



March 21, 2023

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

Re: Emergency Certified Final-Omitted Rulemaking: Control of VOC Emissions from  
Conventional Oil and Natural Gas Sources (#7-580)

Dear Mr. Sumner:

Pursuant to Section 5.1(j.1) of the Regulatory Review Act (RRA), please find enclosed the Control of VOC Emissions from Conventional Oil and Natural Gas Sources emergency certification final-omitted rulemaking for review by the Independent Regulatory Review Commission (IRRC). Under Section 5.1(c) of the RRA, the Environmental Quality Board (Board) previously submitted the enclosed emergency certification final-omitted rulemaking to IRRC, the Office of the Attorney General, and the House and Senate Environmental Resources and Energy Committees (ERE Committees) on November 30, 2022. However, because of the adjournment sine die of the legislative session, the ERE Committees were not able to complete their required 20-day review of the enclosed rulemaking. The Board is resubmitting the rulemaking to IRRC and the ERE Committees to fulfill its obligations under Section 5.1 (j.1) of the RRA. The Board adopted this rulemaking on November 30, 2022.

The enclosed rulemaking, pursuant to Section 6(d) of the RRA, was published in the *Pennsylvania Bulletin* as an emergency certification final-omitted rulemaking on December 10, 2022, at 52 Pa.B. 7635. On November 30, 2022, Governor Wolf signed the enclosed certification attesting to the need for the regulation as an emergency rulemaking. The enclosed rulemaking conforms to the text of the regulation published at 52 Pa.B. 7635.

This final-omitted rulemaking adopts reasonably available control technology (RACT) requirements and RACT emission limitations for conventional oil and natural gas sources of volatile organic compound (VOC) emissions. These sources include natural gas-driven continuous bleed pneumatic controllers, natural gas-driven diaphragm pumps, reciprocating compressors, centrifugal compressors, fugitive emissions components and storage vessels installed at conventional well sites, gathering and boosting stations and natural gas processing plants, as well as storage vessels in the natural gas transmission and storage segment. 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).

*Rulemaking Background and History*

On December 17, 2019, the Board adopted the Control of VOC Emissions from Oil and Natural Gas Sources proposed rulemaking (referred to as the combined rulemaking). The combined rulemaking included VOC RACT requirements for five categories of oil and natural gas sources of VOC emissions in this Commonwealth, including sources used by the unconventional and conventional industries. On May 23, 2020, the combined rulemaking was published for a 66-day comment period at 50 Pa.B. 2633. Three public hearings were held virtually on June 23, 24, and 25, 2020. Over 100 individuals provided verbal testimony. The comment period closed on July 27, 2020. The Board received over 4,500 comments, including comments from the House and Senate Environmental Resources and Energy Committees (ERE Committees), members of the General Assembly and the Independent Regulatory Review Commission (IRRC). The majority of the commentators expressed their support for the VOC RACT requirements in the combined rulemaking, noting the need to address air emissions from the oil and gas sector. On March 15, 2022, the Board adopted the combined rulemaking as a final-form rulemaking.

Also, on March 15, 2022, the Board submitted the final-form combined rulemaking to IRRC for its consideration. On April 26, 2022, the House ERE Committee sent a letter to IRRC indicating their disapproval of the combined rulemaking due to their interpretation of language in the Pennsylvania Grade Crude Development Act, the act of June 23, 2016 (P.L. 375, No. 52) (58 P.S. §§ 1201—1208), known as Act 52. The letter stated the House ERE Committee's position that Act 52 requires the Board to submit two rulemaking packages — one that applies to unconventional oil and natural gas sources and one that applies to conventional oil and natural gas sources. The House ERE Committee's letter to IRRC initiated the concurrent resolution process under section 7(d) of the RRA which allows the General Assembly to adopt a resolution that disapproves and permanently bars a final regulation from taking effect.

While the Board disagrees with the House ERE Committee's interpretation of Act 52, to address their concerns and avoid further delay, on May 4, 2022, the Board withdrew the combined rulemaking from IRRC's consideration. The Board then revised the combined rulemaking to apply only to unconventional oil and natural gas sources. On June 14, 2022, the Board adopted the revised Control of VOC Emissions from *Unconventional* Oil and Natural Gas Sources final-form rulemaking. On July 21, 2022, IRRC unanimously approved the unconventional rulemaking.

