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

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The United States Environmental Protection Agency (“EPA”) published a June 23rd Federal Register Notice containing a final rule approving a revision to the Tennessee State Implementation Plan (“SIP”) addressing excess emissions during periods of Startup, Shutdown and Malfunction (“SSM”). See 88 Fed. Reg. 41031.

EPA determined that the SIP revision addressed a finding of substantial inadequacy and a SIP Call was issued by the agency on June 12, 2015, related to excess emissions during 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 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.

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

Tennessee submitted a SIP revision in response to the SIP Call on November 19, 2016. A supplement to the submission was submitted to EPA on January 20, 2023.

The SIP revisions EPA is approving include:

- Chapter 1200-3-20 of the Tennessee SIP
- Changes to Rule 1200-3-20-.01 (Purpose)
- Rule 1200-3-20-.02 (Reasonable measures required)
- Rule 1200-3-20-.06 (Report required upon the issuance of Notice of Violation)
- Rule 1200-3-20-.07 (Special reports required)
- Rule 1200-3-20-.08 (Rights reserved)
- Rule 1200-3-20-.09 (Additional source covered)
- Rule 1200-3-20-.06 (Scheduled maintenance) is removed

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