

SUMMARY

EPN COMMENTS OBJECTING TO AN EPA PROPOSAL TO CONSIDER AN ALTERNATIVE INTERPRETATION OF PROVISIONS OF THE TEXAS STATE IMPLEMENTATION PLAN REQUIRED UNDER THE CLEAN AIR ACT

June 28, 2019

On April 29, 2019, EPA Region 6 issued a [proposed action](#) that indicates it is considering an “alternative interpretation regarding affirmative defense provisions” of the Texas State Implementation Plan (SIP). The proposed interpretation departs from nationally applicable policies set forth in a 2015 EPA rule that explicitly disapproved this Texas SIP and other SIPs with similar provisions.

Specifically, Region 6 is proposing to find that the “affirmative defense provisions” in the Texas SIP, which are applicable to excess emissions during certain upset events and unplanned maintenance, startup or shutdown activities, are narrowly tailored and limited to ensure protection of the National Ambient Air Quality Standards (NAAQS) and other Clean Air Act requirements. Region 6 asserts that the proposal would be consistent with the newly announced alternative interpretation if adopted. The region indicates that it obtained concurrence from the relevant office in EPA’s national Office of Air and Radiation to deviate from the nationally applicable interpretation.

EPN is providing comments on this proposal because of concerns that the proposed action:

- Fails to explain the reason an alternative interpretation is warranted,
- Sets a dangerous precedent for casual approval of situations generally alleged to warrant an exception to national consistency, and
- Provides neither legal nor technical justification that approval of the Texas SIP revision is protective of public health and consistent with the Clean Air Act.

The approval of the Texas SIP would sanction emissions of substantial amounts of unhealthy air pollution, emitted contrary to legal requirements, but excused from enforcement through the mechanics of an “affirmative defense.” It would set a very dangerous precedent for EPA’s national consistency policy and process, and would put residents of Texas at risk for exposure to significant amounts of pollution for which they would have neither advance warning nor recourse. If finalized, this rule would open the door to any other EPA region seeking a similar exception. For all of these reasons, EPN urges EPA not to finalize this approval.

Launched in 2017, the [Environmental Protection Network](#) (EPN) is a nonprofit organization of more than 450 EPA alumni who volunteer their time and expertise to preserve the nation’s bipartisan progress toward clean air, water, land and climate protection.