

EXHIBIT 12.3

benefits to tribal members and members of the surrounding communities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). Therefore, this rule will be effective May 29, 2008.

VII. Statutory Authority

The statutory authority for this final action is provided by sections 110, 301 and 164 of the CAA as amended (42 U.S.C. 7410, 7601, and 7474) and 40 CFR part 52.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Volatile organic compounds.

Dated: April 18, 2008.

Stephen L. Johnson,
Administrator.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—Wisconsin

■ 2. Section 52.2581 is amended by adding paragraph (f) to read as follows:

§ 52.2581 Significant deterioration of air quality.

* * * * *

(f) Forest County Potawatomi Community Reservation.

(1) The provisions for prevention of significant deterioration of air quality at 40 CFR 52.21 are applicable to the

Forest County Potawatomi Community Reservation, pursuant to § 52.21(a).

(2) In accordance with section 164 of the Clean Air Act and the provisions of 40 CFR 52.21(g), those parcels of the Forest County Potawatomi Community's land 80 acres and over in size which are located in Forest County are designated as a Class I area for the purposes of prevention of significant deterioration of air quality. For clarity, the individual parcels are described below, all consisting of a description from the Fourth Principal Meridian, with a baseline that is the Illinois-Wisconsin border:

(i) Section 14 of Township 36 north (T36N), range 13 east (R13E).

(ii) Section 26 of T36N R13E.

(iii) The west half (W^{1/2}) of the east half (E^{1/2}) of Section 27 of T36N R13E.

(iv) E^{1/2} of SW^{1/4} of Section 27 of T36N R13E.

(v) N^{1/2} of N^{1/2} of Section 34 of T36N R13E.

(vi) S^{1/2} of NW^{1/4} of Section 35 of T36N R13E.

(vii) Section 36 of T36N R13E.

(viii) Section 2 of T35N R13E.

(ix) W^{1/2} of Section 2 of T34N R15E.

(x) Section 10 of T34N R15E.

(xi) S^{1/2} of NW^{1/4} of Section 16 of T34N R15E.

(xii) N^{1/2} of SE^{1/4} of Section 20 of T34N R15E.

(xiii) NW^{1/4} of Section 28 of T34N R15E.

(xiv) W^{1/2} of NE^{1/4} of Section 28 of T34N R15E.

(xv) W^{1/2} of SW^{1/4} of Section 28 of T34N R15E.

(xvi) W^{1/2} of NE^{1/4} of Section 30 of T34N R15E.

(xvii) SW^{1/4} of Section 2 of T34N R16E.

(xviii) W^{1/2} of NE^{1/4} of Section 12 of T34N R16E.

(xix) SE^{1/4} of Section 12 of T34N R16E.

(xx) E^{1/2} of SW^{1/4} of Section 12 of T34N R16E.

(xxi) N^{1/2} of Section 14 of T34N R16E.

(xxii) SE^{1/4} of Section 14 of T34N R16E.

(xxiii) E^{1/2} of Section 16 of T34N R16E.

(xxiv) NE^{1/4} of Section 20 of T34N R16E.

(xxv) NE^{1/4} of Section 24 of T34N R16E.

(xxvi) N^{1/2} of Section 22 of T35N R15E.

(xxvii) SE^{1/4} of Section 22 of T35N R15E.

(xxviii) N^{1/2} of SW^{1/4} of Section 24 of T35N R15E.

(xxix) NW^{1/4} of Section 26 of T35N R15E.

(xxx) E^{1/2} of Section 28 of T35N R15E.

(xxxi) E^{1/2} of NW^{1/4} of Section 28 of T35N R15E.

(xxxii) SW^{1/4} of Section 32 of T35N R15E.

(xxxiii) E^{1/2} of NW^{1/4} of Section 32 of T35N R15E.

(xxxiv) W^{1/2} of NE^{1/4} of Section 32 of T35N R15E.

(xxxv) NW^{1/4} of Section 34 of T35N R15E.

(xxxvi) N^{1/2} of SW^{1/4} of Section 34 of T35N R15E.

(xxxvii) W^{1/2} of NE^{1/4} of Section 34 of T35N R15E.

(xxxviii) E^{1/2} of Section 36 of T35N R15E.

