Appointment

From: Lorang, Phil [Lorang.Phil@epa.gov]
Sent: 10/18/2018 7:48:36 PM
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CC: Brachtl, Megan [Brachtl.Megan@epa.gov]; Selbst, Elizabeth [selbst.elizabeth@epa.gov]; Feldman, Michael [Feldman.Michael@epa.gov]; Smith, Kristi [Smith.Kristi@epa.gov]; Buchsbaum, Seth [buchsbaum.seth@epa.gov]; Santiago, Juan [Santiago.Juan@epa.gov]; Donaldson, Guy [Donaldson.Guy@epa.gov]; Bianco, Karen [Bianco.Karen@epa.gov]

Subject: Kickoff for the proposed withdrawal of the SSM SIP Call for Texas 919-541-5230
Location: RTP-OAQPS-919-541-5230-OID-AQPD/Phone-Line/RTP-OAQPS-BLDG-C

Start: 10/24/2018 6:30:00 PM
End: 10/24/2018 7:00:00 PM
Show Time As: Busy

A tweak on the agenda.

Rescheduling per Kristi's suggestion. Megan may not be available, but I know she trusts us for 30 minutes. I'll keep on the calendar another hour right after this with just Alan, Richard, and Emily, but depending on the conversation during this call we may delay that also.

This will be a short call. I've scheduled a longer call for just Emily, Alan, Richard, Karen, and me right after this call, to get deeper.

Some, but not all of the managers may be able to join at this time, and be available to give input and respond to questions.

Many of you have already received a SharePoint link from me for a folder that has several relevant reference materials and the start of an outline for the notice. I think that those that did not get it don't need it for now, but if you want it let me know.

Draft Agenda

1. Is it Alan who will be team member for the R6 air program? Guy indicated that Michael might make a substitution.
2. Phil heard from Kristi that the goal is to get the NPRM out before the end of 2018. Right? What does this mean for when a clean draft version needs to be ready for Guy/ORC_management/Megan/Kristi-level review?
3. Are there any legal, policy, or strategic issues that still need to be raised to management?
4. About how many typed pages should this notice be? Are we trying to fly under the radar with a short notice, or provide a one-stop record for later litigation?
5. Guy's item:

    Phil,
    I will add one topic to the discussion. I heard from Janis Hudson, a lawyer at TCEQ, that Industry and Texas are interested in providing input or at least understanding the rationale that we will be using in this notice before we go to proposal. Similarly, Rick told me one of the environmental lawyers asked if he could provide input before proposal.
    I'm not sure how we want to deal with this but I suspect we can't just say no because the industry will probably reach out to our bosses.

6. Phil has asked Megan a number of questions. It may be good to review her answers, or hear them for the first time.
    - Did OAR decide against issuing any national policy statement? Not doing that seemed to be the way OAR was leaning, last I listened.
    - Do I understand correctly that we are going back the old policy that ADs are OK for startup, shutdown, and malfunctions, and not just malfunctions? Do the criteria in the pre-2016 policy memos govern what the substance of an AD can be, or are we loosening it up from that?
    - Looking back on documents I have saved, the following seems to be the fullest statement for the new theory for why ADs are OK.
        - "The bases for stating that affirmative defenses are permissible are (1) the NRDC decision was made in the context of CAA section 112 and does not apply to CAA section 110 and (2) section 110 does not explicitly prohibit affirmative defenses." (From an internal document dated July 17, 2018)

      Is there something more in writing now?
    - Are we still planning that the NPRM to propose to withdraw the SIP call for Texas at the same time as the proposals for action on the several SIP submittals that have SSM issues? Is there a target date for that? (I've since heard that the goal is to get the NPRMs for Texas and the Region 4 cases published before the end of 2018.)
    - Megan's message mentions Region 4 cases. None of the Region 4 cases involved an opportunity to approve an AD provision. Of the other ~10 SIP submissions that presented opportunities, the following involved AD provisions. Are these going forward now, and are there teams for these? How will they be coordinated substantively?
        - New Jersey regulation, 7:27-8.3(n), includes an affirmative defense provision for startup, shutdown, malfunction, maintenance, and emergencies.
        - IN Lead (Pb) Redesignation and Maintenance Plan – Muncie, Delaware County (first path, in which a policy-type statement would be made even though not essential as a basis for the action to approve the maintenance plan).
    - When last I was involved, Peter T was saying he'd be willing to make a run at OAR to sell the idea of relying on an argument that only "emission limitations" had to be continuous and it was fine if SIPs have "other measures" that were not continuous, with a retroactive explanation that the provisions that were SIP called can appropriately be treated as "other measures." This would replace the argument that a particular SIP with some emission limits that were not continuous is OK if it has overlapping requirements that collectively protect the NAAQS.
        - I realize this issue is not relevant to the reconsideration of the Texas SIP call, which was only about affirmative defenses. Out of curiosity and for context, which logical path are we on now? Is it in writing yet?
7. Other questions or points of information.
8. What else?