

PENNSYLVANIA TAKES EMERGENCY ACTION TO REGULATE CONVENTIONAL OIL AND GAS INDUSTRY EMISSIONS

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On 30 November 2022, the Pennsylvania Environmental Quality Board (EQB) voted 16-2 to approve an emergency rule regulating volatile organic compound (VOC) emissions from existing conventional oil and gas sources. The emergency rulemaking imposes new reasonably available control technology (RACT) requirements and emissions limitations with respect to VOCs emitted by conventional oil and gas sources, with the intent of lowering air pollution and greenhouse gas emissions.¹ While the emergency rule specifically targets VOC emissions, the Pennsylvania Department of Environmental Protection (DEP) also anticipates a reduction in methane emissions as a “co-benefit,” because both VOCs and methane are emitted from oil and gas operations.

In total, more than 4,700 well owners and over 27,600 facilities throughout the Commonwealth are expected to be affected by this emergency rulemaking. DEP estimates that the emergency rule will cost the conventional oil and gas industry US\$9.8 million in annual compliance costs, but contends the rulemaking will result in an annual savings of US\$15.7 million due to conserving natural gas that would otherwise be lost through uncontrolled emissions.² Because VOC emissions are precursors to the formation of ground level ozone, DEP notes that VOC regulation prevents hazards to public health and the environment. Further, DEP contends that VOC regulation could provide Pennsylvania with a public health benefit of US\$63 million to US\$189 million.

The EQB previously voted in October 2022 to adopt the same rule as a non-emergency rulemaking. The Pennsylvania House Environmental Resources and Energy Committee subsequently initiated a legislative review process that must be completed before the non-emergency rulemaking can take effect. On 14 November 2022, members of the Committee issued a letter to the Independent Regulatory Review Commission (IRRC) opposing the non-emergency regulation. While the IRRC approved the non-emergency regulation on 17 November 2022, its publication has been delayed by the House's letter. This review process is expected to extend into 2023.

The EQB's non-emergency rulemaking initially addressed emissions from both conventional and unconventional sources. But, due to opposition to the combined rulemaking, the EQB separated the regulation of conventional and unconventional sources into two separate regulations. As a result, the emergency regulation addresses conventional oil and gas sources, while a separate non-emergency regulation covers unconventional sources.

Under the federal Clean Air Act (CAA), Pennsylvania is required to submit a State Implementation Plan (SIP) to the Environmental Protection Agency (EPA) by 16 December 2022. The Pennsylvania SIP must include requirements covering VOC emissions from both conventional and unconventional oil and gas sources. Failure to comply with these SIP requirements could result in a loss of up to US\$800 million in federal highway funding presently designated for Pennsylvania projects. Notably, EPA is under an express mandate to strip Pennsylvania

of federal funding for noncompliance and currently lacks discretion to deviate from this mandatory penalty.³ With the review process for the non-emergency rulemaking for conventional sources expected to continue into 2023, the Wolf administration deemed the emergency action necessary to prevent critical federal funding losses for Pennsylvania.

Members of the House Environmental Resources and Energy Committee questioned the necessity for emergency action, noting that the contents of the regulation had been in progress at the DEP since 2016. Those members in favor of the emergency regulation cited budget and personnel cuts to DEP's air quality program as the source of prior regulatory delay.

The emergency VOC regulation took effect on 2 December 2022.⁴ EPA must now review and approve Pennsylvania's revised SIP to bring the state into federal compliance. While EPA may approve or disapprove Pennsylvania's SIP in full or in part, a timely submission by the 16 December 2022 compliance deadline will prevent an immediate federal funding penalty. However, the EQB's approval of the emergency regulation does not prevent future opposition to the regulation, including letters of disapproval, from the House Environmental Resources and Energy Committee. Additionally, opponents to the emergency regulation may still raise challenges in Commonwealth Court. If these legal challenges are pursued, their outcomes could impact Pennsylvania's future SIP compliance and will likely determine the future of VOC and methane regulation for Pennsylvania's oil and gas industry.

FOOTNOTES

¹ <https://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=22217&typeid=1>.

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https://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/2022/November_30_2022/04_7-580_COG%20VOC_ECFO_RAF.pdf.

³ Robert Smith, *EQB paves way for emergency action on methane regulation*, Capitolwire, Nov. 30, 2022, Capitolwire.com.

⁴ <https://www.ahs.dep.pa.gov/NewsRoomPublic/articleviewer.aspx?id=22233&typeid=1>.

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