

# ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION REGULATION NO. 19

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Proposed  
Changes in  
Response to  
the Startup,  
Shutdown, and  
Malfunction  
(SSM) SIP Call

# BACKGROUND

**SSM SIP Call published June 12, 2015 (80 FR 33840).**

**Responds to Sierra Club petition pertaining to provisions in state plans deemed inconsistent with EPA's interpretation of Clean Air Act (CAA) requirements for excess emissions during periods of SSM;**

**Requires 36 states, including Arkansas, to submit corrective SIP Revisions;**

**Establishes a deadline of November 22, 2016 for submittal of corrective SIP revisions; and**

**Revises and clarifies EPA's guidance concerning its interpretation of CAA requirements with respect to SSM.**

**The Arkansas Attorney General is among 17 Attorneys General that are challenging the SSM SIP Call.**

# ARKANSAS PROVISIONS SUBJECT TO SSM SIP CALL

EPA found provisions in APC&EC Reg. 19.602 and Reg. 19.1004(H) substantially inadequate to meet CAA requirements pertaining to periods of SSM.

- Specific objections to these provisions were that:
  - Reg. 19.602 provides a **“complete affirmative defense”** for excess emissions that occur during emergency periods
  - Reg. 19.1004(H) provides an **automatic exemption** for excess emissions of volatile organic compounds for sources located in Pulaski County due to malfunctions

EPA has determined that automatic exemptions from emission limits during periods of startup, shutdown, and malfunction are “impermissible provisions” that are inconsistent with CAA requirements.

# OPTIONS FOR CORRECTING “IMPERMISSIBLE PROVISIONS”

Multiple approaches to complying with the SSM SIP  
Call all of which require removal of the following:

- automatic exemption provisions
- director's discretion provisions
- enforcement discretion provisions
- affirmative defense provisions

Examples provided by EPA:

- Removal of “impermissible provision” without altering any other aspects of the SIP provision at issue
- Replacing the “impermissible provision” with **alternative emission limitations** explicitly applicable to periods of SSM
- Removal of the “impermissible provision” and a total revision of emission limitations that apply **at all times** (not just during SSM)

# ADEQ PROPOSED REVISIONS TO REGULATION 19 SSM PROVISIONS

## Reg. 19.602(A)

- Removal of “complete affirmative defense” language
- Addition of language establishing Reg. 19.602(A)(1 – 4) as criteria and procedures for determining whether excess emissions due to an emergency are avoidable and whether enforcement action by ADEQ is warranted

## Reg. 19.1004(H)(1)

- Removal of language which states that emissions in excess of these regulations due to SSM will not be considered a violation of these regulations
- Addition of language establishing Reg. 19.1004(H)(1)(a – e) as criteria and procedures for determining whether excess emissions due to an emergency are avoidable and whether enforcement action by ADEQ is warranted

Both revisions include a **rescission clause** that would restore the complete affirmative defense should the SSM SIP Call be stayed, vacated, or withdrawn.

# EPA SSM SIP POLICY FOR ENFORCEMENT DISCRETION

Enforcement discretion provisions may not preclude EPA or any parties who qualify under citizen suit provisions of the Clean Air Act from seeking injunctive relief, compliance order, monetary penalties or all of the above from the court for the violation.

The following criteria should be considered when determining whether an enforcement action is appropriate:

To the maximum extent practicable the air pollution control equipment, process equipment or processes were **maintained and operated** in a manner consistent with good practice for minimizing emissions;

Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded.

Off-shift labor and overtime were utilized, to the extent practicable, to ensure that such **repairs were made as expeditiously as practicable**;

The amount and **duration of the excess emissions** (including any bypass) were **minimized** to the maximum extent practicable during periods of such emissions;

All possible steps were taken to **minimize the impact** of the excess emissions on ambient air quality; and

The excess emissions are **not part of a recurring pattern** indicative of inadequate design, operation or maintenance

# PROPOSED REG. 19.602 CRITERIA AND PROCEDURES

An “emergency” means any situation arising from the sudden and reasonably unforeseeable events beyond the control of the source with an operating permit, including natural disasters, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the upset condition. An emergency **shall not include non-compliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.**

(A) In determining whether a period of excess emissions is avoidable, and whether enforcement action is warranted, the Department, based upon information submitted by the owner or operator through properly signed contemporaneous operating logs, or such other relevant evidence, shall consider whether the following criteria are met:

An emergency occurred and that the permittee can identify the cause(s) of the emergency	The permitted facility was at the time being <b>properly operated;</b>	During the period of the emergency, the permittee <b>took all reasonable steps to minimize levels of emissions</b> that exceeded the emission standards, or other requirements in the permit; and	The permittee submitted notice of the upset to the Department by the end of the next business day after the emergency. This notice must contain a description of the emergency, any <b>steps taken to mitigate emissions, and corrective actions taken.</b>
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# PROPOSED REG. 19.1004(H)(1) CRITERIA AND PROCEDURES

