

Air Quality Letter

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PERMITTING

Kentucky SSM Rulemaking Update

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As previously reported in the “*Dinsmore Air Quality Letter*”, the Environmental Protection Agency found in June of last year that the State Implementation Plans (SIPs) of 36 states were substantially inadequate due to their regulatory treatment of excess emissions associated with startups, shutdowns and malfunctions at regulated facilities. The agency issued a SIP Call to each of those states to correct the deficiencies. For Kentucky, the SIP Call was directed at Section 1 of 401 KAR 50:055. Kentucky submitted its formal response to EPA on November 17, 2016, meeting its November 22, 2016 deadline. A copy is available on the DAQ website.

Kentucky had reportedly evaluated a number of options to address the SIP Call, including no action. However, Kentucky ultimately chose to resolve the SIP Call by removing Section 1(1) and (4) of 401 KAR 50:055 from the SIP. Section 1(1) provides as follows: “Emissions which, due to shut down or malfunctions, temporarily exceed the standard set forth by the cabinet shall be deemed in violation of such standards unless the requirements of this section

are satisfied and the determinations specified in subsection (4) of this section are made.” Subsection (4) addresses the demonstration the source must make in order for the Director of the Division for Air Quality to find that the source should be relieved from compliance with the standards. The source must show that (a) the malfunction or shutdown and ensuing start-up did not result from failure to operate and maintain properly the equipment; (b) all reasonable steps were taken to correct, as expeditiously as practicable, the conditions causing the emissions to exceed the standards; (c) all reasonable steps were taken to minimize the emissions and their effect on air quality; (d) the excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and (e) the malfunction or shutdown and ensuing start-up was not caused entirely or in part by poor maintenance, careless operation or any other preventable upset conditions or equipment breakdown. The regulation also requires the Director to notify the source of his determination 60 days after the submittal.

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A public hearing on the proposed approach was held on September 14, 2016. EPA Region 4 had an opportunity to review and comment on Kentucky's proposed approach and had no comments. Therefore, it is anticipated that this proposed resolution of the SIP Call will be approved. However, the change to the SIP is not effective until EPA formally approves the revision. The timing of EPA approval is uncertain, particularly due to the change in administrations. It is not unusual for EPA to take months (or years) to act on proposed SIP revisions.

Even after an approval of the SIP revision, it is important to remember that Section 1(1) and (4) are still in effect as a matter of state law. Although the acceptance of a source demonstration under Section 1(4) by the DAQ Director will not bar federal enforcement or a citizen suit under the Clean Air Act, the granting of a request for relief would preclude state enforcement. The state's determination should also merit consideration in the event EPA or a third party pursues an action over the same event.

AQL

PERMITTING

Ohio SSM Rulemaking Update

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Ohio EPA continues to pursue rulemaking to establish new startup, shutdown or malfunction (SSM) and scheduled maintenance (SM) rules, despite being unable to comply with the EPA's November 22, 2016 deadline for submitting a revised SIP. This rulemaking comes in response to EPA's finding in the June 12, 2015 *Federal Register* (80 Fed. Reg. 33850) that Ohio's SIP was "substantially inadequate" due to its treatment of SSM events.

Ohio was unable to meet the November 22, 2016 deadline because of the procedural requirements of Ohio law to amend the SIP. Failure to timely submit an adequate SIP revision could result in imposition of a Federal Implementation Plan (FIP) by EPA within 24 months. Additionally, mandatory sanctions could be triggered, including restrictions on highway funding. Ohio is not the only state to miss the deadline to submit the revised SIP and, given the circumstances, punitive action is unlikely if Ohio continues to show progress toward enacting the proposed changes in a timely manner.

The modifications to the SIP will eliminate exemptions allowed for SSM and SM events. Portland Cement Kilns will be subject to the SSM and SM requirements in OAC rule 3745-15-06. The rule will also define "malfunction" as "a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, process monitoring equipment or a process to operate in a normal or usual manner. Equipment failures that are caused in part or whole by poor maintenance or careless operation are not malfunctions." Ohio sources will no longer be allowed to exceed emissions limits in the event of a malfunction or shutdown. Owners and operators will be able to request modified limits for times of SSM and SM. The opportunity for interested parties to provide comments on the proposed rules closed on December 14, 2016.

