



Pennsylvania DEP Finalizes Significant Changes to Air Permitting Program for Oil and Gas Industry

On June 7, 2018, Pennsylvania Governor Tom Wolf and Department of Environmental Protection (DEP) Secretary Patrick McDonnell announced the final issuance of air permitting documents affecting oil and gas operations in the Commonwealth. DEP shortly thereafter released a suite of new materials to mark the latest step forward in implementing Governor Wolf's Methane Reduction Strategy. The new permitting documents are controversial in so far as they represent a significant departure from the status quo, requiring operators to take a fresh look at when and where an air permit may be needed.

The suite of materials recently finalized by DEP includes three key permitting documents: (1) a revised Air Quality Permit Exemption List (with substantial changes to the longstanding "Exemption 38" for well sites); (2) a revision of the existing general permit for natural gas compression and processing facilities, known as "GP-5"; and (3) a new general permit known as "GP-5A" to authorize the construction and operation of unconventional natural gas well site operations and remote pigging stations. DEP accepted stakeholder feedback on multiple drafts before issuing the final documents, which are all effective August 8, 2018. The agency also released various ancillary documents, including a Technical Support Document and new permit application forms.

Operators now face the challenging task of adjusting to the new permitting regime. Although the changes to the program are generally forward-looking—affecting new or modified sources—all operators should become familiar with the applicability triggers associated with Exemption 38, GP-5, and GP-5A. What may seem like a routine activity at a facility could have unexpected consequences for permitting purposes. Operators will also want to become familiar with DEP's new e-Permitting platform for GP-5 and GP-5A, as DEP believes that use of the e-Permitting system will expedite review of applications.

In conjunction with finalizing the permitting documents, DEP rescinded a technical guidance document entitled, "Guidance for Performing Single Stationary Source Determinations for Oil and Gas Industries," that was issued in 2012. The agency previously relied on this guidance when evaluating whether to aggregate two or more sources as a single source for air permitting purposes. This topic has been the subject

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of considerable debate and litigation in recent years. DEP rescinded the document in response to a 2016 U.S. Environmental Protection Agency rulemaking regarding source determinations.

Air program requirements for the oil and gas industry will likely continue to evolve. For example, now that Exemption 38, GP-5 and GP-5A have been finalized, DEP is expected to turn its attention to developing a regulation that would impose emission control requirements for existing sources.

If you have questions regarding these air program changes and how they could impact your business, please contact Michael H. Winek at (412) 394-6538 or mwinek@babstcalland.com, Meredith Odatto Graham at (412) 773-8712 or mgraham@babstcalland.com, or Gary E. Steinbauer at (412) 394-6590 or gsteinbauer@babstcalland.com.

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