

standard, * * * or to otherwise comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies." EPA today proposes to find that the approved California SIP is substantially inadequate because it cannot provide "necessary assurances" that the State or districts have the authority to issue permits under their PSD and nonattainment NSR SIPs to all major sources because Health & Safety Code section 42310(e) exempts major agricultural stationary sources from these permitting requirements.

B. How Does the California Health & Safety Code Exemption for Agricultural Sources Affect the Adequacy of the SIP?

For areas that fail to meet the National Ambient Air Quality Standards (NAAQS), section 110 and title I, part D of the Act require SIPs to contain a program for issuing "permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 173." CAA section 172(c)(5). EPA regulations establish that an approvable SIP program for issuing preconstruction permits "shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment * * * ." 40 CFR 51.165(a)(2). Neither the Act nor EPA regulations allow any exemptions from permitting for new major sources, and our regulations contain only limited exemptions for major modifications. 40 CFR 51.165(a)(1)(v)(C).

For areas that attain the NAAQS, section 110 and title I, part C of the CAA require a PSD preconstruction permitting program for new and modified major stationary sources. *See, e.g.,* CAA section 165. EPA regulations also set forth the requirements for PSD permitting programs. 40 CFR 51.166. Like nonattainment NSR, neither the Act nor the PSD regulations contain exemptions from permitting for new major sources, and our regulations provide only limited ones for major modifications. *See* 40 CFR 51.166(b)(2)(iii).

California Health & Safety Code section 42310(e) exempts from all air permitting "equipment used in agricultural operations in the growing of crops or the raising of fowl or animals." As a result, the State and districts cannot issue permits to these agricultural sources, even if they are major stationary sources under the Act. The CAA NSR and PSD permitting

requirements do not provide for this exemption.

Section 110(a)(2)(E) of the Act requires the State to provide assurances that it has "adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof) * * * ." California Health & Safety Code section 42310(e) effectively prohibits the State and districts from fully implementing the SIP-approved NSR and PSD permitting programs for agricultural sources. Thus, the SIP does not comply with the requirement for the State to have adequate legal authority to fully implement the SIP. Therefore, the SIP for nonattainment areas and approved PSD programs in attainment areas in California is substantially inadequate and must be corrected.

C. How Can California Correct the SIP Inadequacy?

To correct the deficiency, EPA recommends that the State legislature amend Health & Safety Code section 42310(e) to remove the exemption as it applies to major agricultural sources. The State is already subject to a sanctions clock based on the Notice of Deficiency (NOD) that EPA issued on May 22, 2002, 67 FR 35990, with respect to the State's title V operating permits program. In that NOD, EPA explained that California Health & Safety Code section 42310(e) improperly exempted major agricultural sources from CAA title V permitting. The NOD stated: "EPA has determined that significant action in this instance means the revision or removal of Health and Safety Code 42310(e) so that local air pollution control districts have the required authority to issue title V permits to stationary agricultural sources that are major sources of air pollution." A similar correction with respect to NSR and PSD permitting is necessary to comply with this proposed action.

The May 2002 NOD notes that the title V regulations instruct EPA to apply sanctions in accordance with section 179(a) of the Act if California has not corrected the deficiency (removal or revision of the permitting exemption in Health and Safety Code section 42310(e)) prior to November 23, 2003 (18 months after the effective date of the NOD). The State legislature is required to take essentially the same action (*i.e.,* remove the agricultural permitting exemption for major stationary sources) to correct the SIP inadequacy discussed in this proposed action.

If EPA finalizes this SIP call and determines the State has failed to submit the necessary assurances addressing the deficiency by the required date, a sanctions clock would start for this SIP deficiency in accordance with section 179 of the Act. EPA proposes that if EPA determines the State fails to submit the necessary assurances to address the SIP call by November 23, 2003, or if EPA subsequently finds the correction does not adequately provide such assurances, sanctions would apply as specified under 40 CFR 52.31.¹

D. Are Individual Districts Required To Revise Approved SIP Rules?

EPA is not calling for specific revisions to district rules at this time. We note that several districts may have exemptions for agricultural sources in their local SIP-approved rules.² We believe it is reasonable to wait for the State legislature to correct Health and Safety Code section 42310(e) first so that it is clear whether any such exemptions at the district level represent authority problems under section 110(a)(2)(E).³ EPA, nonetheless, encourages districts to evaluate their SIP-approved rules to ensure that exemptions do not create potential authority problems. Once the State acts to address Health and Safety Code section 42310(e), EPA will work with the districts to determine if further rulemaking is necessary to address specific local deficiencies that remain after the State law change.

¹ EPA is using its authority in section 110(k)(5) to set a deadline that is less than 18 months. We believe the November 23, 2003, deadline is reasonable because action by this date is otherwise required to address the title V problems noted above.

² EPA has conducted a preliminary search for local rules exempting agricultural sources from NSR or PSD permitting requirements. The following districts may have one or more exemptions currently approved into the SIP: Bay Area, Butte, County, El Dorado, Feather River, Medocino, Placer, Sacramento and Yolo-Solano. As noted below, EPA will continue to evaluate the rules for all of the districts to identify more accurately any potentially problematic rule provisions in the SIP.

³ We note that certain local exemptions are tied to exemptions such as Health and Safety Code section 42310(e) provided under State law. Removal of the exemption at the State level could automatically resolve authority problems at the district level. In addition, if the State legislature were to not only revise the language of Health and Safety Code section 42310(e) but also to clarify that any such local exemptions were also void, no further action by the districts may be necessary. Depending on the action at the State level, EPA may be able to make the required finding under 110(a)(2)(E) that the authority to carry out the permitting programs is not prohibited by any State or local law.