AQL

PERMITTING

EPA Eases Ability to Rescind Some Air Pollution Permits

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On November 7, 2016, EPA issued a final rule easing the ability to rescind some air pollution permits that regulators deem no longer necessary. Prior to this final rule, 40 CFR 52.21(w) authorized the owner or operator of a stationary source that held a Prevention of Significant Deterioration (PSD) permit based on rules in effect on or before July 30, 1987 to request a full or partial rescission of their permit. In this final rule, EPA is removing the July 30, 1987 date restriction from 40 CFR 52.21(w).

EPA issued this rule because experience had shown that there were circumstances where a permit based on rules in effect after

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EPA Eases Ability to Rescind Some Air Pollution Permits

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July 30, 1987 may qualify for rescission under 40 CFR 52.21(w). For example, EPA recently determined a need for rescission authority after the Supreme Court determined that PSD permits were not required for new sources or modifications to existing sources that only emit greenhouse gases. However, because of the July 30, 1987 date restriction, EPA had to revise the regulation in order to enable permits to be rescinded consistent with the Supreme Court's ruling. EPA expects future similar instances under which PSD permits based on rules issued after July 30, 1987 would be appropriate under 40 CFR 52.21(w). EPA also stated that circumstances not previously considered by EPA could lead a source to qualify for a rescission under this section though EPA did not elaborate on what these circumstances might be.

EPA is not changing the criteria under which an owner or operator may qualify for rescission under 40 CFR 52.21(w). An owner or operator still must make an adequate demonstration that the

requirements of 40 CFR 52.21 "would not apply to the source or modification" in order to obtain a rescission. EPA stated that review of a rescission request typically involves an in-depth evaluation of the source, the rules in place at the time, and the court decisions or other events affecting the source. The final rule clarifies that a permit rescission requires an exercise of discretion by the reviewing authority, and the rule does not create a mandatory duty to grant a rescission request.

The scope of the rule only addresses the revision or rescission of permits that are major New Source Review permits. The rule is also only applicable to the EPA Regions and reviewing authorities that are delegated by EPA to issue PSD permits and to reviewing authorities that have their own PSD rules approved by the EPA in a State Implementation Plan that incorporates CFR 52.21(w) by reference.

AQL

STATE REGULATIONS

Kentucky Update

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Kentucky Files Regulatory Amendments

On November 14, 2016, the Division for Air Quality filed amendments to 401 KAR 60:005 and 401 KAR 63:002 that update the existing regulations to include Subparts of 40 CFR Part 60 and Part 63 that have been promulgated by EPA since the last amendment of the regulations. These amendments will update the regulations through July 1, 2016.

AQL

Kentucky Responds to Maryland Petition

On December 2, 2016, the Kentucky Energy and Environment Cabinet requested EPA deny a November 16, 2016 petition from the State of Maryland pursuant to Section 126(b) of the Clean Air Act that requested EPA abate emissions from 36 coal-fired electric generating units in five states, including Kentucky, that supposedly contribute to Maryland's non-attainment with the 2008 ozone National Ambient Air Quality Standard (NAAQS) of 0.075ppm. The Maryland petition identified three Kentucky emission sources as purportedly

contributing to Maryland's failure to meet the 2008 ozone NAAQS and specifically requested more stringent NO_x limits be imposed on those sources. Kentucky's response requested immediate denial of the petition on the ground that ozone ambient air monitors operated in and around Maryland demonstrate compliance with the 2008 limit. Additionally, Kentucky asserted that the petition failed to provide adequate justification for requiring Kentucky sources to make further reductions and also failed to account for recent revisions to the Cross State Air Pollution Rule and the ozone season budgets published on October 26, 2016, which require the three identified Kentucky

