FACT SHEET

In re: Proposed revisions to 250-RICR-120-05-16, “Operation of Air Pollution Control Systems”

Introduction

The Department of Environmental Management (DEM), Office of Air Resources (OAR), is proposing to revise 250-RICR-120-05-16 (Part 16), “Operation of Air Pollution Control Systems”. Part 16 specifies the requirements for the operation of and response to malfunction of air pollution control systems.

Description of Proposed Amendments

RIDEM OAR is proposing to amend 250-RICR-120-05-16 to remove language allowing variances for excess emissions during malfunctions. Specifically RIDEM OAR is proposing to remove § 16.3 which currently allows sources to petition for a variance from air pollution control requirements in the event of a malfunction of its air pollution control that is expected to last more than 24 hours.

Demonstration of Need

RIDEM OAR is proposing to amend 250-RICR-120-05-16, in response to the EPA’s final action, Findings of Failure to Submit (FFS) State Implementation Plan (SIP) Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 87 Fed. Reg. 1680 (January 12, 2022). The final FFS action went into effect on February 11, 2022, and gave RIDEM OAR 18 months from that date to submit an amendment to RIDEM OAR’s SIP or face sanctions under Clean Air Act § 109.

The EPA issued the FFS because RIDEM OAR had not submitted an amendment to its SIP in response to the Startup, Shutdown, and Malfunction SIP Call (“SSM SIP Call”). The SSM SIP Call resulted from a settlement agreement entered November 30, 2011 to settle a lawsuit filed by Sierra Club and WildEarth Guardians, Sierra Club v. E.P.A., 699 F.3d 530 (D.C. Cir. 2012). In the FFS, EPA stated that RIDEM OAR had SSM-related deficiencies in its SIP and, therefore, did not meet CAA requirements. Specifically 250-RICR-120-05-16.3, which addresses malfunctions, does not meet the requirements of the Clean Air Act.

Pursuant to CAA § 179(a) and (b) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b)(2) will apply in RI until the deficiency in Part 16 is corrected. Effective Aug 11, 2023, the 2-to-1 emission offset requirement for all new and modified major sources subject to the new source review program is in place until the Part 16 is revised and incorporated in into the RI SIP.
**Alternative Approaches Considered**

The Department proposed a plan to EPA to allow sources to submit information regarding the excess emissions and identify mitigating factors contributing to the violation where the Department would utilize enforcement discretion in determining the violation rather than eliminating Section 16.3 in its entirety. EPA determined the proposed plan still violated that Clean Air Act and would not be approvable. There are no other alternatives at this time.

**Identification of Overlapped or Duplicated State Regulations**

The Office of Air Resources has identified no state regulations that overlap or duplicate the proposed amendments.

**Determination of Significant Adverse Economic Impact on Small Business or Any City or Town**

The proposed revisions do not impose any new requirements on regulated entities including any small businesses or any city or town, therefore there is no significant adverse economic impact.

**For more information or copies of the proposed amendments contact:**

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