



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

AUG - 1 2014

Mr. Kevin Poloncarz
Paul Hastings LLP
55 Second Street, 24th Floor
San Francisco, California 94105

Dear Mr. Poloncarz:

I wish to inform you of the outcome of the U.S. Environmental Protection Agency's reconsideration of the final rule, "National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines" (RICE NESHAP/ICE NSPS) (78 FR 6674; January 30, 2013) with respect to an issue for which the EPA requested comment on September 5, 2013. Following promulgation of the January 30, 2013, final rule, the EPA received three petitions for reconsideration pursuant to section 307(d)(7)(B) of the Clean Air Act. The EPA received a petition dated March 29, 2013, from Calpine Corporation and PSEG Power LLC; a petition dated April 1, 2013, from the Delaware Department of Natural Resources and Environmental Control (DE DNREC); and a petition dated April 1, 2013, from Clean Air Council, Citizens for Pennsylvania's Future, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Pace Energy and Climate Center, Sierra Club and West Harlem Environmental Action Inc. (Clean Air Council *et al.*). On September 5, 2013, the EPA announced reconsideration of and requested public comment on the following issue raised in the petitions for reconsideration from Calpine and PSEG and from Clean Air Council *et al.*: the conditions in 40 CFR 63.6640(f)(4)(ii) for operation for up to 50 hours per year in non-emergency situations as part of a financial arrangement with another entity.¹

The petitions for reconsideration indicated that the public lacked an opportunity to comment on this issue. Although the EPA added this provision in response to public comments on the proposal, the EPA granted reconsideration to provide an opportunity for public comment on this issue. The EPA received 33 public comments on the notice of reconsideration, several of which addressed the conditions in 40 CFR 63.6640(f)(4)(ii). After careful consideration of the petitions for reconsideration and the public comments received on the notice of reconsideration, the EPA has decided not to propose any changes to the conditions in 40 CFR 63.6640(f)(4)(ii). Following is a discussion of the EPA's final decision on this issue. A summary of the public comments received on the September 5, 2013, notice of reconsideration and the EPA's responses to those comments is enclosed (see "Response to Comments Document") and can be found in the rulemaking docket at docket number EPA-HQ-OAR-2008-0708.

Issue: Criteria for Operation for up to 50 Hours per Year for Non-Emergency Situations

The January 30, 2013, final amendments specified that emergency engines can be used for up to 50

¹ The EPA also granted reconsideration of two additional issues raised in the other petitions for reconsideration.

hours per calendar year in non-emergency situations to supply power as part of a financial arrangement with another entity if all of the following conditions are met:

- the engine is located at an area source of hazardous air pollutants (HAP);
- the engine is dispatched by the local balancing authority or local transmission and distribution system operator;
- the dispatch is intended to mitigate local transmission and/or distribution limitations so as to avert potential voltage collapse or line overloads that could lead to the interruption of power supply in a local area or region;
- the dispatch follows reliability, emergency operation or similar protocols that follow specific North American Electric Reliability Corporation (NERC), regional, state, public utility commission or local standards or guidelines;
- the power is provided only to the facility itself or to support the local transmission and distribution system; and
- the owner or operator identifies and records the entity that dispatches the engine and the specific NERC, regional, state, public utility commission or local standards or guidelines that are being followed for dispatching the engine.

The petitions for reconsideration from Clean Air Council *et al.* and from Calpine and PSEG expressed concern that the conditions specified in the final rule for operation for up to 50 hours per year in non-emergency situations to supply power as part of a financial arrangement with another entity were too indistinct and expansive and would be difficult to enforce, which could lead to engines operating when there is no discernible threat to the grid. The petition from Calpine and PSEG expressed concern that the final rule did not provide any guidance for determining whether the dispatch of an engine is intended to mitigate local transmission and/or distribution limitations so as to avert potential voltage collapse or line overloads that could lead to the interruption of power supply in a local area or region. The petition from Clean Air Council *et al.* recommended that the EPA more clearly delineate the situations under which the engines could run to ensure that the engines are only dispatched during genuine grid emergencies, while still allowing local grid operators to address legitimate reliability concerns.

After consideration of the information provided in the petitions for reconsideration and the public comments on the September 5, 2013, notice of reconsideration, the EPA has decided not to propose any changes to the regulations for this issue. Dating back to the original RICE NESHAP in 2004, the EPA has a long history of regulating emergency engines as a separate subcategory in the NESHAP and NSPS for stationary engines and establishing different standards for emergency engines. The EPA has done so based on significant considerations, including, for area sources of HAP, the high cost of add-on controls, concerns that emergency engines may not operate long enough for a catalyst to reach the temperature needed to reduce emissions, the impracticability of operating the engine to test emissions when the engines operate so infrequently and at unpredictable times, the need for these engines to be operated with little time for startup and the possibility that add-on controls could inhibit the ability of emergency engines to accomplish their time-critical functions. The commenters who indicated that the 50-hour provision for limited operation for engines at area sources of HAP should be removed did not present any information to show that the considerations would not apply to emergency engines used in very limited circumstances when the local transmission and distribution system operator has determined that there are conditions that could lead to a blackout for the local area.

