



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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CHICAGO, IL 60604-3590

C-14J

VIA E-MAIL

Stacie B. Fletcher
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

Re: EAP Ohio Self Audit
Revisions to GP 12.1 and 12.2 Permits

Dear Stacie:

I hope this letter finds you well. We have been reviewing EAP Ohio's November 15, 2021 semi-annual audit report. Although we may have additional comments on the report, we are particularly concerned about two items.

First, the report states that the Ohio Environmental Protection Agency (OEPA) has drafted an order to incorporate the requirements of 40 C.F.R. § 60.5365a(e)(3)(v) into EAP Ohio's GP 12.1 and GP 12.2 permits. EPA allows potential emissions to be averaged across a storage vessel battery when the storage vessels were constructed, reconstructed, or modified after November 16, 2020, and certain criteria are met.¹ But averaging is not allowed for storage vessels constructed, reconstructed, or modified on or before that date.² For tank batteries with storage vessels that weren't constructed, reconstructed, or modified after November 16, 2020, EAP Ohio must continue to determine the tank battery's potential for VOC emissions without averaging across the battery.

Our other concern has to do with the other revisions to EAP Ohio's GP 12.1 and 12.2 permits you have discussed with OEPA. You wrote that, while the draft order would incorporate the requirements of 40 C.F.R. § 60.5365a(e)(3)(v) into permits "for relevant storage vessels," the

¹ The 2020 OOOOa rulemaking set forth narrow circumstances in which averaging would be permitted and applies prospectively. In a tank battery, under 40 C.F.R. § 60.5365a(e)(2), each storage vessel with a potential for VOC emissions above or equal to 6 tpy that was constructed, reconstructed, or modified after November 16, 2020 is a storage vessel affected facility, unless the tank battery meets the exception for averaging in 40 C.F.R. § 60.5365a(e)(3)(v).

² Under 40 C.F.R. § 60.5365a(e)(1), single storage vessels with the potential for VOC emissions above or equal to 6 tpy that were constructed, reconstructed, or modified after September 15, 2015 and on or before November 16, 2020 are subject to Subpart OOOOa. *See also* 40 C.F.R. § 60.5365(e) (the Subpart OOOO equivalent). 40 C.F.R. § 60.5365a(e)(1), unlike (e)(2) in *supra* note 2, has no provision nor reference to the exception for averaging in (e)(3). And Subpart OOOO has no exception equivalent to (e)(3).

draft order would also increase the “monitoring and reporting requirements for storage vessels to address EPA feedback on ‘legally and practicably enforceable’ permit conditions.” We would welcome revisions to GP 12.1 and 12.2 to increase the stringency of their monitoring and reporting requirements. But assuming the proposed requirements would be incorporated into permits for facilities that have previously been determined to be affected facilities under NSPS OOOO or OOOOa,³ EAP Ohio may believe it can rely on the revised permits to demonstrate that its storage vessel affected facilities would no longer be subject to NSPS OOOO or OOOOa should they subsequently obtain an enforceable 6 tpy VOC PTE limit. That is incorrect. Once a storage vessel is determined to be an affected facility under NSPS OOOO or OOOOa, it does not lose that status by receiving a post-construction synthetic minor source permit with a legally and practically enforceable 6 tpy VOC PTE limit.

The regulations are clear on these points. First, NSPS OOOO and OOOOa allow emissions determinations for single storage vessels to take into account requirements under a legally and practically enforceable limit in an operating permit, but the determinations must be made within the 30-day period after startup of production of the well. *See* 40 C.F.R. § 60.5365(e), 60.5365a(e)(2)(i).⁴ There is no exception allowing for redetermination of the affected facility status of a storage vessel affected facility after issuance of a synthetic minor source permit.⁵ On the contrary, NSPS OOOO and OOOOa expressly state that even where a storage vessel affected facility’s potential for VOC emissions decreases below 6 tpy, it remains an affected facility. *See* 40 C.F.R. § 60.5365(e)(2),⁶ 60.5365a(e)(4). Affected facilities whose uncontrolled actual VOC emissions fall below 4 tpy for 12 straight months do not have to reduce VOC emissions by 95%. *See* 40 C.F.R. § 60.5395(d)(2),⁷ 60.5395a(a)(3). But they remain affected facilities. They stop being affected facilities only if the vessel is taken out of service (consistent with 40 C.F.R. § 60.5395(f) or 60.5395a(c)), or if the vessel contains no “accumulation of crude oil, condensate,

³ We also assume, consistent with legal requirements, that the monitoring and reporting requirements OEPA and EAP Ohio are discussing would indeed make the 6 tpy VOC PTE limit legally and practically enforceable.

