Ohio EPA Guidance on the Criteria for Granting One-Year Extensions under the Utility MATS Rule

On February 16, 2012, the U.S. EPA issued in 77 Fed. Reg. 9304 the National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fueled Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, henceforth referred to in this document as the Mercury and Air Toxics Standards (MATS) Rule. Title V permitting authorities were granted within the rule substantial latitude to extend the 3-year compliance deadline up to one year, providing qualifying utilities a full 4 years to comply with the new standards. As the Title V permitting authority in the State of Ohio, Ohio EPA is establishing a set of guidelines to utilities seeking to obtain up to 1 year of additional time to comply with the standard.

I. Rationale
Section 112(i)(3)(B) of the Clean Air Act (CAA) authorizes Title V permitting authorities the discretion to grant extensions of up to 1 year if needed for the installation of controls on a case-by-case basis. As stated in the MATS Rule, “That fourth year should be broadly available to enable a facility owner to install controls within 4 years if the 3-year time frame is inadequate for completing the installation” (77 Fed. Reg. 9410). Additionally, the MATS Rule provides broad latitude in the interpretation of the phrase “installation of controls” to include construction of compliant, on-site replacement generation. Furthermore, the MATS Rule authorizes the permitting authority the discretion to consider 1-year extensions in the case of retirement as a compliance option when; 1. The retiring unit is needed to maintain reliability while other units install emission controls, 2. The retirement of a unit would cause reliability issues while a new unit is being constructed but not expected to be operational within the 3-year timeframe and, 3. When transmission upgrades are needed to maintain reliability after the unit is retired but cannot be completed within 3 years (77 Fed. Reg. 9410). Based on these authorizations, Ohio EPA has identified two broad circumstances under which the owner of a facility could be eligible for an extension of the compliance timeframe of up to 1-year, for a total of 4 years to comply with the MATS Rule, provided these circumstances are adequately demonstrated in the extension application. The first circumstance applies to the “installation of controls” in which reliability issues are not a factor, and the second circumstance applies to situations in which reliability issues are a factor.

II. Non-Reliability Based Extensions
In circumstances in which reliability issues are not a factor, Ohio EPA has identified several factors which would be considered in granting a 1-year extension to the 3-year compliance timeframe. It is important to note that the phrase “installation of controls”, based on 77 Fed. Reg. 9304, refers to the installation and construction of control equipment and the construction and
installation of compliant on-site generation units.

A. Site-specific challenges to installation of controls:
   i. Physical layout of facility hampers or slows construction.
   ii. Location of facility makes operation of heavy equipment difficult.
   iii. Location of facility makes delivery and setup of specialized equipment difficult.
   iv. Weather related delays.
   v. The installation of controls or replacement generation may necessitate time-intensive design, engineering, research and development, and pilot testing activities.
   vi. Physical layout or location of the facility necessitates exceptionally complex siting of control equipment or new generation to protect the public health.
   vii. The installation of control equipment requires coordination with multiple state and local agencies to protect the health and safety of the public. For example, the construction site may impact a public roadway or railroad and additional planning and/or construction is necessary to protect the health and safety of the public during construction.

B. Resource procurement difficulties (Ohio EPA may request vendor/contractor information, if appropriate):
   i. Delays in the availability of necessary, specialized construction equipment.
   ii. Difficulty in the procurement of specialized labor necessary to design and install control equipment.
   iii. Foreseeable labor disputes (i.e. contract expiration).
   iv. Delivery of specialized construction equipment and materials necessitates specialized transportation.
   v. Delays in the availability of specialized materials necessary to complete the construction of controls or the installation of controls within the 3-year timeframe.

C. Other:
   As it would be difficult for Ohio EPA to foresee and detail every circumstance in which a facility is eligible to receive an extension to the 3-year compliance timeframe, the case-by-case review process allows Ohio EPA substantial latitude in granting a 1-year extension based on, “source-specific construction, permitting, or labor, procurement or resource challenges”, provided that the facility provides an adequate demonstration of these challenges in their extension application. It is reasonable to assume that the time required for a facility to obtain all required approvals and complete the physical construction of either compliant replacement generation or control equipment will likely extend beyond the relatively brief 3-year compliance timeframe and necessitate an extension.
III. **Reliability Based Extensions**

