Regulatory Updates – February 2019

Recently Signed Rules

The proposed rule, **National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units -- Reconsideration of Supplemental Finding and Residual Risk and Technology Review**, was signed on December 27, 2018, and is scheduled for publication in the **Federal Register** on February 7, 2019. The EPA is proposing a revision to its response to the U.S. Supreme Court decision in *Michigan v. EPA* which held that the EPA erred by not considering cost in its determination that regulation under section 112 of the Clean Air Act (CAA) of hazardous air pollutant (HAP) emissions from coal- and oil-fired electric utility steam generating units (EGUs) is appropriate and necessary. After considering the cost of compliance relative to the HAP benefits of regulation, the EPA proposes to find that it is not "appropriate and necessary" to regulate HAP emissions from coal- and oil-fired EGUs, thereby reversing the Agency's prior conclusion under CAA section 112(n)(1)(A) and correcting flaws in the Agency's prior response to *Michigan v. EPA*. We further propose that finalizing this new response to *Michigan v. EPA* will not remove the Coal- and Oil-Fired EGU source category from the CAA section 112(c) list of sources that must be regulated under CAA section 112(d) and will not affect the existing CAA section 112(d) emissions standards that regulate HAP emissions from coal- and oil-fired EGUs. We are soliciting comment, however, on whether the EPA has the authority or obligation to delist EGUs from CAA section 112(c) and rescind (or to rescind without delisting) the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Coal- and Oil-Fired EGUs, commonly known as the Mercury and Air Toxics Standards (MATS). The EPA is also proposing the results of the residual risk and technology review of the NESHAP that the Agency is required to conduct in accordance with CAA section 112. The results of the residual risk analysis indicate that residual risks due to emissions of air toxics from this source category are acceptable and that the current standards provide an ample margin of safety to protect public health. No new developments in HAP emission controls to achieve further cost-effective emissions reductions were identified under the technology review. Therefore, based on the results of these analyses and reviews, we are proposing that no revisions to MATS are warranted. Finally, the EPA is also taking comment on establishing a subcategory for emissions of acid gas HAP from existing EGUs firing eastern bituminous coal refuse.

A notice extending the comment period for the **Review of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units** proposed rule was signed on January 30, 2019, and is scheduled for publication in the **Federal Register** on February 7, 2019. The proposed rule was signed on December 6, 2018. The EPA is extending the public comment period from February 19, 2019, until March 18, 2019, which is consistent with the requirement to keep the record open for at least 30 days after the public hearing, which is scheduled for February 14, 2019, in Washington, DC. See **Public Hearing Announcement** below for further information concerning the upcoming public hearing.

A notice to reopen the comment period for the **Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces** proposed rule was signed on January 31, 2019 and is scheduled for publication in the **Federal Register** on February 7, 2019. The EPA is reopening the public comment period on the proposed rule that closed on January 14, 2019. The comment period will remain open for 5

days after the date of publication of the notice in the **FEDERAL REGISTER**. The EPA is taking this action to allow time for the public to comment on the proposed rule for at least 30 days following the public hearing, which was held on December 17, 2018.

Recently Published Rules

The proposed rule, **National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production Residual Risk and Technology Review**, was signed on December 20, 2018, and was published in the **Federal Register** on February 4, 2019, at 84 FR 1570. The EPA is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Hydrochloric Acid Production source category. The proposed action presents the results of the residual risk and technology reviews conducted as required under the Clean Air Act. The proposed amendments address the startup, shutdown, and malfunction provisions of the rule, add electronic reporting, and update the reporting and recordkeeping requirements. Comments must be received on or before March 21, 2019.

Public Hearing Announcement

The previously scheduled public hearing for the **Review of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units,** proposed rule was postponed due to the government furlough. The public hearing previously scheduled for Tuesday, January 8, 2019, has been rescheduled to Thursday, February 14, 2019, at the EPA WJC East Building, 1201 Constitution Avenue, NW, Washington, DC 20004. The hearing will convene at 8:00 a.m. and will conclude at 6:00 p.m. local time. Information about the public hearing was posted online on January 30, 2019, and can be found at [HYPERLINK "https://www.epa.gov/stationary-sources-air-pollution/proposal-nsps-ghg-emissions-new-modified-and-reconstructed-egus"].

Additional Regulatory Information

A guidance memorandum titled Referencing the 2018 MM2A Memorandum in MACT Applicability Determinations (see separate attachment) was co-signed on January 29, 2019, by the Office of Enforcement and Compliance Assurance Assistant Administrator, Susan Parker Bodine, and the Office of Air and Radiation Assistant Administrator, William L. Wehrum. This guidance was provided to help Regional offices know how to use the legal interpretation provided in the 2018 MM2A Memorandum[1] when responding to requests for applicability determinations under 40 CFR 61.06.

[1] EPA Memorandum from William L. Wehrum, *"Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act,"* to Regional Air Division Directors (January 25, 2018).