

START UP, SHUT DOWN MALFUNCTION (SSM) UPDATE

AWMA

Southern Section Annual Meeting and Technical Conference

September 20 – 23, 2016

Biloxi, MS



WHY?

- ▶ EPA proposed to grant Sierra Club's petition against current SSM provisions and against MDEQ's SIP by issuing a SIP call requiring Mississippi to modify its regulations
- ▶ On September 17, 2014, EPA published a supplemental **proposed rule** to modify its policy regarding *affirmative defense* associated with startup, shutdown and malfunction (SSM) provision in SIPs, and to require revisions in 17 state SIPs including Mississippi's.
- ▶ On June 12, 2015, EPA's **final rule** calling for 35 states and the District of Columbia to revise their regulations on excess emissions during startup, shutdown and malfunction was published.
- ▶ On August 11, 2015, Mississippi joined the Florida Attorney General and other states in filing a **petition for review** in the Court of Appeals for the U.S. D.C. Circuit. This petition is still under review by the courts.

WHAT?

- ▶ The current draft proposal (*see MDEQ proposal*) has the following **highlighted changes**:
 - ▶ UPSETS: struck “affirmative defense” provision; added considerations the Commission could consider for whether to take enforcement actions and/or what actions to take.
 - ▶ SU/SD: removed exceptions for application of limits; added provision of adding specific (alternative) emission limitations or work practice standards per rule, regulation or permit; added requirements for these limits or work practice standards that minimize emissions and documentation.
 - ▶ UNPLANNED MAINTENANCE: struck “affirmative defense” provision; added considerations the Commission could consider for whether to take enforcement actions and/or what actions to take.

NOW?

Final SSM SIP Revision Due to EPA

November 22, 2016

- ▶ The November 22 deadline is the deadline for MDEQ to submit the revised SIP submission to EPA. Thus the FIP clock would not start on November 22 unless MDEQ fail to submit anything
- ▶ MDEQ draft regulations just ended their 30 day public notice: August 16, 2016 through September 16, 2016, which included a Public Hearing on Friday, September 16 at MDEQ.
- ▶ At request MDEQ has extended Public Comment period to October 6, 2016

HOW?

So What do MDEQ's draft SSM regulations look like now?

(Remember this framework only applies if SSM is expected to exceed SIP limits that apply to normal operations)

- ▶ Affirmative Defense for Upsets[Rule 1.10(A)(1)] modified
 - ▶ The clear provision for affirmative defense has been removed and replaced with **State** "enforcement discretion" language

HOW?

So What do MDEQ's draft SSM regulations look like now?

- ▶ Startups and Shutdowns [Rule 1.10(B)(1 -3)] modified
 - ▶ MDEQ worked to try and find a reasonable compromise with EPA
 - ▶ Most of the malfunction language is now considered in Section A, Upsets
 - ▶ Remember some NSPS already have Start/Shutdown provisions but expect more in future
 - ▶ MDEQ worked to include “work practice standards” in Rule during negotiations with EPA
 - ▶ However, affirmative defense not effective until these “work practice standards” are adopted into SIP
 - ▶ MDEQ still has **State** enforcement discretion until SIP is final, but facility may have some third party or EPA liability
 - ▶ Many other States taking a similar approach
 - ▶ However, many states have more resources to internally develop work practice standards in advance to include in SIP

HOW?

So What do MDEQ's draft SSM regulations look like now?

- ▶ Maintenance [Rule 1.10(C)]
 - ▶ Now titled "Unplanned Maintenance"
 - ▶ Language shifted towards enforcement discretion
 - ▶ Some general language cleaned up for 5 day notification requirement

CONCLUSION

So what does it all mean:

- ▶ More effort and paperwork to develop “work practice standards” for industry and MDEQ
- ▶ Minimal additional protection of the environment (No NAAQS exceedances)
- ▶ Removal of third party liability protection to some degree
- ▶ More work for MDEQ who is already working with limited resources

For continued information:

http://www.deq.state.ms.us/MDEQ.nsf/page/Air_Homepage?OpenDocument