Maintaining the stability and reliability of the electric transmission grid will be given substantial weight in the granting of 1-year extensions to the 3-year compliance timeframe of the MATS Rule. The importance of the issue of reliability is highlighted by the considerable detail in which the matter is explored in the MATS Rule, which provides several example cases in which a 1-year extension would be reasonable. As stated in the Rule, "information from the RTO or other planning authority or other entities with relevant expertise" will be the primary source by which Ohio EPA will consider granting an extension to the 3-year compliance timeframe in the case of retiring units. Information from the RTO or other planning authority will primarily be reliability analysis reports, and Ohio EPA will require these analyses be submitted with the extension request(s). Entities with relevant expertise include the Public Utilities Commission of Ohio. Again, Ohio EPA has identified several broad categories of circumstances in which a 1-year extension would be considered, consistent with what is established and detailed in the MATS Rule.

A. Retiring unit(s) needed while other units install controls to maintain reliability:
   
   i. The unit’s generation is needed while compliant, on-site replacement is built to maintain reliability
   
   ii. The unit’s generation is needed while controls are being built and installed on other units to maintain reliability
   
   iii. The unit’s generation is needed to accommodate scheduled outages.

B. Retiring unit needed while off-site replacement is built:
   
   i. Off-site generation will not be operational within the 3-year timeframe and the retiring unit is needed for reliability
   
   ii. The unit’s generation is needed to accommodate scheduled outages during the construction of off-site replacement generation.

C. Transmission upgrades necessary as a result of a scheduled retirement to maintain reliability:
   
   i. If the compliance plan for the unit is retirement, and the retirement of the unit makes upgrades to the transmission system necessary to maintain reliability, and the upgrades to the transmission will require additional time beyond the 3-year compliance timeframe

D. Modifications to existing units to maintain reliability
   
   i. Ohio EPA recognizes that smaller units for which installation of controls will not be economically feasible will likely be retired. This places a significant reliability burden on larger units, and modifications to these units may be necessary to maintain
reliability. For example, larger units may need to be upgraded to be “black start” capable. These modifications may be extraordinarily complex, and subject to the same circumstances detailed in Section II of this document. Under these circumstances, a unit may be eligible for additional time beyond the 3-year compliance timeframe.

IV. Additional information: One Year Extensions

The General Provisions allow a facility to apply for an extension to a MACT compliance deadline. More specifically, 40 C.F.R. 63.6 references the requirements for this process. The permitting authority can grant an extension allowing an existing source up to 1 additional year to comply with the standard (emission standards), if such additional period is necessary for the installation of controls and/or issue electrical reliability.

1. Do we have a specific form or application? What is the timeframe for submittal? Since these determinations are made on a case-by-case basis, we do not have a standardized application for this process. However, §63.6(i)(6)(i) lists the requirements necessary to apply for such extension. The application must be submitted to the appropriate authority no later than 120 days prior to the affected source’s original compliance date (§63.6(i)(4)(B)) but Ohio EPA would like to begin the process as soon as possible.

Requirements for the application:

- Description of the controls to be installed to comply with the standard
- Written demonstration of the necessity of the extension based on the above guidelines
- A compliance schedule with steps to take to ensure compliance
  - Date by which on-site construction, installation of control equipment, or a process change is planned to be initiated
  - Date by which on-site construction, installation of control equipment, or process change is to be completed
  - Date when final compliance will be achieved

2. Are these extensions official agency actions? Yes. As the Title V permitting agency within the State of Ohio, the Ohio EPA will be responsible for this action. These extensions are official actions of the Director appealable to the Environmental Review Appeals Commission (ERAC).

3. Do we public notice the issuance? Do we need to issue draft to allow for public comment? Since the rules themselves only allow states a 30-day review period prior to a final determination being issued on the request, U.S. EPA could not have contemplated anything but a final action. Ohio EPA will issue these as direct final actions, with a public notice in a local newspaper, and appealable to ERAC.
4. What has been the processing time in the past?
   a. Ohio EPA (considered the Administrator) is required to notify the owner/operator in writing within 30 calendar days after the receipt of the original application whether the application is complete to make a determination.
      • If the application is not complete, the owner/operator has the opportunity to submit supplemental information.
   b. The 30 day approval/denial period begins after the owner/operator has been notified in writing that the application is complete. Ohio EPA has issued appropriate extensions within the time-frame allotted by the process.

Please submit your request application materials to the following address:

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Thank you,
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