

EQB Adopts Regulations Reducing Emissions from Unconventional and Conventional Operations

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On December 10, 2022, the Pennsylvania Environmental Quality Board (EQB) published in the *Pennsylvania Bulletin* a final-omitted rulemaking (Conventional VOC Rule), 52 Pa. Bull. 7635, and a final-form rulemaking (Unconventional VOC Rule), 52 Pa. Bull. 7587, adopting reasonably available control technology (RACT) standards to control volatile organic compound (VOC) and methane emissions from existing and future conventional oil and gas operations and unconventional oil and gas operations. These regulations establish RACT requirements for conventional and 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.

The Conventional VOC Rule was effective on notice from the Pennsylvania Department of Environmental Protection (PADEP) on December 2, 2022. Members of the Pennsylvania House Environmental Resources and Energy (ERE) Committee had disapproved the final-omitted regulation, Regulation #7-579, in a November 14, 2022, letter to the Independent Regulatory Review Commission (IRRC). On November 17, 2022, the IRRC approved the final-omitted rulemaking, and the EQB subsequently adopted an emergency certified final-omitted regulation, Regulation #7-580, on November 30, 2022. See Press Release, PADEP, “EQB Adopts Emergency Air Quality Regulation for Existing Conventional Oil and Gas Sources” (Nov. 30, 2022). Regulation #7-580 is identical to Regulation #7-579 except that it received an emergency certification of need from then-Governor Tom Wolf. PADEP said that the final-omitted regulation was appropriate under the Commonwealth Documents Law because notice and comment from the public was unnecessary, impractical, and contrary to the public interest. PADEP recommended that EQB adopt the regulation as a final-omitted regulation as part of the process to meet the U.S. Environmental Protection Agency’s (EPA) 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); see also Vol. 39, No. 4 (2022) of this *Newsletter*. Failure of the state to adopt the required regulations reportedly could have resulted in the loss of over \$500 million in federal highway assistance. On December 5, 2022, the Pennsylvania Independent Oil & Gas Association, Pennsylvania Independent Petroleum Producers, and Pennsylvania Grade Crude Oil Coalition filed a lawsuit challenging the legality of the Conventional VOC Rule. See Petition for Review in the Nature of a Complaint for Declaratory Relief, *Pa. Indep. Oil & Gas Ass’n v. Commonwealth*, No. 574 MD 2022 (Pa. Commw. Ct. filed Dec. 5, 2022).

The Unconventional VOC Rule, which became effective upon publication in the *Pennsylvania Bulletin*, was adopted by the EQB at 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 took further action and the regulation was published in the *Pennsylvania Bulletin*.

A rule substantially similar to those published on December 10 was approved by the EQB in March 2022, but it did not distinguish between conventional and unconventional emission sources. That rulemaking had advanced to the

Pennsylvania House and Senate ERE Committees and the 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 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 submitted both the Unconventional VOC and Conventional VOC Rules to EPA as a revision to Pennsylvania's state implementation plan (SIP). On December 14, 2022, EPA issued a completeness determination for PADEP's revision to Pennsylvania's SIP, which avoided the imposition of federal highway funding sanctions that were set to take effect on December 16, 2022. EPA is now evaluating whether it will approve the SIP revision.

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