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# Startup, Shutdown, and Malfunction/Clean Air Act: U.S. Environmental Protection Agency Final Rule Approving Mississippi State Implementation Plan Revision

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The United States Environmental Protection Agency (“EPA”) in a November 18th Federal Register Notice published a final rule approving a state implementation plan (“SIP”) revision submitted by the Mississippi Department of Environmental Quality (“MDEQ”). See 87 Fed. Reg. 69177.

MDEQ submitted the revision in response to a 2015 EPA SIP Call concerning excess emissions during startup, shutdown, and malfunction (“SSM”) events.

Section 110 of the Clean Air Act requires that states 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 also must prohibit the emission of air pollution that contributes to nonattainment or interference with maintenance of the NAAQS in other states. The role of SSM exemptions and their relationship with SIPs has been a focus of EPA, the regulated community, and environmental organizations for many years.

SSM refers to rules or provisions in SIPs that address the status of excess emissions during periods other than “normal” operation. The rationale for a potential exemption, or otherwise treating differently excess emissions during SSM, is a concern that in some instances the prescribed emission control strategies would not work. In other words, the pollutants emitted during SSM would be unrepresentative of the normal process. To invoke an SSM exemption or affirmative defense, the exceedance would generally have to be deemed unavoidable and certain procedural/substantive conditions fulfilled.

EPA began evaluating SIP provisions a number of years ago in various states for consistency with the agency’s interpretation of the Clean Air Act. The evaluation began in response to a prior request by the Sierra Club.

EPA subsequently issued a finding that certain SSM SIP provisions in a number of states were substantially inadequate to meet Clean Air Act requirements. As a result, EPA issued a SIP Call for those states. It established the due date for states subject to the SIP Call to submit what it deemed corrective SIP revisions.

A number of states and various organizations challenged this action.

EPA in the November 18th Federal Register Notice states it is approving the Mississippi SIP revision. Further, it determines that the Mississippi SIP provisions correct deficiencies identified in the 2015 SIP Call. Specifically, EPA is approving Mississippi's November 17, 2016, SIP submission revising Rule 1.10.B, Startups and Shutdowns, and requesting removal of Rule 1.10.A, Upsets, Rule 1.10.B(3), and Rule 1.10.C, Maintenance, from the Mississippi SIP-approved version of Rule 1.10, Provisions for Upsets, Startups, and Shutdowns.

A copy of the Federal Register Notice can be downloaded [here](#).