

## Clarification of DEQ AQD's interpretation of annual in regard to NSPS and NESHAPs

DEQ has developed this guidance document, effective September 1, 2022, due to recent questions regarding the interpretation of the term "annual" as it pertains to compliance with NSPS and NESHAPs. These questions specifically involved DEQ's interpretation of the NESHAP Subpart ZZZZ (Subpart ZZZZ) requirement to do certain maintenance events annually. However, an annual requirement is also included in many other NSPS and NESHAP subparts, for maintenance, testing, etc. Therefore, this will address the use of the term across all NSPS and NESHAP subparts. DEQ has historically interpreted "annual" to mean once every 12 months; however, some industry entities have challenged this interpretation and believe "annual" to mean "a calendar year." DEQ maintains the interpretation that the maintenance must be performed no more than 12 months after the last maintenance event occurred.

Industry points to an EPA FAQ document for Subpart ZZZZ which asks if "year" means calendar year, 12-month block average, or fiscal year. This question was directed towards emergency RICE operating a "specified number of hours per year in certain non-emergency situations". EPA's response was that "year" is interpreted to mean "calendar year". However, EPA does not go further in defining what "calendar year" means.

"Calendar year" is typically interpreted to mean the one-year period beginning on January 1 and ending on December 31. This is the interpretation that industry believes is the intent of EPA. Therefore, industry believes that it has until the end of the calendar year to perform the required maintenance. However, it should be noted that Subpart ZZZZ does not use the term "year", rather it uses "annual." Furthermore, the use of "year" in this case applies only to the number of hours allowed to operate, rather than setting a schedule for maintenance.

Industry has also cited as guidance an email written in June of 2014 by Melanie King with EPA that purportedly supports the calendar year interpretation. However, this was in the form of an email rather than a formal determination and was not definitive.

EPA has given other conflicting interpretations, ranging from as lenient as 11-13 months to as stringent as 365 days from the previous activity. DEQ believes our guidance to be a logical compromise between the two.

In December 2013, DEQ issued a formal Applicability Determination ("AD") regarding the interpretation of "annual". And though the question spurring the AD was specifically regarding MACT Subpart ZZZZ, it is applied broadly across other NSPS and NESHAP subparts. The following summarizes the conclusion of this AD:

The terms "annually" and "annual" are utilized in several sections of Subpart ZZZZ, however, the term is not specifically defined within the regulations.

When a particular word or term is not defined within a regulation or general provisions, a dictionary is used to help determine its meaning. As of the date of this email, the Merriam-Webster Dictionary defines "Annual" as:

1. Covering the period of a year

2. Occurring or happening every year or once a year  
(Noun forms, such as publication of periodicals and living plants, are excluded here.)

"Covering the period of a year" would infer a 12-month period, and AQD considers this to be the most applicable interpretation of "annual." A 12-month period is the least stringent meaning, i.e., the time frame least likely to result in an enforcement case. Furthermore, it seems impractical for EPA to mean that vast numbers of engines all receive maintenance on January 1 of each calendar year. Interpreting "annually" as "in a 12-month period" is analogous to establishing a fiscal year. Therefore, the term "annual" and "annually" are interpreted to mean a 12-month period commencing with the most recent maintenance session which deals with engine oil, spark plugs, and belts and hoses. (Note: we consider it timely if it is submitted within the 12<sup>th</sup> month from the previous activity.)

This is consistent with AQD's prior and current approach with other facilities and regulations when interpreting "annual" and "annually."

### ***Summary***

To maintain consistency across regulations and industries, unless a regulation specifies a different timeframe for annual testing (e.g., 14 months under NSPS KKKK), DEQ expects that each annual test, maintenance activity, etc., will be conducted no later than the end of the 12<sup>th</sup> month since the previous occurrence.

For example, if an activity is conducted on January 10 of one year, it should be conducted no later than January 31 of the following year.

*Note: this guidance applies to 5-year and 10-year requirements as well (e.g. NSPS Ka and Kb).*