UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960

June 21, 2016

Michelle Walker Owenby, Director
Division of Air Pollution Control
Tennessee Department of
Environment and Conservation
Tennessee Tower, 15th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102

Dear Ms. Owenby:

The Region 4 Office of the U.S. Environmental Protection Agency received the Tennessee Department of Environment and Conservation, Division of Air Pollution Control's June 20, 2016, prehearing proposal responding to the EPA's June 12, 2015, final State Implementation Plan (SIP) call and finding of substantial inadequacy with respect to the treatment of excess emissions during periods of startup, shutdown and malfunction (SSM). We have completed our preliminary review and have enclosed our comments for your consideration.

We look forward to continuing to work with you and your staff. If you have any questions, please contact Ms. Lynorae Benjamin, Chief, Air Regulatory Management Section at (404) 562-9040, or have your staff contact Mr. Brad Akers at (404) 562-9089.

Sincerely,

R. Scott Davis
Chief
Air Planning and Implementation Branch

Enclosure

cc: James Johnston, Division of Air Pollution Control, TDEC
cc: Paul LaRock, Division of Air Pollution Control, TDEC

The U.S. Environmental Protection Agency Comments on Tennessee's Prehearing Submission Addressing the SSM SIP

1. The amended provisions of 1200-3-20 have been built upon a SIP revision that Tennessee submitted on October 10, 1994 (i.e., TN-143 according to the EPA's tracking system), which has not yet been acted on by the EPA. Therefore, approval of the State's SSM SIP call submittal as proposed would be contingent upon the EPA's approval of TN-143 (or at least some portion of it).

   Among other things, TN-143 includes a table in paragraph 1200-3-20-.06(5) that lists various types of sources and *de minimis* emission levels, below which no notice of violation(s) (NOVs) of certain pollutant limits will be automatically issued. For all of the source types listed in the table at 1200-3-20-.06(5), the *de minimis* levels include exclusions for periods of SSM that appear to be inconsistent with the EPA's SSM SIP Call. Consequently, outstanding issues with TN-143 will have to be reconciled before the EPA could consider additional changes to rules at 1200-3-20. The EPA is available to discuss possible options for reconciliation.

   Specific concerns regarding the table in paragraph 1200-3-20-.06(5) include the following:

   a. Because this provision seems to pertain only to when the State will "automatically" issue a NOV, it concerns the exercise of state discretion. The State may limit the automatic issuance of an NOV to circumstances where *de minimis* levels are exceeded so long as regulatory language does not exempt such exceedances from enforcement altogether. However, the State must retain authority to bring an enforcement action addressing violations that do not exceed the *de minimis* levels. Please confirm that Tennessee does not view this provision as prohibiting the State, the EPA, or a member of the public from bringing an enforcement action to address violations that do not exceed the specified *de minimis* levels. It would be helpful if this paragraph explicitly stated that nothing in this provision exempts a source from enforcement based on violations that do not exceed the *de minimis* levels applicable to automatic NOV issuance.

   b. The EPA is concerned about the language stating that the determination of whether a violation exceeds the *de minimis* level excludes "periods of permitted startup or shutdown and excused malfunctions." First, the term "excused malfunctions" needs to be removed. Malfunction periods cannot be excused from otherwise applicable SIP emission limits. Second, excluding "periods of permitted startup or shutdown" also is a problem insofar as this language refers to periods of startup or shutdown that are exempt from SIP emission limits.

   c. If the phrase "permitted startup or shutdown" refers to an alternative emission limit applicable during these periods, please explain why violations of these limits are not considered in evaluating the significance of a violation. Note that any alternative emission limits applicable during startup and/or shutdown periods must be incorporated into the SIP itself and not simply established via a permit. A state cannot alter an otherwise applicable SIP emission limit via a permit.

   d. Please explain the definition of a "24-hour exceedance" as a continuous violation lasting 24 hours. More clarification is needed on how this would apply to emission limitations that have shorter durations, like the many emission limits that have 1-hour or 3-hour averaging periods.

2. The amended paragraph 1200-03-20-.06(4) states:

> Failure to submit the report required in paragraph (3) of this rule within the twenty (20) day period specified in paragraph (2) of this rule shall preclude the admissibility of the data for determination of potential enforcement actions, and **for any air contaminant source not having startup or shutdown levels as a permit condition**.

