



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52 and 70

[EPA-R03-OAR-2022-0166; FRL-10673-02-R3]

Air Plan Approval; Pennsylvania; Revisions to Plan Approval and Operating Permit Fees Rule and Title V Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving both a State implementation plan (SIP) revision and Title V operating permits program revision submitted by the Pennsylvania Departmental of Environmental Protection (PADEP) on behalf of the Commonwealth of Pennsylvania. The SIP revision pertains to Pennsylvania's general provisions regarding air resources, operating permit requirements, and plan approval and operating permit fees. This includes increases to existing plan approval application and operating permit fees. The Title V operating permit program revision amends the Title V operating permit program fee schedules that fund the Pennsylvania Title V operating permit program. EPA is approving these revisions to the Pennsylvania SIP and Title V operating permit program in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2022-0166. All documents in the docket are listed on the

<https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available

docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Yongtian He, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 JFK Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2339. Mr. He can also be reached via electronic mail at He.Yongtian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 7, 2023 (88 FR 14104), EPA published a notice of proposed rulemaking (NPRM) for the Commonwealth of Pennsylvania. In the NPRM, EPA proposed approval of both a State implementation plan (SIP) revision and Title V operating permits program revision. EPA did not receive any comments.

The formal SIP revision and Title V program revision was submitted by PADEP on July 20, 2021, with a clarification letter sent on January 3, 2023. The revisions amend 25 Pennsylvania (PA) Code Chapters 121 (relating to general provisions) and 127, Subchapters F and I (relating to operating permit requirements; and plan approval and operating permit fees). Pennsylvania indicates that these revisions are necessary to ensure that fees are sufficient to cover the costs of administering the plan approval application and operating permit process as required by section 502(b) of the Clean Air Act (42 U.S.C. 7661a(b)) and section 6.3 of the Air Pollution Control Act (APCA) (35 P.S. section 4006.3).

A. SIP Revision

Section 110(a)(2)(L) of the CAA mandates that SIPs require the owner or operator of each major stationary source to pay to the permitting authority a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the

owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit.

The SIP revision approves into Pennsylvania's SIP amended versions of 25 PA Code Chapters 121 and 127, specifically sections 121.1, 127.424, 127.702 and 127.703. This SIP revision also adds sections 127.465, 127.709 and 127.710. EPA has previously approved Pennsylvania code Chapter 121 general provisions definitions at 25 PA code 121.1, Chapter 127 public notice requirement in section 127.424, and Pennsylvania's plan approval and operating permit fee regulations at 25 PA Code 127.701, 127.702, 127.703 and 127.707, into the Pennsylvania SIP in accordance with section 110 of the CAA. See 61 FR 39597 (July 30, 1996).

B. Title V Operating Permit Program Revision

EPA granted full approval of the Pennsylvania Title V operating permits program on July 30, 1996. See 61 FR 39597. Under 40 CFR 70.9(a) and (b), an approved state Title V operating permit program must require that the owners or operators of part 70 sources pay annual fees, or the equivalent over some other period, that are sufficient to cover the permit program costs and ensure that any fee required under 40 CFR 70.9 is used solely for permit program costs. The fee schedule must result in the collection and retention of revenues sufficient to cover the permit program implementation and oversight costs. CAA 502(b)(3)(A).

Pennsylvania's initial Title V operating permit emission fee was established in 1994 at 25 PA Code 127.705 and was last increased in 2014. In a February 11, 2014 Title V operating permit program revision, Pennsylvania revised 25 PA Code 127.705 to increase annual emission fees for Title V sources, noting that annual emissions fees were no longer sufficient to cover costs. See 80 FR 40922 (July 14, 2015).

In the July 20, 2021 submission, PADEP indicated that the currently approved fee structure is insufficient to continue to support the Title V program, and as a result, PADEP has revised sections 127.704 and 127.705, and has submitted these revisions for EPA action pursuant to CAA 502(d). EPA is approving these revisions into Pennsylvania's Title V operating permit

program.

II. Summary of SIP Revision and EPA Analysis

A. SIP Revision

PADEP added the definition of “synthetic minor facility” in the definition section 121.1 and corrected a cross-reference error in public notice section 127.424. PADEP amended section 127.702 that establishes plan approval fees, and section 127.703 that establishes operating permit fees under Subchapter F (State Operating Permit Requirements) for future years in details based on year and permit categories. The newly added section 127.465 establishes the procedures the owner or operator of a stationary air contamination source or facility shall follow to make a significant modification to an applicable operating permit. New section 127.709 establishes fees for requests for determination, for whether a plan approval, an operating permit, or both, are needed for the change to the facility. Section 127.710 establishes application fees for the use of general plan approvals and general operating permits for stationary or portable sources.

The revisions to Pennsylvania’s SIP satisfy CAA section 110(a)(2)(L), referenced above. The revisions update the Pennsylvania SIP with current fee schedules and meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

B. Title V Operating Permit Program Revision

The revision to Pennsylvania’s Title V program approves PADEP’s amendments to Chapter 127 sections 127.704 and 127.705. Section 127.704 establishes Title V operating permit fees, and section 127.705 requires the owner or operator of a Title V facility to pay annual Title V emission fees.

Pennsylvania indicates that these amendments to its Title V operating permit program ensure that fees will remain sufficient to cover the costs of administering the plan approval application and operating permit process as required by section 502(b) of the CAA and section 6.3 of the APCA.