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Kentucky Responds to Maryland Petition

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sources to reduce their emissions by more than 2,000 tons of NO_x during ozone season or acquire allowances while still complying with applicable requirements. Kentucky also highlighted the local source impact on Maryland air quality and that 32 sources in Maryland have higher NO_x limits than the requested limits for the three Kentucky sources. As stated in Kentucky's response, "[i]f EPA grants the petition,

Kentucky sources will be required to reduce emissions at an economic penalty, whereas Maryland can continue to promote economic growth and increase emissions." Kentucky requested the petition be denied so that Kentucky industries would not be placed "at an unfair, unreasonable economic disadvantage."

AQL

STATE REGULATIONS

Ohio Update

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Ohio EPA Seeks Input on Uses of Volkswagen Settlement Money

The State of Ohio is expected to receive \$71.4 million over 10 years as part of a multistate settlement worth \$570 million with Volkswagen over the use of emissions control defeat devices in diesel passenger vehicles. Ohio EPA has requested input from the public on how best to spend this money. The settlement money will be used to fund grants and other initiatives to improve air quality throughout the state. Ohio EPA must prepare a plan to submit to the court appointed trustee to demonstrate how it intends to use its share of the funds. The plan must address a number of factors, including for example, the expected emission benefits and how the beneficiary will seek and consider public comment. Beneficiaries are specifically required to provide an estimate of the amount of NO_x that their mitigation actions will reduce when submitting funding requests.

Eligible mitigation actions are focused on reducing NO_x emissions from mobile sources such as motor vehicles and vessels. Actions eligible under the Diesel Emission Reduction Act (DERA) include truck stop electrification (electrified parking spaces to eliminate long duration idling), fuel efficiency and idle reduction equipment (single-wide tires, fuel-operated heaters, auxiliary power units, etc.), construction and agricultural equipment, smaller marine vessels, and diesel generators, among others.

Beneficiaries may use funds to purchase new all-electric vehicles such as government-owned school, transit or shuttle buses to replace existing diesel, government-owned school, transit or shuttle buses. In addition, states may use trust funds to pay for up to 75 percent of the cost of a new all electric replacement

Maryland Petition Seeks Reductions from Ohio Sources

On November 16, 2016, the Maryland Department of the Environment filed a petition with EPA requesting that it force 36 coal-fired units in Ohio and neighboring states to take measures to reduce emissions alleged to have increased ozone concentrations on the East Coast. The Ohio facilities targeted by the petition are Killen Station, the Kyger Creek Generating Station and the W.H. Zimmer Generating Station. The petition also included generating facilities in Indiana, Kentucky, Pennsylvania and West Virginia. Pursuant to Section 126 of the Clean Air Act, states may petition EPA to find that specific sources of air pollution in other states are significantly contributing to non-attainment or interfering with maintenance of federal air quality standards in the petitioning state. The petition requests that EPA mandate that the named facilities use all installed control technology for every day during the ozone season starting on May 1, 2017. EPA has 60 days to respond to the petition.

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Ohio EPA Seeks Input on Uses of Volkswagen Settlement Money

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vehicles for nongovernment-owned fleets, and 100 percent of the cost of new, all electric school bus replacements in private fleets contracted with public school districts. The charging infrastructure associated with these electric vehicles can also be purchased with trust funds. To ensure that such replacements achieve the intended emission reductions, the replaced equipment must be scrapped.

