

# EQB Adopts Regulations Reducing Emissions from Unconventional and Conventional Operations

**December 1, 2022**

*FNREL Mineral and Energy Law Newsletter*

Pennsylvania – Oil & Gas

(By [Joseph Reinhart](#), [Sean McGovern](#), [Matthew Wood](#) and [Gina Falaschi](#))

During its June 14, 2022, meeting, the Pennsylvania Environmental Quality Board (EQB) voted 15-3, with one abstention, to adopt Part I of a revised final regulation reducing volatile organic compound (VOC) and methane emissions from unconventional wells and facilities. See Final-Form Rulemaking Preamble, EQB, “Control of VOC Emissions from Unconventional Oil and Natural Gas Sources” (June 14, 2022). This regulation establishes reasonably available control technology (RACT) requirements for unconventional oil and natural gas sources of 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 unconventional well sites, gathering and boosting stations, and natural gas processing plants, as well as storage vessels in the natural gas transmission and storage segment. *Id.* at 1.

A substantially similar rule approved by the EQB in March 2022 did not distinguish between conventional and unconventional emission sources. That rulemaking had advanced to the Pennsylvania House and Senate Environmental Resources and Energy (ERE) Committees and the Independent Regulatory Review Commission (IRRC) for consideration, but the House ERE Committee issued a disapproval letter for the rulemaking on April 26, 2022. Three trade associations also filed a petition for review of the rulemaking in the Commonwealth Court of Pennsylvania. The petition and the House ERE Committee’s disapproval letter alleged that the Pennsylvania Department of Environmental Protection (PADEP) failed to comply with Act 52 of 2016, which requires that any rulemaking concerning conventional oil and gas wells be undertaken separately and independently from those concerning unconventional oil and gas wells or other subjects. As a result, PADEP withdrew the regulation from IRRC consideration on May 4, 2022. See Vol. 39, No. 2 (2022) of this *Newsletter*.

PADEP revised the regulation to remove provisions regulating conventional wells and facilities and submitted the regulation to the EQB for approval, which it approved during its June 14, 2022, meeting. The House ERE Committee met on July 11, 2022, and approved a letter to the IRRC announcing its opposition to the final EQB regulation on a number of grounds, including that the revised regulation had not gone through public notice and comment. During its July 21, 2022, meeting, the IRRC unanimously voted to approve the regulation. The House ERE Committee met on August 2, 2022, to vote on a concurrent resolution disapproving of the rule, and the resolution was voted out of committee. The House and Senate each had 30 calendar days, or 10 legislative voting days (whichever is later), to adopt the concurrent resolution. Neither body took further action.

On October 12, 2022, the EQB voted 15-3 to approve Part II, a separate rule addressing VOC and methane emissions from conventional wells and facilities. See Final-Omitted Rulemaking Preamble, EQB, “Control of VOC Emissions from Conventional Oil and Natural Gas Sources” (Oct. 12, 2022). PADEP recommended that the EQB adopt Part II as a final-omitted regulation as part of the process to meet the U.S. Environmental Protection Agency’s December 16, 2022, deadline for the state to adopt methane emission controls for oil and gas operations. See Executive Summary, “Control of VOC Emissions from Conventional Oil and Natural Gas Sources—25 Pa. Code Chapter 129” (Oct. 12, 2022). Adoption of Part II as a final-omitted regulation allows for the rulemaking to skip the proposed rulemaking stage and proceed forward without any public comment. Per the Pennsylvania Commonwealth Documents Law, PADEP may use the final-omitted process if starting at the proposed stage for rulemaking is “impracticable, unnecessary, or contrary to the public interest.” 45 Pa. Stat. § 1204(3). In its executive summary of the rulemaking, PADEP justified promulgation of Part II as a final-omitted regulation, stating that “[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.” Executive Summary at 5. Under the Regulatory Review Act, 71 Pa. Stat. §§ 745.1–.14, the IRRC

and the House and Senate still have the opportunity to review the rulemaking. Failure of the state to adopt this rule reportedly may result in the loss of over \$500 million in federal highway funding. Executive Summary at 5.

*Copyright © 2022, The Foundation for Natural Resources and Energy Law, Westminster, Colorado*



PITTSBURGH, PA | CHARLESTON, WV | HARRISBURG, PA | LAKEWOOD, NY | STATE COLLEGE, PA | WASHINGTON, DC