In determining whether enforcement action is warranted for emissions in excess of these Regulations which are temporary and result solely from a sudden and unavoidable breakdown, malfunction or upset of process or emission control equipment, or sudden and unavoidable upset of operation, as per referenced in Reg. 19.601 and Reg. 19.602, the Department, based on information submitted by the owner or operator shall consider whether the following criteria are met:

the owner or operator notifies the Department of any such occurrence by the end of the next business day of the occurrence; and	the owner or operator demonstrates to the Director that the suggested <b>period of time for correction is as expeditious as practicable</b> ; and	the breakdown or upset is determined by the Director to be <b>unavoidable and not the result of negligence</b> ; and	within five (5) days after the beginning of the occurrence, a written report is submitted to the Director which includes the cause and nature of the event, estimated quantity of volatile organic compounds emitted, time of emission and to <b>prevent recurrence</b> ; and	the Director is immediately notified when corrective measures have been accomplished.
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# PROPOSED REGULATION 19

## ENFORCEMENT DISCRETION PROVISIONS

Enforcement discretion provisions in Reg. 19.602 and 19.1004(H) are consistent with EPA's SSM SIP Policy as of 2015.

- The five criteria that EPA states should be considered in determining whether an enforcement action is appropriate during malfunction are covered in 19.602 and 19.1004(H).
- Nothing in 19.602 or 19.1004(H) precludes EPA or other parties under citizen suit provisions of the Clean Air Act from seeking injunctive relief, a compliance order, or monetary penalties from the court for excess emissions occurring as a result of malfunction/emergency conditions.

# RESCISSION CLAUSE

ADEQ acknowledges the Attorney General's challenge to the SSM SIP Call.

Rescission clauses have been included at 19.602(C) and 19.1004(H)(3) in the event the SSM SIP Call is stayed, vacated, or withdrawn.

Rescission clauses are modeled after an EPA-approved rescission clause in a revision to the Jefferson County portion of a Kentucky SIP, which modified certain NSR and PSD permitting regulations (77 FR 62150).

- Two factors critical in the Jefferson County rulemaking:
  - Whether the **public will be given reasonable notice** of any change to the SIP that occurs as a result of the automatic rescission clause;
  - Whether any future change to the SIP that occurs as a result of the automatic rescission clause will be **consistent with EPA's interpretation of the court action.**

# PROPOSED RESCISSION CLAUSES

## Reg. 19.602(C)

- If any provision of “SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction” (80 FR 33840) is subsequently suspended by EPA or stayed by a federal court, then demonstration that conditions 19.602(A)(1 – 4) have been met will constitute a complete affirmative defense for emergency conditions until the completion of the reconsideration process or the resolution of the proceeding performing judicial review. **This period shall begin and end on the date specified in the notices of stay published in the Federal Register for that section or subsection.**
- If “SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction” (80 FR 33840) is withdrawn by EPA, vacated by a federal court, or otherwise nullified by federal legislation, then demonstration that conditions 19.602(A)(1 – 4) have been met will constitute a complete affirmative defense for emergency conditions **following the date specified in the notice of vacatur or withdrawal published in the Federal Register.**

The rescission clause in Reg. 19.1004(H)(3) mirrors Reg. 19.602(C).

# ARKANSAS SSM SIP REVISION

ADEQ's approach is consistent with EPA's allowance for the inclusion of criteria and procedures for the use of **enforcement discretion by air agency personnel** in the preamble of the SSM SIP call (80 FR 33844).

## Options for SIP Revision

- **Revise Regulation 19 and withdraw Reg. 19.602 and Reg. 19.1004(H) from the SIP (EPA's preference)**
- **Revise Regulation 19 include revision of Reg. 19.602 and Reg. 19.1004(H) in SIP revision submittal (Stakeholders' preference)**

ADEQ anticipates adopting the necessary revisions to Regulation 19 in **October of 2016** and submitting a SIP Revision including the changes to Reg. 19.602 and Reg. 19.1004(H) in early 2017.

# OTHER PROPOSED CHANGES TO REGULATION 19 INCLUDED IN THIS RULEMAKING

## Repeal of Chapter 14, CAIR NO<sub>x</sub> Ozone Season Trading Program General Provisions

- The Clean Air Interstate Rule (CAIR) program is no longer in effect as of December 31, 2014

## Chapter 2, Definitions

- Addition of definition of “Direct PM<sub>2.5</sub> emissions”
  - This term is used in Regulation 19, but was previously not defined
  - Definition taken from EPA’s “Clean Air Fine Particle Implementation Rule” (72 FR 20664)
- Addition of t-butyl acetate to the list of compounds determined to have negligible photochemical reactivity in the definition of “Volatile organic compounds”
  - EPA exempted t-butyl acetate in the regulatory definition of volatile organic compounds (81 FR 9339)

## Non-substantive revisions

- Revisions for correction of typographical errors at Reg. 19.405(B)(4) and 19.407(C)(2)
- Revisions for clarification and correction of typographic errors and letters in the list at Reg. 19.601

# PUBLIC COMMENT ON PROPOSED REVISIONS TO REGULATION 19

Oral and written statements will be accepted at today's hearing, but written comments are preferred in the interest of accuracy.

Written and electronic mail comments will be accepted until 4:30 pm on **June 20, 2016.**

Written Comments should be mailed to:

- Kelly Robinson, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118

Electronic mail comments should be sent to:

- [reg-comment@adeq.state.ar.us](mailto:reg-comment@adeq.state.ar.us)

# QUESTIONS?

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