

EPA Proposes to Require 36 States to Revise Startup, Shutdown, and Malfunction Air Emission Provisions in State Implementation Plans

Article By:

David M. Friedland

On February 22, 2013, the **U.S. Environmental Protection Agency (EPA)** published a proposed rule that requires 36 states to revise startup, shutdown, and malfunction (SSM) provisions in their State Implementation Plans (SIPs). The proposed rule responds to a rulemaking petition filed by the Sierra Club. The petition claims that previously approved SIP provisions are inconsistent with the Clean Air Act because they include emission limit exemptions during periods of SSM. If this proposal becomes final, the SSM protections that many facilities are relying on for excess emissions during times of startup, shutdown and malfunction may no longer be available.

In response to the petition, EPA proposes to grant in part the Petitioner's claim and find that 36 states have approved SIPs that include SSM provisions that do not meet the requirements of the Clean Air Act. EPA must make this "inadequacy" finding before requiring a state to revise and resubmit its SIP. EPA proposes to issue a SIP Call that would require the 36 states to correct and submit revised SSM SIP provisions no later than 18 months after EPA makes its final findings of inadequacy. A SIP Call would be issued for the District of Columbia and the following states: Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Virginia, Washington, West Virginia and Wyoming. Some local jurisdictions within Arizona, Kentucky, Nebraska, North Carolina and Tennessee are also impacted.

In addition, EPA is denying several parts of the petition. EPA proposes to deny the petition's request to prohibit affirmative defenses to SSM violations in SIPs. EPA proposes to revise its previous policy to continue to allow affirmative defenses in SIPs for excess emissions that occur when a facility is experiencing a malfunction but not for excess emissions that occur during a planned startup or shutdown. EPA also proposes to deny the request in the petition that EPA discontinue reliance on interpretive letters from states to clarify any potential ambiguity regarding a state's SSM provision. EPA proposed that it may rely on adequate explanations from the state to determine that the SSM provision is sufficiently clear and complies with applicable Clean Air Act and regulatory requirements.

EPA will accept comments on this proposed rule until March 25, 2013.

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