Ohio EPA has indicated that the first priority for funding will be for projects in the Cincinnati, Columbus and Cleveland areas because of existing air quality problems. Ohio EPA is accepting early stakeholder comments through December 31, 2016. Ohio EPA will then draft a state mitigation plan, which will be circulated during a formal comment period in spring of 2017. More information is available at <http://epa.ohio.gov/oe/EnvironmentalEducation.aspx#131365122-vw-mitigation-grants>

AQL

STATE REGULATIONS

Ohio EPA Considers Request for Elimination of Low RVP Requirement in Cincinnati and Dayton Areas

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Ohio EPA may petition EPA to request the removal of Low Reid Vapor Pressure (RVP) fuel requirements in the Cincinnati and Dayton areas from Ohio's State Implementation Plan (SIP). RVP is a measure of gasoline volatility and, thus, the rate of vaporization. EPA regulates the RVP of gasoline because while higher vaporization gasoline is often necessary in the winter for starting engines in cold weather, in summer evaporative emissions from gasoline can contribute to increased ground-level ozone levels. Ohio implemented low RVP requirements in order to comply with the ozone National Ambient Air Quality Standards (NAAQS) by reducing nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions, which are precursors to ozone formation. Currently, low RVP fuel requirements are in effect in Butler, Clark, Clermont, Greene, Hamilton, Miami, Montgomery and Warren counties. Ohio EPA proposes substituting the low RVP requirements with permanent reductions in NO_x emissions from two major sources, 40.50 tons of NO_x from MillerCoors LLC and 30.27 tons of NO_x from Wright-Patterson Air Force Base.

AQL

STATE REGULATIONS

West Virginia Update

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Under West Virginia law, the state legislature must approve all rules drafted by state agencies, including the West Virginia Department of Environmental Protection (WVDEP). Just as importantly, the West Virginia legislature only meets for 60 days during the first quarter of each year.

Occasionally, this creates timing problems related to EPA-imposed deadlines. An example of this is currently occurring with the November 22, 2016 deadline for submittal of a revised state implementation plan (SIP) for addressing excess emissions during periods of startup, shutdown and malfunction (SSM). Essentially,

EPA is requiring states to modify their SIPs by removing previously approved language that exempts industrial facilities from compliance with emissions standards related to those periods where certain demonstrations are made that the excess emissions were unavoidable. In West Virginia, the WVDEP can draft and recommend changes to the SIP, but they only become binding if the legislature approves the changes while it is in session. Thus, West Virginia's legal requirement means that the state missed the EPA's response deadline. If EPA declines to take West Virginia's unique situation into account, EPA could impose a Federal Implementation Plan (FIP) within 24 months.

That reality does not mean that West Virginia has been doing nothing. As part of its annual rules package, WVDEP adopted a rule on August 26, 2016, establishing criteria to allow companies subject to 45CSR2, 45CSR3, 45CSR5, 45CSR6, 45CSR7, 45CSR10, 45CSR21 or 45CSR40 that have excess SSM emissions that cannot meet an allowable emission limit indicative of normal operations

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West Virginia Update

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to request an alternative emission limitation. This limitation will be a component of a continuous allowable emission limitation and may take the form of a control measure such as (1) a numerical limitation, (2) a technological control requirement, or (3) a work practice requirement. It is now up to the legislature to approve this rule and the governor's signature to make it final.

As part of its annual rules package, WVDEP is also proposing additional rules affecting state air quality. Specifically, WVDEP is currently proposing the following rules for legislature approval:

45CSR8 -- Ambient Air Quality Standards: This proposed rule establishes and adopts ambient air quality standards for sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, equivalent to the national primary and secondary ambient air quality standards established under Section 109 of the Clean Air Act (CAA) and promulgated by the United States Environmental Protection Agency under 40 CFR Part 50, and 40 CFR Part 53.

45CSR13 -- Permits for Construction, Modification, Relocation, and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Administrative Updates, Temporary Permits, Permission to Commence Construction, and Procedures for Evaluation: This proposed rule sets forth (1) the procedures for stationary source reporting; (2) the criteria (a) for obtaining a permit to construct and operate a new stationary source which is not a major stationary source, (b) to modify a non-major stationary source, to make modifications which are not major modifications to an existing major stationary source, and (c) to relocate non-major stationary sources within the state of West Virginia; and (3) to set forth procedures to allow facilities to commence construction in advance of permit issuance.

