

Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118 (D.C. Cir. 2015). EPA began implementation of CSAPR, which replaced CAIR, on January 1, 2015. Therefore, Tennessee cannot rely on CAIR to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals.

As mentioned above, a state may meet the requirements of prong 4 without a fully approved regional haze SIP by showing that its SIP contains adequate provisions to prevent emissions from within the state from interfering with other states' measures to protect visibility. Tennessee did not, however, provide a demonstration in any of the infrastructure SIP submissions subject to this proposed action that emissions within its jurisdiction do not interfere with other states' plans to protect visibility.

As discussed above, Tennessee does not have a fully approved regional haze SIP that meets the requirements of 40 CFR 51.308 and has not otherwise shown that its SIP contains adequate provisions to prevent emissions from within the state from interfering with other states' measures to protect visibility. Therefore, on December 7, 2016, Tennessee submitted a commitment letter to EPA requesting conditional approval of the prong 4 portions of the aforementioned infrastructure SIP revisions. In this letter, Tennessee commits to submit an infrastructure SIP revision, within one year of final conditional approval, that will satisfy the prong 4 requirements for the 2010 1-hour NO<sub>2</sub> NAAQS, 2010 1-hour SO<sub>2</sub> NAAQS, and 2012 annual PM<sub>2.5</sub> NAAQS through reliance on a fully approved regional haze SIP or through an analysis showing that emissions from sources in Tennessee will not interfere with the attainment of the reasonable progress goals of other states. If the revised infrastructure SIP revision relies on a fully approved regional haze SIP revision to satisfy prong 4 requirements, Tennessee also commits to providing the necessary regional haze SIP revision to EPA within one year of EPA's final conditional approval.

If Tennessee meets its commitment within one year of final conditional approval, the prong 4 portions of the conditionally approved infrastructure SIP submissions will remain a part of the SIP until EPA takes final action approving or disapproving the new SIP revision(s). However, if the State fails to

submit these revisions within the one-year timeframe, the conditional approval will automatically become a disapproval one year from EPA's final conditional approval and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval. If the conditional approval is converted to a disapproval, the final disapproval triggers the FIP requirement under CAA section 110(c).

#### V. Proposed Action

As described above, EPA is proposing to conditionally approve the prong 4 portions of Tennessee's March 13, 2014, 2010 1-hour NO<sub>2</sub> and 2010 1-hour SO<sub>2</sub> infrastructure SIP submission and December 16, 2015, 2012 PM<sub>2.5</sub> infrastructure SIP submission. All other outstanding applicable infrastructure requirements for these SIP submissions have been or will be addressed in separate rulemakings.

#### VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 21, 2017.

**Kenneth R. Lapierre,**

*Acting Regional Administrator, Region 4.*  
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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 320

[EPA-HQ-SFUND-2015-0781; FRL-FRL 9959-85-OLEM]

RIN 2050-AG61

### Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry; Extension of Comment Period

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

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule entitled

“Financial Responsibility Requirements under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry.” That proposed rule was published on January 11, 2017, and the public comment period was scheduled to end on March 13, 2017. However, a number of parties have requested additional time to review the proposed rule and supporting information, and to develop and submit comments.

Therefore, in response, EPA is extending the comment period an additional 120 days, so that comments are now due on or before July 11, 2017.

**DATES:** Comments on the proposed rule must be received on or before July 11, 2017.

**ADDRESSES:** Submit your comments on the proposed rule, identified by Docket ID No. EPA–HQ–SFUND–2015–0781, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** For questions on the January 11, 2017,

proposed rule or on this document, contact Barbara Foster, Program Implementation and Information Division, Office of Resource Conservation and Recovery, Mail code 5303P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 308–7057; email address: [foster.barbara@epa.gov](mailto:foster.barbara@epa.gov), or Michael Pease, Program Implementation and Information Division, Office of Resource Conservation and Recovery, Mail code 5303P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (703) 308–0008; email address: [pease.michael@epa.gov](mailto:pease.michael@epa.gov).

**SUPPLEMENTARY INFORMATION:** On January 11, 2017, EPA published in the **Federal Register** proposed requirements under section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for demonstrating financial responsibility.<sup>1</sup> The proposed rule would create a new part in the CERCLA regulations to require financial responsibility under CERCLA section 108(b), define requirements for demonstration of financial responsibility, define requirements for maintenance of financial responsibility instruments, and establish criteria for owners and operators to be released from financial responsibility requirements. In addition, the proposed rule would establish specific financial responsibility requirements applicable to certain classes of mines and associated mineral processing facilities within the hardrock mining industry.

The comment period for the proposed rule was scheduled to end on March 13, 2017. Since publication, EPA has received more than 60 requests to extend that comment period to allow

<sup>1</sup> See Financial Responsibility Requirements under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry (82 FR 3388, January 11, 2017).

the public additional time to develop comments on the proposed rule. The requests were for extensions ranging from 60 days to 120 days, and came from members of Congress, mining companies, states, state groups, and trade associations. The requestors cited a number of reasons for needing an extended comment period including the size and complexity of the rule, and the amount of background information in the rulemaking docket.

In addition to requests to extend the comment period, EPA also received a request to not extend it. This request came from several environmental groups concerned that the rule move forward without delay.

EPA acknowledges that the proposed rule and supporting materials include a substantial amount of information, and that EPA’s proposed section 108(b) requirements are novel. Those commenters who have requested an extension have provided information to EPA demonstrating that they need more time than the 60 days EPA originally allotted to evaluate EPA’s proposal and supporting information and develop their comments. Thus, after considering these comments, EPA has decided to extend the comment period for 120 days. This document is the Agency’s response to those persons who requested an extension of the comment period.

As a result of this action, comments on the proposed rule must be submitted by July 11, 2017.

#### List of Subjects in 40 CFR Part 320

Environmental protection, Financial responsibility, Hardrock mining, Hazardous substances.

Dated: February 23, 2017.

**Barry N. Breen,**

*Acting Assistant Administrator, Office of Land and Emergency Management.*

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