As discussed in the January 30, 2013, final rule, the provision for operation for up to 50 hours is intended for situations where the local transmission and distribution system operator has determined that

there are conditions that could lead to a blackout for the local area. Information provided to the EPA² indicated that rural distribution lines are not configured in a typical grid pattern, but instead have distribution lines that can run well over 50 miles from a substation and regularly extend 15 miles or longer. According to the information submitted to the EPA, during periods of exceptionally heavy stress within the region or sub-region, electricity from regional power generators may not be available because of transmission constraints, and, in many cases, there may be only one transmission line that feeds the rural distribution system and no alternative means to transmit power into the local system. The EPA added the provision for operation of emergency engines for up to 50 hours per year to support local system reliability to recognize these unique challenges faced by the local transmission and distribution system operators in rural areas. The majority of public commenters on the September 5, 2013, notice of reconsideration agreed that the provision is appropriate. Commenters noted that regional transmission organizations (RTOs), or transmission providers in areas without RTOs, monitor their systems continuously, but they do not necessarily track small, localized concerns, and it is at those levels that state and local regulatory agencies and load-serving utilities have always played crucial roles in both setting standards and maintaining reliable supply to customers. Commenters stated that the EPA has created a set of requirements that appropriately recognizes that those responsibilities are often divided in different ways depending on the location and configuration of individual systems. For example, one commenter noted that there are differences between the way the grid is monitored in a rural, highly dispersed system, such as the electric and transmission system in Kansas, and the more redundant grids in New Jersey or Delaware. The commenter indicated that in Kansas there are many small communities served by very long transmission lines, and the local transmission provider may not continuously monitor the voltage situation in each of those small towns, as is done for the bulk power system. Commenters stated that rural electric cooperatives could face blackouts if the regulations lacked contingencies under which engines could be operated to support local system reliability. Commenters indicated that, in rural areas such as Kansas, communities rely on small, local generation units, including stationary RICE, to maintain the transmission voltages necessary to provide reliable electric service during unusual events such as weather contingencies. According to the commenters, it would not be feasible to build larger or more redundant transmission lines or to site power plants locally to alleviate transmission constraints for small communities served by very long transmission lines.


Some commenters were concerned that the current criteria are too indistinct, and that owners/operators would use the provision to operate engines in situations where electric reliability is not actually threatened. However, as other commenters noted, the rule clearly indicates that the dispatch must follow reliability, emergency operation or similar protocols that follow specific NERC, regional, state, public utility commission or local standards or guidelines. See 40 CFR 63.6640(f)(4)(ii)(C) [“The dispatch follows reliability, emergency operation or similar protocols that follow specific NERC, regional, state, public utility commission or local standards or guidelines”] and 63.6640(f)(4)(ii)(E) [“The owner or operator identifies and records the entity that dispatches the engine and the specific NERC, regional, state, public utility commission or local standards or guidelines that are being followed for dispatching the engine.”]. Thus, the current regulations already require that operation must be pursuant to established, verifiable standards or guidelines, and the owner/operator must document the entity that dispatched the engine and the specific standard or guideline that was followed. While some commenters believe the EPA should specify the circumstances for dispatch more exactly, the EPA believes that, given the varied circumstances that may lead to potential voltage collapse or line overloads, attempting to specify exactly what circumstances may lead to use of this provision may be counterproductive. The EPA believes that it is important to ensure that dispatch be available to avoid potential voltage collapse or line overloads and does not believe it is appropriate for the language to be so restrictive that it would

² Document number EPA-HQ-OAR-2008-0708-1056.

preclude effective dispatch. The EPA believes that the existing language already indicates that this provision should only be used where electric reliability is threatened. The EPA and the state or local air-pollution-control agencies that are implementing and enforcing the rule will be able to verify whether or not the engines operated in situations where reliability was threatened. For example, a commenter indicated that the Electric Reliability Council of Texas (ERCOT), the sole balancing authority and transmission operator for Texas, specifically defines “dispatch” and has detailed rules on when and how a resource is dispatched. The implementing and enforcing authority for a unit dispatched in Texas could use the facility’s records to verify whether the dispatch followed the ERCOT standards. In addition, the reporting requirements of the final rule allow the EPA to receive information regarding the use of these engines for local reliability; the EPA can monitor whether the circumstances for use of this provision need to be further clarified in the future. For further discussion of this issue, please see the enclosed response to comments.

We thank you for raising this issue and appreciate your comments and interest in this matter.

Sincerely,



Gina McCarthy

Enclosure