45CSR14 -- Permits for Construction of and Major Modifications of Major Stationary Sources for the Prevention of Significant Deterioration of Air Quality: This proposed rule establishes pre-construction permit emission limitations and other measures as may be necessary for the Prevention of Significant Deterioration of air quality and adopts a preconstruction permit program in accordance with the policy of Section 101(b)(1) of the CAA,

the purposes of Section 160 of the CAA, and the Prevention of Significant Deterioration of air quality requirements of 40 CFR Section 51.166.

45CSR16 -- Standards of Performance for New Stationary Sources: This proposed rule establishes and adopts standards of performance for new stationary sources promulgated by the EPA pursuant to Section 111(b) of the CAA. It codifies general procedures and criteria to implement the standards of performance for new stationary sources set forth in 40 CFR Part 60 except for Subparts B, C, Ca, Cb, Cc, Cd, Ce, Ea, Eb, Ec, WWW, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, LLLL and MMMM. It also specifically excludes the 2015 amendments to subpart AAA and Subpart QQQQ relating to wood-burning heaters and appliances.

45CSR25 -- Control of Air Pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities: This proposed rule establishes and adopts a program of regulation over air emissions and emission standards for the treatment, storage and disposal of hazardous waste promulgated by EPA pursuant to the Resource Conservation and Recovery Act (RCRA), as amended by codifying general procedures and criteria to implement emission standards set forth in the 40 CFR Parts 260, 261, 262, 264, 265, 266, 270 and 279 as listed in Table 25-A.

45CSR34 -- Emission Standards for Hazardous Air Pollutants (HAP): This proposed rule establishes and adopts a program of national emission standards for HAPs and other regulatory requirements promulgated by EPA pursuant to 40 CFR Parts 61, 63 and Section 112 of the CAA, as amended. It codifies general procedures and criteria to implement emission standards for stationary sources that emit (or have the potential to emit) one or more of the eight substances listed as HAPs in 40 CFR Section 61.01(a), or Section 112(b) of the CAA with the exception of the following Subparts: (1) E of 40 CFR Part 63 and any provision related to Section 112(r) of the CAA; (2) DDDDDD, LLLLLL, OOOOOO, PPPPPP, QQQQQQ, TTTTTT, WWWWWW, ZZZZZZ, HHHHHH, BBBBBB, CCCCCC, WWWWWW, XXXXXX, YYYYYY, ZZZZZZ, AAAAAA, BBBBBB, CCCCCC, and DDDDDD of 40 CFR Part 63; and (3) B, H, I, K, Q, R, T, and W; Methods 111, 114, 115 and Appendix D and E of 40 CFR Part 61.

AQL

NAAQS

EPA Proposes Implementation Regulations for the 2015 Ozone NAAQS

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On November 17, 2016, EPA proposed regulations in the Federal Register to establish nonattainment area classification thresholds and implementation requirements for the 8-hour ozone NAAQS adopted in 2015. The proposed regulations largely retain and update the implementing regulations that were promulgated for the 2008 8-hour ozone NAAQS. Written comments on the proposed rules must be submitted on or before January 17, 2017.

EPA is accepting comment on a number of important policy issues including the following:

- Nonattainment area classification thresholds and deadlines for areas to attain the 2015 ozone standard; Milestone compliance demonstrations to address reasonable further progress (RFP);
- Plan implementation deadlines for reasonable available control technology (RACT);
- Ability to consider the emission reductions from sources within a state but outside a nonattainment area for purposes of attainment planning; and
- Reconsideration of optional ozone NAAQS trading provisions

for pollutants that react to form ozone that would allow VOCs and NO_x emission reductions to satisfy nonattainment new source review permitting emission offset requirements.

EPA is also taking comment on two options for revoking the 2008 ozone NAAQS. The first option would revoke the 2008 ozone NAAQS in all areas effective one year after the final designations for the 2015 ozone NAAQS. Final area designations for the 2015 ozone NAAQS are to be issued by EPA by October 1, 2017. Under this option, EPA would establish anti-backsliding requirements for all nonattainment areas that have not obtained the 2008 NAAQS at the time of its revocation.