Given the concerns expressed by the House ERE Committee and other commentators during the regulatory process for the combined rulemaking, the Department developed a separate rulemaking to control VOC emissions from *conventional* oil and natural gas sources. At the October 12, 2022, meeting, the Board adopted the "Control of VOC Emissions from Conventional Oil and Natural Gas Sources" final-omitted rulemaking, Regulation #7-579. On November 14, 2022, the House ERE Committee disapproved the previously adopted final-omitted regulation triggering the 14-calendar-day legislative review period under Section 5.1(j.2) of the RRA (71 P.S. § 745.5a(j.2)). During that 14-day period, the regulation may not

be published in the *Pennsylvania Bulletin*. The 14-day period began after IRRC issued its approval order of Regulation #7-579 on November 17, 2022, and the 2022 legislative session ended on November 30, 2022. Under Section 5.1(j.3) of the RRA (71 P.S. § 745.5a(j.3)), the legislative review period would therefore run into the 2023 legislative session ensuring that Regulation #7-579 could not be published by the December 16, 2022, sanction deadline.

This final-omitted rulemaking, Regulation #7-580, is identical to the previous final-omitted rulemaking (Regulation #7-579) except it has received an emergency certification of need from the Governor.

### *Final-Omitted Rulemaking and Emergency Certification of Need*

Under section 201 of the CDL (45 P.S. § 1201), an agency is required to provide public notice of its intention to promulgate, amend or repeal administrative regulations. Section 202 of the CDL (45 P.S. § 1202) also requires agencies to review and consider any written comments submitted under section 201 and authorizes agencies to hold public hearings as appropriate. However, under section 204 of the CDL (45 P.S. § 1204), an agency may omit or modify the procedures specified in sections 201 and 202, if:

The agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the order adopting the administrative regulation or change therein) that the 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 impracticable, unnecessary, and contrary to the public interest for the amendments included in this final-omitted rulemaking. These procedures are impracticable and unnecessary because the VOC RACT requirements for the conventional oil and natural gas sources covered by this final-omitted rulemaking are identical to those contained in the combined rulemaking. As detailed above, the Board provided a comment period and three public hearings for the combined rulemaking and numerous members of the public provided testimony and submitted comments. Those comments were then used in the development of the final-form combined rulemaking and this final-omitted rulemaking. Therefore, this final-omitted rulemaking was already subject to a notice and comment process when the combined rulemaking was published in the *Pennsylvania Bulletin* on May 23, 2020.

The comment and response document included with this final-omitted rulemaking contains all comments received during the comment period for the combined rulemaking. A public comment period is also contrary to the public interest because it will delay the implementation of the VOC RACT requirements in this final-omitted rulemaking, resulting in the Commonwealth being unable to satisfy the December 16, 2022, sanction deadline. If the Board were to provide notice of proposed rulemaking, and an additional public comment period and public hearings, the Commonwealth would have been unable to submit this rulemaking to the EPA as a SIP revision by December 16, 2022. The entire rulemaking process in this

Commonwealth takes about two years, sometimes longer, from start to finish, and the concurrent resolution process under the RRA further lengthens that timeline. Additional delay of this rulemaking would further harm the public interest because the Commonwealth would lose millions of dollars in Federal highway funding and much needed VOC and methane emission reductions. As a result, the Board finds that the use of the final-omitted rulemaking process is for good cause and that additional public comment in this case is not necessary or in the public interest.

This final-omitted rulemaking is also being submitted as an emergency certified regulation. Section 6(d) of the RRA allows an agency to immediately implement a final-omitted regulation when the Governor certifies that promulgation is necessary to respond to an emergency circumstance specified in the RRA. On November 30, 2022, Governor Tom Wolf issued a Certification of Need for Emergency Regulation finding that this final-omitted rulemaking is required to prevent “the need for supplemental or deficiency appropriations of greater than \$1,000,000.” (71 P.S. § 745.6(d)).

Governor Tom Wolf determined that this emergency certified final-omitted rulemaking is necessary to ensure the Commonwealth complies with the Federal CAA and the APCA. As discussed above, if the Commonwealth did not submit this final-omitted rulemaking to the EPA as a SIP revision by the December 16, 2022, sanction deadline, Federal highway funding would be withheld until the submission is made. For the upcoming fiscal year, Federal highway funds subject to these sanctions are estimated to be in the hundreds of millions of dollars in the nonattainment areas. The Pennsylvania Department of Transportation, the U.S. Department of Transportation Federal Highway Administration and the EPA have identified several projects in the nonattainment areas that would not receive funding and would therefore not be completed or would be subject to delay. This emergency certified final-omitted rulemaking was published in the *Pennsylvania Bulletin* on December 10, 2022 and submitted to the EPA on December 12, 2022. The EPA confirmed acceptance of the SIP revision on December 14, 2022, before Federal highway funding sanctions took effect.

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

Please contact me by e-mail at [laurgriffi@pa.gov](mailto:laurgriffi@pa.gov) or by telephone at 717.772.3277 if you have any questions or need additional information.

Sincerely,



Laura Griffin  
Regulatory Coordinator

Enclosures