fossil gas and an extremely potent climate pollutant. Methane is up to 87 times as efficient as CO₂ at trapping heat in the atmosphere over a 20-year timeline. Methane and VOC can each be emitted by O&G sources, and DEP considers methane emission reductions to be a co-benefit of this regulation.

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<https://www.federalregister.gov/documents/2021/11/15/2021-24202/standards-of-performance-for-new-reconstructed-and-modified-sources-and-emissions-guidelines-for>