⁴ In the NSPS OOOO reconsideration, EPA declined to allow delays in affected facility determinations so that facilities could have more time to deal with state requirements (i.e. getting a state permit for emergency replacement of a storage vessel). *See* EPA, Office of Air Quality Planning and Standards (OAQPS), [Response to Public Comments on Proposed Rule 26-27](#) (Sept. 22, 2013).

⁵ NSPS OOOO and OOOOa do allow for a subsequent emissions determination “[i]n the event of removal of apparatus that recovers and routes vapor to a process, or operation that is inconsistent with” the cover and closed vent system requirements. *See* 40 C.F.R. § 60.5365(e)(3)(iv), 60.5365a(e)(5)(iv). That exception does not apply to the events described in your report.

⁶ As discussed in the 2013 NSPS OOOO reconsideration, one reason EPA included 40 C.F.R. § 60.5365(e)(2) in NSPS OOOO was to make clear that affected facilities whose uncontrolled VOC emissions were once below, but later increased above, 4 tpy would have to meet the 95% VOC reduction standard. *See* 78 Fed. Reg. 22,126, 22,129 & 22,133 (Apr. 12, 2013). EPA considered continued controls at facilities with uncontrolled emission rate of 4 tpy VOC or more to be cost effective. *See* 78 Fed. Reg. 58,416, 58,422 (Sept. 23, 2013).

⁷ *See supra* note 4 at 17 & 29 (while facilities with actual uncontrolled emissions below 6 tpy VOC remain affected facilities, the alternative emission limit in 40 C.F.R. § 60.5395(d)(2) offers facilities with declining production and emissions the flexibility to remove controls if uncontrolled emissions remain below 4 tpy).

intermediate hydrocarbon liquids, or produced water,” and thus no longer qualifies as a “storage vessel” under NSPS OOOO or OOOOa. *See* 40 C.F.R. § 60.5430, 60.5430a.

In the 2013 amendment to NSPS OOOO, EPA reiterated that storage vessel affected facilities remain as such so long as their potential for VOC emissions was at or above 6 tpy as determined in the 30-day period after startup, unless the storage vessel is taken out of service or no longer qualifies as a “storage vessel” under the NSPS. In that rulemaking, one commenter argued that EPA’s proposed treatment of storage vessel affected facilities “would create a one-time determination of potential emissions that forever captures a tank, regardless of whether it continues to hold the materials that would bring it within regulation,” and asked EPA to “affirm that storage vessels no longer holding VOC containing liquids or that are taken out of service are no longer an affected source.”⁸ In response, EPA affirmed that “[i]f a tank ceases to be used for a purpose other than to hold an accumulation of any of the materials listed above, then it ceases to fit the definition of storage vessel under subpart OOOO and is therefore no longer an affected facility subject to the standards.”⁹ But EPA also affirmed that, in considering storage vessels as affected facilities even if their potential for VOC emissions declines below 6 tpy, NSPS OOOO is consistent with EPA’s longstanding treatment of affected facilities under NSPS: “EPA historically has never let facilities in and out of affected facility status and is consistent in subpart OOOO.”¹⁰

We hope this letter assists you in your discussions with OEPA over the draft order. If you have any questions or concerns, please get in touch with me at (312) 353.4510 or peachey.robert@epa.gov.

Sincerely,



Digitally signed by
Peachey, Robert
Date: 2022.03.29
14:42:00 -05'00'

Robert M. Peachey
Associate Regional Counsel

cc: Bob Hodanbosi, OEPA

⁸ *See* 78 Fed. Reg. at 58,428.

⁹ *Id.* at 58,430.

¹⁰ *Id.*