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# Startup Shutdown Malfunction/Affirmative Defense Policy Update: Charles R. Buttry (Trinity Consultants) Arkansas Environmental Federation Presentation

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Mr. Charles R. (Chuck) Buttry undertook a Zoom presentation as part of the Arkansas Environmental Federation convention titled:

*Startup Shutdown Malfunction (SSM) & Affirmative Defense Policy Update (“Presentation”)*

Mr. Buttry serves as Regional Manager – Southeast of Trinity Consultants.

SSM might generally be described as follows:

- Startup constitutes setting in operation an affected source or portion of an affected source
- Shutdown generally connotes the cessation of operation of an affected source or portion of an affected source
- Malfunction is generally described as any sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment, or process to operate in a normal or usual manner which causes, or has to the potential to cause the emission limitations in an applicable standard to be exceeded (i.e., it does not constitute scheduled maintenance)

Section 110 of the Clean Air Act requires states to submit SIPs to ensure that each state attains and maintains compliance with each of the National Ambient Air Quality Standards (“NAAQS”) promulgated by EPA. The SIPs must include “enforceable emission limitations” sufficient to meet the Clean Air Act’s requirements. The plans must also prohibit the emission of air pollution that contributes to nonattainment or interference with maintenance of the NAAQS in other states. In addition, states must have adequate authority to carry out their SIPs.

The role of SSM exemptions and their relationship with SIPs has been a focus of EPA, states, the regulated community and environmental organizations for many years. Various existing state air rules had historically allowed some excess emissions during SSM events if certain procedural requirements were met.

Mr. Buttry’s *Presentation* generally addressed:

- APC&E Rule 19, Rule 19.601 (Upset Conditions)
- APC&E Rule 19, Rule 19.602 (Emergency Conditions)
- SSM/Affirmative Defense Policy Update

As to Regulation 19, he noted 19.601 (Upset Conditions) defines upset conditions and reporting obligations. Questions such as how minutes are calculated the timing of emissions were also addressed.

19.602 (Emergency Conditions) are noted to cover:

. . . sudden and reasonably unforeseeable events beyond the control of the source. . .

These are noted to potentially include natural disasters and power outages. Qualifying conditions include the fact they only address technology-based emission limitations. The potential for either of these sections of Regulation 19 to serve as an affirmative defense were reviewed.

The *Presentation* also addressed the Obama Administration's SIP Call in 2015 in response to a Sierra Club Petition pertaining to certain startup shutdown malfunction provisions in a number of states' State Implementation Plans. See 80. Fed. Reg. 33840.

The Sierra Club had argued that certain provisions in these State Implementation Plans were inconsistent with EPA's interpretation of the Clean Air Act's requirement for excess emissions during periods of startup, shutdown and malfunctions. As a result, various states were required to remove relevant startup shutdown and malfunction provisions from their State Implementation Plans and delete related affirmative defenses. The State of Arkansas is one of the 36 states required to submit corrective State Implementation Plan revisions.

Mr. Buttry notes that the Arkansas Department of Energy and Environment – Division of Environmental Quality had initiated rulemaking in 2016 but withdrew it in September 2018. Further, he noted EPA policy shifted under the Trump Administration.

Subsequent developments are addressed such as EPA's Region 6 withdrawal of an inadequacy finding for the Texas State Implementation Plan along with EPA's Region 4 adoption of an alternative Startup Shutdown and Malfunction policy, therefore approving a North Carolina State Implementation Plan.

Equally important is a discussion of an October 9th guidance memorandum issued by Administrator Wheeler titled:

*Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans*

Mr. Buttry notes that this memorandum supports the actions taken in regards to the Texas and North Carolina State Implementation Plans and reverses the 2015 Obama Administration policy.

A copy of Mr. Buttry's slides can be downloaded [here](#).