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Startup, Shutdown, and Malfunction/Clean Air Act: U.S. Environmental Protection Agency Proposed Rule Disapproving Revision to the Louisiana State Implementation Plan

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The United States Environmental Protection Agency (“EPA”) published a June 13th Federal Register Notice proposing to disapprove a revision to the Louisiana State Implementation Plan (“SIP”) addressing excess emissions during periods of Startup, Shutdown and Malfunction (“SSM”). See 88 Fed. Reg. 38448.

EPA determined that the SIP revision does not correct the deficiency with the Louisiana SIP identified in a June 12, 2015, EPA SIP Call.

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 the 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 SSM provisions in various state SIPs a number of years ago for consistency with the agency’s interpretation of the Clean Air Act. The evaluation began in response to a 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 these states. It established a due date for states subject to the SIP Call to submit what it deemed corrective SIP revisions.

Louisiana was one of the 36 states that had provisions deemed substantially inadequate to meet Clean Air Act requirements. A SIP Call was issued to Louisiana and various other states to submit SIP revisions to address the inadequacies related to SSM.

The Louisiana Department of Environmental Quality (“LDEQ”) on behalf of Louisiana submitted SIP revisions in 2016 and 2017 in response to the 2015 SSM SIP Call. EPA made a finding that Louisiana Administrative Code 33:III.2201.C (8) of the state’s SIP was substantially inadequate to meet the Clean Air Act requirements.

LDEQ is stated to have repealed the referenced section and added a new section in its place. The 2017 submittal by LDEQ requires affected NOx sources to comply with either:

1. the applicable emission limitations and standards at all times, including periods of startup and shutdown; or
2. the applicable emission limitations and standards at all times, except during periods of startup and shutdown covered by work practice standards permissible under the rule.

EPA states in the June 13th Federal Register Notice:

. . . Thus, owners and operators of sources that would choose not to comply with the numeric emission limitations during periods of startup and shutdown would be allowed to comply with alternative work practice standards. The owner or operator would not have to select the same method of compliance for every affected point source and would be allowed to revise its selection of the method of compliance for one or more affected point sources by means of a permit modification. Any noncompliance with the emission limitations or with the alternative plan would be submitted in writing within 90 days of the end of each ozone season (May 1–September 30, inclusive) to the administrative authority.

EPA in the June 13th Federal Register Notice proposed to determine that this revision to the SIP does not correct the deficiency in the Louisiana SIP and provides certain recommendations for alternative language.

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