Based on the 40 CFR part 70 presumptive minimum fee rate from the October 3, 2022,

EPA Office of Air Quality Planning and Standards memorandum,¹ the requirements of 40 CFR 70.9(b)(2) and the economic analysis by PADEP, EPA finds that the July 20, 2021 PADEP submission has met the requirements of CAA section 502(b)(1)-(10), and is consistent with applicable EPA requirements in the Title V operating permit program of the CAA and 40 CFR part 70.

III. Final Action

EPA is approving Pennsylvania's July 20, 2021 revision to both the Pennsylvania SIP and Pennsylvania's approved Title V operating permit program. The SIP revision is in accordance with requirements in section 110(a)(2)(L) of the CAA and implementing regulations. The Title V submittal meets the requirements of CAA section 502(d) and implementing regulations.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Pennsylvania Regulation described in the amendments to 25 PA Code 121 and 127, as discussed in section II.A of this rulemaking. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.²

V. Statutory and Executive Order Reviews

¹ www.epa.gov/system/files/documents/2022-09/FEE70_2023.pdf.

² 62 FR 27968 (May 22, 1997).

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Under the CAA, the Administrator approves Title V operating permit program revisions that comply with the Act and applicable Federal Regulations. See 42 U.S.C. 7661a(d). Thus, in reviewing SIP and Title V operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements

would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this SIP action. Consideration of EJ is not required as part of this SIP action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

Additionally, Executive Order 12898 directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or

environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that this Title V action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. This Title V action merely approves into Pennsylvania's part 70 operating permit program the relevant Pennsylvania regulations for fees that are required to administer the Title V program in Pennsylvania. Those fees are already being collected by the State. This Title V action therefore does not directly address emission limits or otherwise directly affect any human health or environmental conditions in the commonwealth of Pennsylvania. In addition, EPA provided meaningful involvement on this rulemaking through the notice and comment process, which received no comments, and is in addition to the State-level notice and comment process held by Pennsylvania.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60**

DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving Pennsylvania SIP and Title V permit program revisions may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Lead, Nitrogen dioxide, Operating permits, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR parts 52 and 70 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

2. In § 52.2020, the table in paragraph (c)(1) is amended by:
 - a. Revising the entries for “Section 121.1” and “Section 127.424”;
 - b. Adding an entry for “Section 127.465” in numerical order;
 - c. Revising the entries for “Section 127.702” and “Section 127.703”; and

d. Adding entries for “Section 127.709” and “Section 127.710” in numerical order.

The revisions and additions read as follows:

§ 52.2020 Identification of plan.

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(c) * * *

(1) EPA-Approved Pennsylvania Regulations and Statutes

State citation	Title/subject	State effective date	EPA approval date	Additional explanation/§ 52.2063 citation
Title 25—Environmental Protection Article III - Air Resources				
Chapter 121—General Provisions				
Section 121.1	Definitions	1/16/2021	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION].	Added the definition of “synthetic minor facility”
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Chapter 127—Construction, Modification, Reactivation, and Operation of Sources				
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Subchapter F—Operating Permit Requirements				
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Review of Applications				
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Section 127.424	Public Notice	1/16/2021	[INSERT DATE OF PUBLICATION IN THE	Corrected a cross-reference error in public notice

			<u>FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION].</u>	section.
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Operating Permit Modifications

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Section 127.465	Significant operating permit modification procedures.	1/16/2021	<u>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION].</u>	Added section 127.465 to establish the procedures the owner or operator of a stationary air contamination source or facility shall follow to make a significant modification to an applicable operating permit.
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Subchapter I—Plan Approval and Operating Permit Fees

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Section 127.702	Plan approval fees	1/16/2021	<u>[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION].</u>	Amended section 127.702
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Section 127.703	Operating permit fees under subchapter F	1/16/2021	<u>[INSERT DATE OF PUBLICATION IN THE FEDERAL</u>	Amended section 127.703
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			<u>REGISTER],</u> <u>[INSERT</u> <u>FEDERAL</u> <u>REGISTER</u> <u>CITATION].</u>	
* * * * *				
Section 127.709	Fees for requests for determination	1/16/2021	<u>[INSERT</u> <u>DATE OF</u> <u>PUBLICATION</u> <u>IN THE</u> <u>FEDERAL</u> <u>REGISTER],</u> <u>[INSERT</u> <u>FEDERAL</u> <u>REGISTER</u> <u>CITATION].</u>	Added section 127.709 to establish fees for requests for determination
Section 127.710	Fees for the use of general plan approvals and general operating permits under Subchapter H.	1/16/2021	<u>[INSERT</u> <u>DATE OF</u> <u>PUBLICATION</u> <u>IN THE</u> <u>FEDERAL</u> <u>REGISTER],</u> <u>[INSERT</u> <u>FEDERAL</u> <u>REGISTER</u> <u>CITATION].</u>	Added section 127.710 to establish application fees for the use of general plan approvals and general operating permits for stationary or portable sources.
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PART 70—STATE OPERATING PERMIT PROGRAMS

3. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

4. Appendix A to part 70 is amended by adding paragraph (e) to the entry for

Pennsylvania to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permit Programs

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Pennsylvania

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(e) The Pennsylvania Department of Environmental Protection submitted a program revision to amends Chapter 127 sections 127.704 and 127.705 on July 20, 2021; approval effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

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[FR Doc. 2023-16734 Filed: 8/8/2023 8:45 am; Publication Date: 8/9/2023]