Under Option 2, EPA would revoke the 2008 ozone NAAQS in all areas designated attainment for the 2008 ozone NAAQS within one year after the effective date of designations for the 2015 ozone NAAQS. Under Option 2, the 2008 ozone standard would continue to apply in any areas designated nonattainment until the area is re-designated to attainment for the 2008 ozone NAAQS. This is the approach being used for the most recent PM_{2.5} NAAQS. The 2008 ozone NAAQS implementation rule is currently being contested in the United States Court of Appeals for the District of Columbia Circuit. The 2015 ozone NAAQS is also being challenged before the District of Columbia Circuit.

AQL

NAAQS

EPA Finalizes Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS

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On October 26, 2016, EPA published a final rule in the Federal Register updating its emission budget for oxides of nitrogen (NO_x) for electric generating units in 22 eastern states that are deemed to significantly contribute to nonattainment or interference with maintenance of the 2008 ozone NAAQS in downwind states. The required reductions in NO_x emissions is intended to reduce

ozone season emissions to help achieve compliance with the 2008 ozone NAAQS. The Cross-State Air Pollution Rule (CSAPR) Update establishes federal implementation plan budgets in each of the 22 states that apply beginning with the 2017 ozone season (May 1 through September 30). Of significance, the NO_x emission budgets are designed and established with respect to 2008 ozone NAAQS and not the more stringent 70 ppb 2015 8-hour ozone NAAQS. The emission budgets are estimated to reduce ozone season NO_x emissions from power plants in the eastern United States by 20 percent in 2017 as compared to 2015 levels. The emission budgets for each of the 22 states are to be achieved through allowance trading programs. The power industry contends that the mandatory emission budgets are not necessary given the reduction in NO_x emissions that are otherwise occurring due to unit retirements and conversions.

AQL

GREENHOUSE GAS EMISSIONS

EPA Proposes to Amend Greenhouse Gas Permitting Regulations and Establish a Significant Emission Rate for GHG Emissions Under PSD

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On October 3, 2016 EPA published a proposed rule designed to respond to the United States Supreme Court and United States Court of Appeals for the District of Columbia Circuit decisions regarding its tailoring rule for greenhouse gases. The Court decisions invalidated that portion of the tailoring rule that applied PSD and Title V permitting requirements to sources only because greenhouse gas emissions from the source exceeded permitting thresholds. The Supreme Court decision upheld PSD and Title V permitting requirements applied to sources that exceeded emission levels for other pollutants, as well as for greenhouse gas emissions (the so-called “anyway sources”). The Supreme Court had also noted EPA’s authority to establish a *de minimus* threshold below which Best Available Control Technology (“BACT”) is not required in a PSD permit but found that the 75,000 CO_{2e} tpy threshold in the tailoring rule had not been properly justified and was not an exercise of its authority to establish a *de minimus* exception.

In August 2015, EPA issued a final rule which deleted sections and paragraphs from the rule that were readily severable from other provisions of the program. These removed provisions required a stationary source to obtain a PSD permit solely on the basis of greenhouse gas emissions. EPA was able to promulgate these changes as a final rule without public notice and comment because of their severability and designation as ministerial actions, which are exempt from notice and comment rulemaking procedures. The October 3, 2016 proposed rule is designed to complete the rulemaking changes to comply with the court decisions.

In drafting the tailoring rule EPA had placed the definition of greenhouse gases within the definition of the term “subject to regulation.” In this proposed action, EPA would remove those provisions from the definition of “subject to regulation” and would place a stand-alone definition of greenhouse gases within the regulations. EPA is further proposing to modify the definitions of “major stationary source” and “major modification” to include an exemption for greenhouse gases to ensure that a source is

not required to obtain a permit solely because it emits or has the potential to emit greenhouse gases above the major source thresholds or significance levels.

