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Air, Pesticides, and Toxics Management Division
U.S. Environmental Protection Agency, Region 4
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Attention Docket ID No. EPA-R04-OAR-2013-0272

Comments on EPA's Proposed Approval of Jefferson County SIP Revisions Addressing Emissions During Startup, Shutdown, and Malfunction Events

We are submitting these comments in support of the proposed rule that will close unlawful regulatory loopholes in Jefferson County that industry uses to emit vast quantities of pollution during start up, shut down and malfunction of their plants. We applaud Jefferson County and the Environmental Protection Agency (EPA) for enacting these long-needed measures to protect the health and welfare of its residents. The proposed rule will eventually help mitigate the impacts of large pollution events on local communities in Jefferson County, directly improving people's lives.

Industrial facilities release significant air emissions over short periods of time during startup, shutdown, malfunction, and maintenance (SSM) events. The pollution caused by these events often exceeds the routine pollution emitted by a source during normal operations, and it jeopardizes public health and quality of life in nearby communities, which are often predominantly low-income communities of color. In Jefferson County, the environmental justice community near the industrial "Rubbertown" area has endured decades of high levels of pollution and devastating accidents at neighboring chemical plants,¹ including a hydrochloric acid release that occurred this month and several others in the past year. Though Louisville has made progress in reducing air pollution in Rubbertown, west Louisville residents who live in close proximity to chemical plants and coal plants still experience higher rates of asthma and other respiratory problems, burning eyes and other health problems that we believe are linked to or exacerbated by the plant emissions.²

Therefore, we are pleased to see that Jefferson County's proposed revisions fix unlawful loopholes in its existing rules regarding SSM events. The current rules allow facilities to emit pollution beyond permit limits during SSM events without fear of legal consequences. The loopholes include provisions that give a District official the unbounded authority to exempt emissions during SSM events as well as "affirmative defense" provisions that allow polluters to avoid financial liability for excessive emissions events.

¹ Louisville Courier-Journal, *Rubbertown Timeline*, available at <http://blogs.courier-journal.com/watchdogearth/2011/03/22/rubbertown-timeline/>

² WFPL News, *Louisville's Air Program Marks Successes, But Health Concerns Linger*, (Jan. 7, 2013), available at <http://wfpl.org/post/louisvilles-air-program-marks-successes-health-concerns-linger>

These loopholes conflict with Clean Air Act requirements that emissions limitations apply on a continuous basis in order to ensure compliance with air quality standards; they undercut the public's right to use the Clean Air Act enforcement provisions; they conflict with the statutory provisions that give discretion solely to the courts to consider relevant factors and assess penalties for violations; and they ignore the fact that ambient air quality standards, sources of pollution, and their emissions change over time. This is especially true given the newer one-hour ambient air quality standards that reflect the latest science about the adverse impacts of pollution on public health. As the District explains: "companies to have a general duty to comply with all applicable emission standards; provide factual information on excess emissions; and to take appropriate actions to minimize emissions Cumulatively, repeated instances of excess emissions can interfere with attainment and maintenance of the NAAQS and threaten public health."³

Jefferson County's revised regulations, which EPA now proposes to approve, no longer include any of these problematic loopholes. The revised rule does not contain any exemptions or affirmative defenses, and it states clearly that all excess emissions during SSM events are a violation of the emissions standards. We agree with EPA that the revised regulations meet the requirements of the Clean Air Act, and we commend Jefferson County for proactively taking action to comply with the law and protect communities.

Further, Jefferson County's regulations now include much-needed notification and reporting requirements. We agree with EPA that these reporting provisions will help enhance compliance and enforcement efforts. Contemporaneous reporting of the conditions surrounding the violation, including the type and the quantity of the pollution released, the legal limit, the cause of the violation, and any measures taken to limit or prevent the emissions, is necessary to ensure that enforcement resources are targeted towards violations where further actions are warranted. The District noted in its response to comments that these notification requirements will ease its administrative burden in determining whether and how much excess emissions occur at facilities.⁴ Additionally, the information will enable the District to better respond to citizen inquiries about excess emission events.⁵

We urge the District to take further steps to make information about excess emission events easily accessible to the public so that communities can be better informed about pollution from neighboring facilities and the air that they breathe, and so health professionals can more effectively treat illnesses that may be related to emissions. The District should, for example, create a publicly-available electronic database of this information similar to databases in Texas and Louisiana.⁶ Open records request laws are insufficient because the public is not made aware of when these events occur in the first place.

Lastly, we observe that a rule is only useful to the extent that it is enforced. We therefore trust and advocate that the District do its utmost to enforce SSM rules once affirmed by EPA.

³ District RTC 1.07-9.

⁴ RTC 1.07-15.

⁵ RTC 1.07-13.

⁶ See RTC 1.07-20, 36, 37, & 58.

In summary, we ask EPA to move forward with the final rule quickly in order for the District to better protect our health before more unnecessary exposures occur. SSM events have real adverse impacts on communities around industrial facilities in Jefferson County, and delay will only prolong those impacts.

Sincerely,

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