

PADEP's RACT III Rule Requires Action from Major Sources of NO_x and VOCs by End of Year

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On November 12, 2022, the Pennsylvania Environmental Quality Board (EQB) published amendments to the Pennsylvania Department of Environmental Protection's (PADEP) regulations in 25 Pa. Code chs. 121 and 129 for all major stationary sources of nitrogen oxides (NO_x) or volatile organic compound (VOC) emissions, which is commonly known as the RACT III rule. See 52 Pa. Bull. 6960 (Nov. 12, 2022). The rule requires major sources of either or both of these air pollutants in existence on or before August 3, 2018, to meet reasonably available control technology (RACT) emission limits and requirements by January 1, 2023. See also Vol. 39, No. 1 (2022) of this *Newsletter* (Pennsylvania – Oil & Gas report).

These regulations are being promulgated to address federal Clean Air Act (CAA) RACT requirements to meet the 2015 ozone National Ambient Air Quality Standards (NAAQS) in the commonwealth. The CAA requires a reevaluation of RACT when new ozone NAAQS are promulgated. RACT is required in nonattainment areas, including the Ozone Transport Region, which includes Pennsylvania. The RACT III rulemaking establishes presumptive RACT requirements and emission limits for specific source categories of affected facilities. The RACT III rulemaking also imposes additional requirements for all major sources of NO_x and/or VOCs, not just those subject to the presumptive RACT requirements and limitations.

RACT III applies to all major sources of VOCs and NO_x. Because the commonwealth is in the Northeast Ozone Transport Region, the major source threshold is 50 tons per year (tpy) of VOCs and 100 tpy of NO_x. PADEP estimates that 425 title V facility owners and operators will be subject to the final rule. Affected source categories include combustion units; process heaters; turbines; stationary internal combustion engines; direct-fired heaters, furnaces, or ovens; and other sources that are not regulated elsewhere under chapter 129. The sources included in these categories are located at various facility types, including fossil fuel-burning and other electric generation, petroleum and coal products manufacturing, and iron and steel milling. RACT III imposes presumptive RACT limitations at 25 Pa. Code § 129.112 on additional categories of facilities that were not previously subject to any presumptive RACT limitations or requirements. These categories include glass melting furnaces, lime kilns, and certain combustion units.

The owner or operator of a NO_x air contamination source with a potential emission rate equal to or greater than 5.0 tpy of NO_x for which presumptive RACT requirements are not outlined in section 129.112 is required to propose a NO_x RACT requirement or RACT emission limitation to PADEP. Similarly, the owner or operator of a VOC air contamination source with a potential emission rate equal to or greater than 2.7 tpy of VOCs for which presumptive RACT requirements are not outlined in section 129.112 is required to propose a VOC RACT requirement or RACT emission limitation to PADEP.

Notably, 25 Pa. Code § 129.115 requires that all major VOC or NO_x emitting facilities submit a written notification to PADEP or the appropriate local air pollution control agency by December 31, 2022, identifying air contamination sources at the facility as covered by—or exempt from—RACT III requirements. This written notification requirement applies to all major sources of NO_x and VOC emissions, even if those facilities are not subject to the presumptive RACT provisions of section 129.112. The written notification must include the following for each identified air contamination source:

- a description of each identified air contamination source at the facility, including make, model, and location;
- the applicable RACT requirement or RACT emission limitation;
- how the owner or operator will comply with the application RACT requirement or RACT emission limitation; and

- the reason why a source is exempt from the RACT requirements and RACT emission limitations, if applicable.

Operators are not required to immediately amend operating permits to include RACT III, but as of January 1, 2023, the final rulemaking will apply to those sources covered by the rulemaking. As of this compliance date, RACT III's requirements could supersede any conflicting requirements and emissions limitations in a facility's permit or Pennsylvania regulations, unless those conflicting requirements are more stringent than RACT III. See 25 Pa. Code § 129.112(l)–(m).

The EQB adopted the proposed rulemaking in May 2021. The proposed rulemaking was published for public comment, see Vol. XXXVIII, No. 4 (2021) of this *Newsletter*, and PADEP held public hearings on the proposal. PADEP reviewed and responded to comments on the proposed rule and presented the final rule to the EQB at its August 9, 2022, meeting, where it was approved. Upon approval, the regulation was submitted to the Pennsylvania House and Senate Environmental Resources and Energy standing committees and the Pennsylvania Independent Regulatory Review Commission (IRRC). The standing committees approved the regulation on September 14, 2022, and the IRRC approved the regulation on September 15, 2022. The regulation was then approved by the Office of the Attorney General before being published in the *Pennsylvania Bulletin*. PADEP will now submit the regulation to the U.S. Environmental Protection Agency (EPA) for incorporation into Pennsylvania's state implementation plan.

The RACT III compliance date established by EPA is January 1, 2023, and this regulation went into effect immediately upon publication in the *Pennsylvania Bulletin*. Owners and operators should take note of the impending December 31, 2022, notification deadline described above.

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