

1. On page 32275, in the third column, in the **DATES** section, remove “May 21, 2010” and add in its place “May 24, 2010”.

Dated: June 30, 2010.

Kathryn Sinniger,

*Acting Chief of the Office of Regulations and Administrative Law (CG-943), U.S. Coast Guard.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-HQ-OAR-2010-0473; FRL-9174-5]

#### Extension of Deadline for Action on Section 126 Petition From New Jersey

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is extending by 6 months the deadline for EPA to take action on a petition submitted by the New Jersey Department of Environmental Protection (NJDEP). The petition requests that EPA make a finding under the Clean Air Act (CAA) that the coal-fired Portland Generating Station in Upper Mount Bethel Township, Northampton County, Pennsylvania, is emitting air pollutants in violation of the provisions of the CAA. Under the CAA, EPA is authorized to grant a time extension for responding to the petition if EPA determines that the extension is necessary, among other things, to meet the purposes of the CAA's rulemaking requirements. By this action, EPA is making that determination.

**DATES:** The effective date of this action is July 12, 2010.

**ADDRESSES:** EPA has established a docket for this rulemaking under Docket ID number EPA-HQ-OAR-2010-0473. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to

4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

#### FOR FURTHER INFORMATION CONTACT:

General questions concerning this final rule should be addressed to Ms. Gobeail McKinley, Office of Air Quality Planning and Standards, Geographic Strategies Group, Mail Code C539-04, Research Triangle Park, NC 27711; telephone (919) 541-5246; e-mail address: [mckinley.gobeail@epa.gov](mailto:mckinley.gobeail@epa.gov).

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##### I. Background

This is a procedural action to extend the deadline for EPA to respond to a petition from New Jersey filed under CAA section 126. EPA received the section 126 petition on May 13, 2010. The petition requests that EPA make a finding that the coal-fired Portland Generating Station (Portland Plant) in Upper Mount Bethel Township, Northampton County, Pennsylvania, is emitting air pollutants in violation of the provisions of section 110(a)(2)(D)(i) of the CAA. That section provides that each state's State Implementation Plan (SIP) shall contain adequate provisions prohibiting emissions of any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with

respect to any national ambient air quality standard (NAAQS). The petition asserts that emissions from the Portland Plant have a significant impact on New Jersey's air quality and that this impact would be mitigated by further regulation of fine particulate matter and sulfur dioxide emissions from this plant. Section 126(b) authorizes states or political subdivisions to petition EPA to find that a major source or group of stationary sources in upwind states emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D) by contributing significantly to nonattainment or maintenance problems in downwind states. If EPA makes such a finding, EPA is authorized to establish federal emissions limits for the sources which so contribute.

Under section 126(b), EPA must make the finding requested in the petition, or must deny the petition within 60 days of its receipt. Under section 126(c), any existing sources for which EPA makes the requested finding must cease operations within three months of the finding, except that the source may continue to operate if it complies with emission limitations and compliance schedules that EPA may provide to bring about compliance with the applicable requirements.

Section 126(b) further provides that EPA must allow a public hearing for the petition. EPA's action under section 126 is also subject to the procedural requirements of CAA section 307(d). *See* section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3).

In addition, section 307(d)(10) provides for a time extension, under certain circumstances, for rulemaking subject to section 307(d). Specifically, section 307(d)(10) provides:

Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the subsection.

Section 307(d)(10) applies to section 126 rulemakings because the 60-day time limit under section 126(b) necessarily limits the period after proposal to less than six months.

##### II. Final Action

###### A. Rule

In accordance with section 307(d)(10), EPA is determining that the 60-day period afforded by section 126(b) for

responding to the petition from the NJDEP is not adequate to allow the public and the Agency the opportunity to carry out the purposes of section 307(b). Specifically, the 60-day period is insufficient for EPA to complete the necessary technical review, develop an adequate proposal and allow time for notice and comment on whether the Portland Plant identified in the section 126 petition contributes significantly to nonattainment or maintenance problems in New Jersey. EPA has reviewed the petition and supporting technical information provided by NJDEP, and has scheduled a meeting with NJDEP officials to further understand the technical information. Additional time is required to afford EPA adequate time to further review and evaluate the basis for the petition, prepare a proposal that clearly elucidates the issues to facilitate public comment, and provide adequate time for the public to comment prior to issuing the final rule. As a result of this extension, the deadline for EPA to act on the petition is January 12, 2011.

#### *B. Notice-and-Comment Under the Administrative Procedures Act (APA)*

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). The EPA believes that, because of the limited time provided to make a determination that the deadline for action on the section 126 petition should be extended, Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to the extent that this determination otherwise would require notice and opportunity for public comment, there is good cause within the meaning of 5 U.S.C. 553(b)(3)(B) not to apply those requirements here. Providing for notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert Agency resources from the substantive review of the section 126 petition.

#### *C. Effective Date Under the APA*

This action is effective on July 12, 2010. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. This action—a deadline extension—must take effect immediately because its purpose is to extend by 6 months the deadline for action on the petition. It is important for this deadline extension action to be effective before the original 60-day

period for action elapses. As discussed above, EPA intends to use the 6-month extension period to develop a proposal on the petition and provide time for public comment before issuing the final rule. It would not be possible for EPA to complete the required notice-and-comment and public hearing process within the original 60-day period noted in the statute. These reasons support an immediate effective date.

### **III. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review*

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review by the Office of Management and Budget under the Executive Order.

#### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320(b). This action simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Therefore, it does not impose an information collection burden.

#### *C. Regulatory Flexibility Act*

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice-and-comment requirements under the APA or any other statute because, although the rule is subject to the APA, the Agency has invoked the “good cause” exemption under 5 U.S.C. 553(b). Therefore, it is not subject to the notice-and-comment requirement.

#### *D. Unfunded Mandates Reform Act*

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

This action simply extends the deadline for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of URMA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any small governments.

#### *E. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.”

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. This action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed

above, this action imposes no new requirements that would impose compliance burdens. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule simply extends the deadline for EPA to take action on a petition and does not impose any regulatory requirements.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse effects because this action simply extends the deadline for EPA to take action on a petition.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it simply extends the deadline for EPA to take action on a petition and does not impose any regulatory requirements.

*K. Congressional Review Act*

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 of the CRA provides an exception to this requirement. For any rule for which an agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest, the rule may take effect on the date set by the Agency. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not

postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: July 2, 2010.

**Lisa P. Jackson,**  
*Administrator.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

**[EPA–R05–OAR–2009–0730; FRL–9172–9]**

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of the Manitowoc County and Door County Areas to Attainment for Ozone**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving Wisconsin’s requests to redesignate the Manitowoc County and Door County, Wisconsin nonattainment areas to attainment for the 1997 8-hour ozone standard because the requests meet the statutory requirements for redesignation under the Clean Air Act (CAA). The Wisconsin Department of Natural Resources (WDNR) submitted these requests on September 11, 2009.

These approvals involve several related actions. EPA is making determinations under the CAA that the Manitowoc County and Door County areas have attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). These determinations are based on three years of complete, quality-assured and certified ambient air quality monitoring data for the 2006–2008 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the areas. Complete, quality-assured air quality data for the 2009 ozone season have been recorded in the EPA’s Air Quality System (AQS) and show that the areas continue to attain the 8-hour ozone standard. EPA is also approving, as revisions to the Wisconsin State Implementation Plan (SIP), the State’s