This paragraph appears to provide that failure to submit the required report shall preclude the admissibility of the data for two potential uses: (1) for determination of potential enforcement actions, and (2) for any air contaminant source not having startup or shutdown levels as a permit condition. The first part of the provision (up to the comma) requires submittal of a report within 20 days if a source wants it to be considered in the determination of potential enforcement actions. This part of the provision appears to adequately cover all potential cases. Therefore, the EPA recommends deleting the phrase after the comma **("for any air contaminant source not having startup or shutdown levels as a permit condition")** because it seems unnecessary. In addition, the effect of the phrase is unclear for the reasons listed in the next paragraph.

The EPA notes that Tennessee has submitted to the EPA (in TN-143) for inclusion in the State's implementation plan the phrase after the comma **("for any air contaminant source not having startup or shutdown levels as a permit condition")** but that this phrase is not in Tennessee's current federally-approved SIP. If the Department would still like the EPA to consider approval for this portion of the submittal, the meaning and purpose of the phrase will need clarification for the following reasons:

- The meaning of the term "startup or shutdown levels" is unclear. If this term is intended to be in reference to emission limitations that apply during startup or shutdown, then all permits should include such limitations anyway because startup and shutdown are part of normal source operation. Emission limitations in Tennessee's SIP must apply at all times, including startup and shutdown, and the source's title V operating permit must assure ongoing compliance with such emission limitations.

- The first stated potential use of the required report ("for determination of potential enforcement actions") is that the admissible data may be considered when pursuing enforcement actions. However, the second stated potential use of the required report **("for any air contaminant source not having startup or shutdown levels as a permit condition")** does not indicate what purpose the report would serve. Please clarify.
- This phrase **("for any air contaminant source not having startup or shutdown levels as a permit condition")** appears to dictate that if a source that does not have startup or shutdown levels as a permit condition fails to submit the report required by paragraph (3) within the relevant 20-day period, the data that would have been included in such a report cannot be considered by the Technical Secretary (or the Secretary's representative) in deciding whether to proceed with a potential enforcement action. However, it appears that the draft rule would not preclude consideration of such data with respect to a source that *does* have startup or shutdown levels as a permit condition. Please explain why these two groups of sources are treated differently.

3. As amended, paragraph 1200-03-05-.02(1) states (with new language underlined):

> Consistent with the requirements of Chapter 1200-3-20, due allowance may be made for visible emissions in excess of that permitted in this chapter which are necessary or unavoidable due to routine startup and shutdown conditions. <u>However, no visible emission in excess of that permitted in this chapter shall be allowed which can be proved to cause or contribute to any violations of the Ambient Air Quality Standards contained in Chapter 1200-03-03 and the National Ambient Air Quality Standards.</u> The owner or operator shall maintain a continuous, current log of all excess visible emissions showing the time at which such conditions began and ended and that such record shall be available to the Technical Secretary or his representative upon his request.

The EPA's preliminary review of this submission indicates that the amended provision presents the same deficiencies noted in the proposed and final SSM SIP call notices. Even though the new language provides that no excess visible emissions shall be allowed which can be proved to cause or contribute to any violations of ambient air quality standards, the provision still operates as an impermissible discretionary exemption because it allows a state official to give "due allowance" to the fact that excess emissions occurred during startup or shutdown events. Though the term "due allowance" is not defined, the reference in the next sentence to circumstances under which no excess visible emissions "shall be allowed" suggests that giving "due allowance" to startup and shutdown conditions means that Tennessee is authorized to *allow* excess emissions during such times. While Tennessee may take startup and shutdown conditions into account in deciding whether to bring its own enforcement action, Tennessee cannot authorize excess emissions during such periods, since such authorization would equate to an impermissible exemption.

To the extent that Tennessee intends to establish alternative emission limitations for periods of startup/shutdown in permits, such limitations must be approved by the EPA, into the State's implementation plan, as source-specific SIP limits in order to be valid for SIP compliance purposes. Alternatively, the State could choose to establish, in the SIP, narrowly tailored alternative emission limitations for periods of startup/shutdown for specific source categories.