

## SUMMARY

### EPN Comments on Proposed SIP Call Withdrawal and Air Plan Approval; NC: Large Internal Combustion Engines NO<sub>x</sub> Rule Changes

August 5, 2019

On June 5, 2019, EPA Region 4 issued a [proposed rule](#) indicating it is considering “adopting an alternative policy regarding startup, shutdown, and malfunction (SSM) exemption provisions” in the State of North Carolina’s State Implementation Plan (SIP). Region 4’s proposal would depart from the 2015 national policy relating to such exemptions, which explicitly disapproved of the same proposed SIP provision in North Carolina and 35 other SIPs with similar provisions.

Specifically, Region 4 states that it is “evaluating whether there is a reasonable alternative way to consider SSM provisions in SIPs that allows such exemptions if the SIP considered as a whole is protective of the [National Ambient Air Quality Standards] NAAQS.” Region 4 indicates that it obtained concurrence from the relevant office in EPA’s Office of Air and Radiation (OAR) to take an alternative interpretation that deviates from the nationally applicable interpretation.

The [Environmental Protection Network](#) (EPN) is providing comments on this proposal because of concerns that the proposed action:

- Fails to explain the reason an alternative interpretation is warranted, and in fact one is not in this situation;
- Sets a dangerous precedent for casual approval of situations generally alleged to warrant an exception to national consistency;
- Provides neither legal nor technical justification that approval of the North Carolina SIP revision is both protective of public health and consistent with the Clean Air Act (CAA) as interpreted in EPA’s national rulemakings; and
- Would open the door widely for states seeking virtually any exception to EPA’s national policy on SSM, contrary to the CAA and judicial precedent, and could lead to increased emissions if exceptions are adopted and approved, and unnecessary administrative and legal proceedings when those exceptions are legally challenged.

The proposal to approve North Carolina’s SIP revision could lead to a substantial increase in unhealthy air pollution, which would be emitted during periods of start-up, shutdown or malfunction. These amounts cannot be determined in advance and thus cannot assure that the NAAQS will continue to be met. The explanation provided for this exception is thin to the point of non-existence and fails entirely to meet expected standards of reasoned agency decision-making. If finalized, this rule would open the door to any other EPA Region to seek a similar exception to the national policy. In fact, Region 6 recently submitted a [similar proposal](#), which EPN disagreed with on the same basis. These cases set a terrible precedent that undermines the agency’s approach to national consistency. EPN urges EPA not to finalize approval of this element of the North Carolina SIP.