

## Rule 201 Discussion Update

December 12, 2012

An email request for opinion on the matter of modifying Rule 201(4) was sent to EPA on October 30, 2012. The question posed asked for an initial reaction from EPA as to the 'approvability' of the language into Michigan's SIP. It was stated that AQD was uncertain if pursuing a lengthy rulemaking process was worth the time if the modified rule was not something that could be approved into the SIP.

No response from EPA other than a brief verbal discussion on the issue on November 13, 2012. It was stated that the matter was bumped to headquarters. This is part of a larger issue involving when can the initial 18-month timeline for commencing construction for a PSD permit be extended. Region 9 has guidance that discusses the recommended actions to take when considering an 18-month extension, including revisiting the BACT analysis and re-public noticing the decision. On the opposite end of the spectrum, Kentucky and Michigan have both issued 18-month extensions for PSD permits based on the project being held up in litigation. It was conveyed to AQD that headquarters is working on formal guidance regarding permit extensions beyond the initial 18 month timeframe.

EPA mentioned a situation where a permit was appealed to the EAB. The permit would be stayed and construction could not commence until the appeal is resolved.

Although Ohio has similar language in its state rules, the language is not part of their approved SIP. As such, applying the 18-month 'hold' pending resolution of litigation leaves a facility at risk of EPA asserting its federal authority to cite a facility in violation of the CAA for commencing construction absent a valid permit.

Question – What action would the group like to take on this issue? Is there a need for this rule to be modified? We can continue to pursue rule making without EPA's approval of the change. This may lead to a facility being vulnerable to EPA action. We can elect to no longer pursue this rule change and defer to the standard 18-month commence construction timeframe with requests for extensions being considered on a case-by-case basis.