



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE GOVERNOR

GREGORY G. SCHWAB  
GENERAL COUNSEL

December 12, 2022

Mr. Adam Ortiz  
Regional Administrator  
U.S. Environmental Protection Agency  
1600 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103-2852

Dear Mr. Ortiz:

I have reviewed the enclosed materials related to a revision to the Pennsylvania State Implementation Plan (SIP) concerning amendments made to 25 Pa. Code Chapters 121 and 129 (relating to general provisions; and standards for sources) and it is my legal opinion that these enclosed materials demonstrate that the Commonwealth of Pennsylvania followed all of the procedural requirements of the State's laws and constitution in conducting and completing the adoption/issuance of the SIP revision.

The SIP revision contains the final-form rulemaking for both unconventional and conventional sources to establish volatile organic compound (VOC) emission limitations and other reasonably available control technology (RACT) requirements for certain oil and natural gas industry sources of VOC emissions in Pennsylvania consistent with the U.S. Environmental Protection Agency's (EPA) recommendations in the "Control Techniques Guidelines for the Oil and Natural Gas Industry," EPA 453/B-16-001, Office of Air Quality Planning and Standards, EPA, October 2016 (2016 O&G CTG). *See* 81 FR 74798 (October 27, 2016). The implementation of these RACT requirements is required under the federal Clean Air Act (CAA) to control VOC emissions from the regulated sources to assist Pennsylvania in attaining and maintaining the 2008 and 2015 ground-level ozone National Ambient Air Quality Standards. Moreover, these requirements are also necessary because Pennsylvania is part of the Northeast Ozone Transport Region.

The final-form rulemaking for unconventional sources adopting regulatory amendments to Chapters 121 and 129 became effective upon publication in the *Pennsylvania Bulletin* on December 10, 2022. The final-form rulemaking adds §§ 129.121—129.130 (relating to control of VOC emissions from unconventional oil and natural gas sources) to adopt RACT requirements and RACT emission limitations for certain oil and natural gas industry sources of VOC emissions

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installed at unconventional well sites. This rulemaking was subject to a 66-day comment period in the *Pennsylvania Bulletin*. See 50 Pa.B. 2633 (May 23, 2020).

The SIP revision also contains the emergency certified final-omitted rulemaking for conventional sources adopting regulatory amendments to Chapter 129 which became effective upon actual notice on December 2, 2022. The emergency certified final-omitted rulemaking adds §§ 129.131—129.140 (relating to control of VOC emissions from conventional oil and natural gas sources) to adopt RACT requirements and RACT emission limitations for certain oil and natural gas industry sources of VOC emissions installed at conventional well sites. This rulemaking was subject to a 66-day comment period in the *Pennsylvania Bulletin*. See 50 Pa.B. 2633 (May 23, 2020).

The Department provided actual notice, consistent with Pennsylvania law, by issuing a press release notifying all regulated entities and the public that the conventional sources emergency certified final-omitted rulemaking was effective. This emergency-certified rulemaking was also published in the *Pennsylvania Bulletin* on December 10, 2022. On November 30, 2022, Pennsylvania Governor Tom Wolf issued a Certification of Need for Emergency Regulation finding that the Department's final-omitted rulemaking is required to prevent "the need for supplemental or deficiency appropriations of greater than \$1,000,000." See 71 P.S. § 745.6(d).

This certification of need arose to avoid the imposition of mandatory federal highway funding sanctions under section 179 of the CAA on December 16, 2022. (42 U.S.C.A. § 7509). See 85 FR 72963 (November 16, 2020), *Findings of Failure To Submit State Implementation Plan Revisions in Response to the 2016 Oil and Natural Gas Industry Control Techniques Guidelines for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) and for States in the Ozone Transport Region*, and 86 FR 71385 (December 16, 2021), *Findings of Failure To Submit State Implementation Plan Revisions for the 2016 Oil and Natural Gas Industry Control Techniques Guidelines for the 2015 Ozone National Ambient Air Quality Standards (NAAQS) and for States in the Ozone Transport Region*.

Based on this analysis, it is my legal opinion that the Commonwealth followed the applicable procedural requirements of the State's laws and constitution in conducting and completing the adoption and issuance of this SIP revision.

Sincerely,

  
GREGORY G. SCHWAB