UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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DALLAS, TEXAS 75202 – 2733

Office of the Regional Administrator

October 16, 2018

Mr. Jon Niermann
Chairman
Texas Commission on Environmental Quality
Post Office Box 13087
Austin, Texas 78711-3087

Ms. Janis Boyd Hudson
Attorney, Environmental Law Division
Texas Commission on Environmental Quality
Post Office Box 13087
Austin, Texas 78711-3087

RE: Convening a proceeding for reconsideration of a final rule entitled "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," 80 FR 33839, published June 12, 2015.

Dear Chairman Niermann and Ms. Hudson:

The U.S. Environmental Protection Agency (EPA) has considered the petition from former Chairman Bryan W. Shaw submitted by letter dated March 15, 2017, "Petition for Reconsideration of the Final Rule and Request for Administrative Stay" in the matter of the Texas SIP call, which was included as part of EPA's final rule referenced above, also referred to as the 2015 SSM SIP Action. The Texas Commission on Environmental Quality (TCEQ) requested that EPA reconsider issues raised in the petition under the Administrative Procedure Act (APA) or the Clean Air Act (CAA) and that EPA stay implementation of the final rule's identification of certain affirmative defenses in the Texas state implementation plan (SIP) as inconsistent with the CAA pending reconsideration.

Under CAA §307(d)(7)(B), EPA must convene a proceeding for reconsideration if an objection is of central relevance to the outcome of the rule and the objection was impracticable to raise during the period for public comment or the grounds for the objection arose after the period for public comment, but within the time specified for judicial review. In addition, EPA retains discretion to conduct a reconsideration when the agency determines it is appropriate.

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After review of the issues raised, although the petition does not meet the criteria in section 307(d)(7)(B) of the CAA, EPA has decided to partially grant the petition and use its discretion to reconsider the Texas SIP call included as part of the 2015 SSM SIP Action. Region 6 has received concurrence from the relevant office in EPA's Office of Air and Radiation to convene a proceeding for reconsideration of the Texas SIP call, the outcome of which may potentially entail Region 6 proposing an action inconsistent with EPA's interpretation in the 2015 SSM SIP Action when acting pursuant to the reconsideration of the Texas SIP call. Accordingly, EPA will convene a proceeding for reconsideration of the Texas SIP call and will provide notice and an opportunity for public comment if the Agency proposes changing the rule. In this letter, EPA is not responding to TCEQ's request for a stay.

We appreciate your comments and interest in this important matter. If you have any questions, please contact me or have your staff contact Wren Stenger, Director, Multimedia at (214) 665-6583 or stenger.wren@epa.gov.

Sincerely,

Anne L. Idsal
Regional Administrator