The proposed rule also provides a justification for the *de minimus* level of 75,000 CO_{2e} tpy below which BACT would not be required in those instances where a PSD permit is required. EPA reviewed the regulatory provisions for a *de minimus* exception as well as historical approaches taken for establishing *de minimus* levels in the PSD program, and found that a new and different approach was necessary for determining the *de minimus* level of greenhouse gases. First, EPA used its experiences with greenhouse gas BACT reviews at the 75,000 CO_{2e} tpy level, finding that the types of sources addressed in those reviews represent the most important industry sectors in terms of emissions contributions. Second, a review of “anyway source” PSD permits that did not go through BACT review under 75,000 CO_{2e} tpy revealed only a few cases where the proposed level may have resulted in additional greenhouse gas BACT reviews. The review revealed only a handful of PSD modification permits on a yearly basis nationwide that could be expected to increase greenhouse gas emissions in the range of 30,000 – 75,000 CO_{2e} tpy. EPA requested comment on whether a value between 30,000 – 75,000 CO_{2e} tpy would better represent a *de minimus* threshold for applying the BACT requirement to greenhouse gases but recognized that the 75,000 CO_{2e} tpy was justifiable. EPA also requested specific comments related to the administrative and enforcement burdens associated with implementing greenhouse gas BACT review at the proposed SER level of 75,000 CO_{2e} tpy or at a suggested alternative significant emission rate level.

The comment period for this proposed rule ended on December 16, 2016 and therefore a final rule is not likely prior to the change in administration.

AQL

FEDERAL REGISTER UPDATES

EPA Continues With Rulemaking Through the End of the Administration

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10/14/2016

81 FR 70,966

Final Rule. EPA approved changes to Kentucky's SIP that remove Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in Kentucky and allow the decommissioning of existing Stage II equipment in Boone, Campbell and Kenton counties. The final rule took effect on November 14, 2016. See <https://www.gpo.gov/fdsys/pkg/FR-2016-10-14/pdf/2016-24779.pdf>.

10/17/2016

81 FR 71,444

Proposed Rule. EPA proposed to approve a request from Ohio to re-designate the Cleveland-Akron-Lorain area (the Cleveland area) to attainment for the 2008 ozone NAAQS. The Cleveland area includes Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit Counties. EPA also proposed, as a revision to the Ohio SIP, approval the state's plan for maintaining the 2008 ozone standard through 2030 in the same area. EPA also made a finding of adequacy and proposed to approve Ohio's 2020 and 2030 Motor Vehicle Emission budgets for the Cleveland area. See <https://www.gpo.gov/fdsys/pkg/FR-2016-10-17/pdf/2016-24914.pdf>.

10/21/2016

81 FR 72,755

Proposed Rule. EPA proposed to approve a revision to the Kentucky SIP addressing reasonably available control measures (RACM) for the Kentucky portion of the Louisville, KY-IN nonattainment area for the 1997 annual PM_{2.5} NAAQS. In its SIP revision submittal, Kentucky determined that no additional control measures are necessary to satisfy the RACM requirements because the area has attained the 1997 PM_{2.5} NAAQS. EPA proposes to agree with Kentucky's analysis. See <https://www.gpo.gov/fdsys/pkg/FR-2016-10-21/pdf/2016-25433.pdf>

11/16/2016

81 FR 80,593

Final Rule; Notice of Data Availability. EPA gave notice of emission allowance allocations to certain units under the new unit set-aside (NUSA) provisions of the Cross-State Air Pollution Rule (CSAPR)

federal implementation plans (FIPs). Specifically, EPA provided final calculations for second NUSA allowances for the 2016 compliance year of the CSAPR NO_x ozone season trading program. In the notice, EPA provides a link to spreadsheets showing unit by unit calculations and allocations. See <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-27541.pdf>.

11/21/2016

81 FR 83,152

Final Rule. EPA approved Kentucky's SIP submission demonstrating that the Commonwealth meets the infrastructure requirements of the 2010 1-hour NO₂ NAAQS. EPA's approval, which takes the form of a final rule, officially took effect on December 21, 2016. See <https://www.gpo.gov/fdsys/pkg/FR-2016-11-21/pdf/2016-27538.pdf>.