(xxix) SW^{1/4} of Section 36 of T35N R15E.

(xl) S^{1/2} of NW^{1/4} of Section 36 of T35N R15E.

(xli) S^{1/2} of Section 24 of T35N R16E.

(xlii) N^{1/2} of Section 26 of T35N R16E.

(xliii) SW^{1/4} of Section 26 of T35N R16E.

(xliv) W^{1/2} of SE^{1/4} of Section 26 of T35N R16E.

(xlv) E^{1/2} of SW^{1/4} of Section 30 of T35N R16E.

(xlvi) W^{1/2} of SE^{1/4} of Section 30 of T35N R16E.

(xlvii) N^{1/2} of Section 34 of T35N R16E.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2007-1188; FRL-8559-5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control of Stationary Generator Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This SIP revision contains provisions to control emissions from stationary generators. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on May 29, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-1188. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly

available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814-2182, or by e-mail at quinto.rose@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 5, 2008 (73 FR 11845), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of the provisions to control emissions from stationary generators. The formal SIP revision was submitted by the State of Delaware on November 1, 2007. Specific requirements of Delaware's regulation to control emissions from stationary generators and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving Regulation No. 1144—Control of Stationary Generator Emissions, as a revision to the Delaware SIP. This regulation will help ensure that the air emissions from new and existing generators do not cause or contribute to the existing air quality problems with regard to ground-level ozone and fine particulate matter, thereby adversely impacting public health, safety, and welfare.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the

agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 30, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, pertaining to Delaware's regulation to control emissions from stationary generators, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 15, 2008.

William T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

- 2. In § 52.420, the table in paragraph (c) is amended by adding entries for Regulation No. 1144—Control of Stationary Generators Emissions at the end of the table to read as follows:

§ 52.420 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* * * * *				
Regulation No. 1144 Control of Stationary Generator Emissions				
Section 1.0	General	01/11/06	4/29/08	[Insert page number where the document begins].
Section 2.0	Definitions	01/11/06	4/29/08	[Insert page number where the document begins].
Section 3.0	Emissions	01/11/06	4/29/08	[Insert page number where the document begins].
Section 4.0	Operating Requirements	01/11/06	4/29/08	[Insert page number where the document begins].
Section 5.0	Fuel Requirements	01/11/06	4/29/08	[Insert page number where the document begins].
Section 6.0	Record Keeping and Reporting	01/11/06	4/29/08	[Insert page number where the document begins].
Section 7.0	Emissions Certification, Compliance, and Enforcement	01/11/06	4/29/08	[Insert page number where the document begins].
Section 8.0	Credit for Concurrent Emissions Reductions	01/11/06	4/29/08	[Insert page number where the document begins].
Section 9.0	DVFA Member Companies	01/11/06	4/29/08	[Insert page number where the document begins].

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2007-1068; FRL-8559-6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Section 110(a)(1) 8-Hour Ozone Maintenance Plan for the White Top Mountain, Smyth County, VA 1-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).
ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision pertains to a 10-year maintenance plan for the White Top Mountain 1-hour ozone nonattainment area located in Smyth County, Virginia. This action is being taken under the Clean Air Act (CAA).
DATES: *Effective Date:* This final rule is effective on May 29, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2007-1068. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814-2166, or by e-mail at shandruk.irene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 110(a)(1) of the CAA requires that states submit to EPA plans to maintain the NAAQS promulgated by EPA. EPA interprets this provision to require that areas that were maintenance areas for the 1-hour ozone NAAQS, but attainment for the 8-hour ozone NAAQS, submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS.

On May 20, 2005, EPA issued guidance that applies to areas that are designated unclassifiable/attainment for the 8-hour ozone standard. The purpose of this guidance is to address the maintenance requirements in section 110(a)(1) of the CAA, and to assist the States in the development of a SIP. The components from EPA's guidance include: (1) An attainment emissions inventory, which is based on actual "typical summer day" emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) for the 10-year maintenance period, from a base-year chosen by the State; (2) a maintenance demonstration, which demonstrates how the area will remain in compliance with the 8-hour ozone standard for a period of 10 years following the effective date of designation unclassifiable/attainment (June 15,