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Startup Shutdown Malfunction/Clean Air Act NSPS: Environmental Organizations Petition U.S. Environmental Protection Agency Seeking Elimination

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The Sierra Club and a number of other environmental organizations sent a September 13th document to the United States Environmental Protection Agency (“EPA”) titled:

Petition for Rulemaking to Eliminate Startup, Shutdown, and Malfunction Exemptions in the Clean Air Act Section 111 Regulations (“Petition”)

The other organizations include:

- 350 New Orleans
- Air Alliance Houston
- Alliance for Affordable Energy
- Clean Air Task Force
- Deep South Center for Environmental Justice
- Downwinders at Risk
- Earthjustice
- Environment Texas
- Environmental Integrity Project
- Green Army
- Healthy Gulf
- Ironbound Community Corporation
- Natural Resources Defense Council
- RESTORE
- RISE St. James
- Southern Environmental Law Center

(collectively, “Sierra Club”)

Startup, shutdown, and malfunction (“SSM”) might generally be described as follows in the Clean Air context:

- 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 the potential to cause, the emission limitations in an applicable standard to be exceeded (i.e., it does not constitute scheduled maintenance)

Sierra Club is seeking the elimination of SSM exemptions in the Section 111 Clean Air Act Implementing Regulations. Section 111 contains the New Source Performance Standards.

Sierra Club argues that the current federal regulations implementing Section 111 of the Clean Air Act:

. . . unlawfully allow stationary sources to emit air pollution without consequence during startup, shutdown, and malfunction/maintenance (“SSM”) events at levels that far exceed emissions during normal operations, and that harm the health and wellbeing of the communities near the polluting facilities.

The *Petition* cites disproportionate impacts from SSM on low income and communities of color.

The *Petition* argues that the plain text of the Clean Air Act requires that EPA promulgate standards of performance (i.e., NSPS) for such stationary sources that are continuous. The argument is that EPA has not done so because of what is described as a carve-out of blanket exemptions. The organizations cite 23 Section 111 NSPS (i.e., Section 111) subparts that they contend exempt emissions from standards of performance during SSM events.

A counter argument that will likely be made by industry and other groups is that an NSPS must be set that is achievable. Various stationary sources cannot literally achieve a particular emission limit or standard during periods of startup, shutdown, and malfunction. As a result, to impose a standard on such stationary sources during these periods would violate Section 111 of the Clean Air Act.

Sierra Club’s *Petition* is divided into sections which include:

- The Severe Impacts of SSM Events on Surrounding Communities
- History of SSM Exemptions
- Regulatory History of NSPS SSM Exemptions
- D.C. Circuit Court of Appeals Decisions on SSM Exemptions
- EPA Policy
- Standards of Performance Under Clean Air Act Section 111 Require Continuous Emission Reduction
- The NSPS General Duty Provision is Not a Valid Standard of Performance
- EPA Must Remove the Unlawful SSM Exemptions

A copy of the *Petition* can be downloaded [here](#).