11/21/2016

81 FR 83,158

Final Rule. EPA re-designated the Ohio portion of the Campbell-Clermont Kentucky-Ohio from nonattainment with the 2010 SO₂ standard to attainment. The area consists of Pierce Township in Clermont County. EPA noted that the primary emission source in the area has permanently closed and the air quality in the area is now meeting the SO₂ standard. EPA also approved the state's maintenance plan for the area. The re-designation took effect on November 21, 2016. See <https://www.gpo.gov/fdsys/pkg/FR-2016-11-21/pdf/2016-27852.pdf> The Kentucky portion of the area was addressed in a separate EPA action and is discussed below.

12/1/2016

81 FR 86,664

Proposed Rule. EPA proposed to approve two separate but related submittals from the Commonwealth of Kentucky related to the attainment of the 2010 SO₂ NAAQS for the Kentucky portion of the Campbell-Clermont Kentucky-Ohio 2010 1-hour SO₂ nonattainment area. The Kentucky portion of the area includes a portion of Campbell County in Kentucky and a portion of Clermont County in Ohio. EPA specifically proposed to take the following actions with respect to the area: (1) to approve Kentucky's RACM determination for the area and incorporate it into the SIP; (2) to approve the base year emissions inventory for the area for the 2010 1-hour SO₂ NAAQS and incorporate it into the SIP; (3) to determine the area has attained the 2010 1-hour ozone NAAQS pursuant to the "Clean Data Policy;" (4) to approve Kentucky's maintenance plan for the area; and (5) to re-designate the area to attainment for the 2010 1-hour SO₂ NAAQS. EPA is accepting comments on the proposal through Jan. 3, 2017. See <https://www.gpo.gov/fdsys/pkg/FR-2016-12-01/pdf/2016-28821.pdf>

FEDERAL REGISTER UPDATES

EPA Continues With Rulemaking Through the End of the Administration

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12/6/2016
81 FR 87,817

Final Rule. EPA finalized its approval for changes to portions of Kentucky's State Implementation Plan regarding "infrastructure requirements" for the 2010 1-hour SO₂ NAAQS. Kentucky had requested the SIP amendment on April 26, 2013. The approved submission certifies that Kentucky's SIP contains provisions that ensure the 2010 1-hour SO₂ NAAQS is implemented, enforced, and maintained in the Commonwealth. The approval did not include minor source program requirements or interstate transport requirements. See <https://www.gpo.gov/fdsys/pkg/FR-2016-12-06/pdf/2016-29115.pdf>.

12/6/2016
81 FR 87,815

Final Rule. EPA took action to approve a Kentucky SIP revision related to the Louisville Metro Air Pollution Control District's changes to air quality standards for lead, particulate matter, ozone, nitrogen dioxide, and sulfur dioxide. The revision was submitted by Kentucky on March 22, 2011 and May 3, 2012. The air quality standards were revised by the District to be consistent with the NAAQS. See <https://www.gpo.gov/fdsys/pkg/FR-2016-12-06/pdf/2016-29106.pdf>.

12/16/2016
81 FR 91,035

Final Rule. EPA found that the Cincinnati, Ohio-Kentucky-Indiana area is attaining the 2008 ozone NAAQS and redesignated the Ohio portion of the Cincinnati area to attainment for the 2008 ozone NAAQS. EPA also approved, as a revision to the Ohio SIP, the state's plan for maintaining the 2008 ozone standard through 2030 in the Cincinnati area. EPA further approved the state's 2020 and 2030 VOC and NO_x Motor Vehicle Emission Budgets (MVEBs) for the Ohio and Indiana portion of the Cincinnati area. See <https://www.gpo.gov/fdsys/pkg/FR-2016-12-16/pdf/2016-30054.pdf>

AQL

Air Quality Letter

Readers are invited to provide comments, suggestions or newsworthy materials to the editors of the newsletter. All input is welcome.

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