

### III. Why EPA Is Proposing To Disapprove the State of Montana's January 16, 2003 Submittal

#### *ARM 17.8.335 Is Not Consistent With the Clean Air Act (CAA) and EPA Policy*

First, ARM 17.8.335 provides an exemption to meeting emission limits for a specified source category during scheduled maintenance. Generally, since SIPs must provide for attainment and maintenance of the national ambient air quality standards (NAAQS) and the achievement of the prevention of significant deterioration of air quality (PSD) increments, all periods of excess emissions must be considered violations.<sup>1</sup> Accordingly, any provision that allows for an automatic exemption for excess emissions is prohibited. The appropriate mechanism for excusing excess emissions in this situation is through the exercise of enforcement discretion. We understand that the source conducted modeling to demonstrate that excess emissions during the maintenance procedures would not cause or contribute to violations of the Montana Ambient Air Quality Standards (MAAQS) or NAAQS. Our concerns with the modeling are discussed below.

The State contends that the new rule only indicates that the Department may not initiate an enforcement action for excess emissions during maintenance of air pollution control equipment that results in a violation of emission standards and that the rule does not contain an exemption from enforcement for maintenance activities that violate a federal or state ambient air quality standard or PSD increments.

We do not agree with the State. The 1970 Act established the air quality management process as a basic philosophy for air pollution control in this country. Under this system, we establish air quality goals (NAAQS) for common pollutants. States develop control programs (termed SIPs) and also issue permits under the PSD or nonattainment new source review programs, to assure that the NAAQS are attained and maintained. The NAAQS themselves are not an emission standard or limitation. *Coalition Against Columbus Center v. New York*, 967 F.2d 764, 769 (2d Cir. 1992). States establish enforceable emission limits in SIPs or permits at sources to assure that the NAAQS are met.

Second, in guidance documents issued by EPA and other final rulemakings, we have indicated that scheduled maintenance is a predictable event which can be scheduled at the discretion of the operator, and which can therefore be made to coincide with maintenance on production equipment, or other source shutdowns. Consequently, excess emissions during periods of scheduled maintenance should be treated as a violation unless a source can demonstrate that such emissions could not have been avoided through better scheduling for maintenance or through better operation and maintenance practices.<sup>2</sup>

The State contends that the aluminum process is unique in that the process does not include periodic shutdowns; the startup and shutdown process is expensive and lengthy; maintenance of the control equipment requires the plant to bypass some of the dry scrubbers. We are not convinced that the CFAC aluminum process is so unique, or that redundant control technology could not be added, to address scheduled maintenance. We are not aware of other aluminum facilities that have asked for an exemption to emission limits for scheduled maintenance. Some other aluminum facilities are designed so that maintenance can be completed on portions of the control equipment without having to shut down all of the control equipment.

We are proposing to disapprove ARM 17.8.335 because we believe it is inconsistent with the Act (*e.g.*, sections 110(a)(2)(E) and 110(i)), prior rulemakings and our guidance.

#### *Concerns With Impacts in the Columbia Falls PM-10 Nonattainment Area*

The impact of the "maintenance" emissions (*i.e.*, the additional 700 lbs of PM per 24-hour period expected during maintenance) on the Columbia Falls PM-10 nonattainment area were not analyzed. The State believes CFAC is in a different airshed from the nonattainment area and that emissions from CFAC do not have a significant impact on the Columbia Falls PM-10 nonattainment area. We believe that further analyses need to be completed before it can be determined that CFAC does not impact the Columbia Falls PM-10 nonattainment area. CFAC is only about one mile from the City of Columbia Falls. The State has not demonstrated that this plan revision

will not interfere with the attainment plan for the Columbia Falls PM-10 nonattainment area. Because of the potential impact in the Columbia Falls nonattainment area, we believe ARM 17.8.335, Maintenance of Air Pollution Control Equipment for Existing Aluminum Plants, may not be consistent with section 110(l) of the CAA. That is, EPA cannot approve a SIP revision if it interferes with any applicable requirement concerning attainment and reasonable progress or any other applicable requirement of the Act.

#### *Concerns With the Modeling*

DEQ's testimony in the matter of the amendment of air quality rules pertaining to maintenance of air pollution control equipment for existing aluminum plants indicates that CFAC modeled its normal operations plus 700 lbs of PM-10 per 24-hour period.<sup>3</sup> Therefore, the normal operating emissions were considered along with the maximum allowable increase (700 lbs of PM-10 per 24-hour period) from the proposed maintenance procedure. Additionally, only emissions from the CFAC facility were considered in the analysis because the State determined that adding background concentration of PM-10 emissions measured at the onsite PM-10 monitor adequately represented the emissions from other sources in the area. We believe this modeling approach is inconsistent with the modeling rules and will not assure protection of the NAAQS for several reasons.

Allowable emissions, rather than normal operating emissions, should be used in modeling. This requirement is contained in EPA's Guideline on Air Quality Models, 40 CFR part 51, appendix W, Table 9-1. Montana adopted these rules by reference and we have approved them into the State's SIP (see ARM 17.8.802(1)(g)). Additionally, "normal operating emissions" is not defined in the State's new rule and the rule does not explain how "normal operating emissions" are calculated. Finally, EPA's "Guideline on Air Quality Models" requires that any nearby point sources that cause a significant concentration gradient should also be included in the modeling. See 40 CFR part 51, appendix W, section 9.2.3. Other sources in the airshed including those at CFAC should also be included in the modeling.

The State only required that the source model one month (*i.e.*, September) for three years. We believe

<sup>1</sup> See EPA's September 20, 1999 memorandum from Steven A. Herman and Robert Perciasepe to Regional Administrators entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown."

<sup>2</sup> See EPA's September 28, 1982 policy memorandum from Kathleen M. Bennett to Regional Administrators, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction," page 3 of the Attachment. See also, 65 FR 51412, 51426 (August 23, 2000).

<sup>3</sup> The testimony is contained in the documents submitted with the January 16, 2003 SIP. See Tab 10 of the submittal.