



An Open Letter to Representative Metcalfe on the use of General Permits for Control of Methane Emissions

March 10, 2017

Dear Representative Metcalfe,

On February 10, 2017, you sent a letter to Acting Secretary Patrick McDonnell of the Department of Environmental Protection (Department) expressing your belief that the Department did not follow the correct procedure in proposing two general permits related to the oil and gas industry (GP-5 and GP-5A). This letter mischaracterized the statutorily prescribed protocol for issuance of general plan approvals and general permits.

Unlike a regulation, the decision to utilize a general permit is voluntary. Electing to comply with the standardized terms and conditions found in a general permit saves time and is often highly cost-effective, but applicants always have the option to seek individual permits if they choose or if they cannot comply with the standardized specifications and conditions in the general permit. Since the individual permit process provides the Department the freedom to exercise discretion to follow or not follow the standardized terms and conditions found in the general permit, these terms and conditions do not have the nature of a rule or regulation.¹

Rather, general permits are a statutorily prescribed alternative to individual permits that enable the Department to permit jurisdictional activities in a manner that conserves staff time and resources and enable regulated entities to obtain authorization for regulated activities in an expedited fashion. In Section 6.1(f) of the Air Pollution Control Act, the Legislature gave the Department broad discretion both to issue general permits and to determine what specifications and conditions comprise adequate regulation. The legislation says:

¹ *DEP v. Rushton Mining*, 139 Pa. Commw. 648, 658 (1991).

The department may by regulation establish a general plan approval and a general permit program. After the program is established, the department may grant general plan approval or a general permit for any category of stationary air contamination source if the department determines that the sources in such category are similar in nature and can be adequately regulated using standardized specifications and conditions.

Pursuant to this authority, the Department established a general plan approval and general permit program in Title 25, Chapter 127 of the *Pennsylvania Code*. Under this program, the Department must set standardized specifications and conditions that ensure “that the emissions from a new source will be the minimum attainable through the use of the best available technology.”² The Department must also allow for a public comment period of at least 45 days³ before it may publish a notice in the *Pennsylvania Bulletin* that the general plan approval or general permit is available for use.

The procedure by which the Department is proposing GP-5 and GP-5A has been used consistently for decades. Indeed, DEP is not required to submit general permits for legislative review, including review by the Independent Regulatory Review Commission. If DEP’s procedure were invalid, the Department would have no choice but to withdraw all of the existing general permits which were issued using the same procedure. Without the availability of general permits, all of the affected operators would need to use the individual permitting process for a wide range of applications. The potentially impacted general permits include the following:

- Small Gas and No. 2 Oil Fired Combustion Units (GP-1)
- Storage Tanks for Volatile Organic Liquids (GP-2)
- Portable Nonmetallic Mineral Processing Plant (GP-3)
- Burn-Off Ovens (GP-4)
- Natural Gas Compression Facilities (GP-5)
- Petroleum Dry Cleaning (GP-6)
- Sheet-Fed Offset Lithographic Printing Press (GP-7)
- Powder Metal Sintering Furnace (GP-8)
- Diesel or No. 2 Fuel-Fired Internal Combustion Engines (GP-9)
- Non-Heatset Web Offset Lithographic Printing Press (GP-10)
- Nonroad Engines (GP-11)
- Fugitive Dust Sources and Diesel Fired Internal Combustions Engines at Coal and Coal Refuse Preparation Plants (GP-12)
- Human or Animal Crematories (GP-14)
- Feed Mill (GP-15)
- Dry Abrasive Blasting Operations (GP-19)

² 25 Pa Code § 127.12(a)(5).

³ 25 Pa Code § 127.612(b)(7).

- Landfill Gas-Fired Simple Cycle Turbine(s) (GP-22)
- Pharmaceutical and Specialty Chemical Production (GP-24)
- Heatset Web Offset Lithographic Printing Presses Conditions (GP-25)

As you can see, what the Department is proposing with respect to GP-5 and GP-5A is consistent with long-standing protocol. General permits are merely one option for operators to pursue. To characterize this proposal as unprecedented or unauthorized is completely unfounded.

Further, the proposal reflects new understanding—including self-reported information from industry itself—about methane emissions and the means to address them. The proposal, when published in the Pennsylvania Bulletin on February 4, 2017 (Volume 47, Number 5), included a 73-page Technical Support Document with cost analysis. You can find that information on the Department’s website here: <http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-13330>

Protection of public health and the environment is fundamental to the Department’s mission, and they have followed that mission and the letter of the law in advancing this proposal.

Sincerely,

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