UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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MAY 25 2016

Rita Bates
Planning Section Chief
Air Quality Bureau
New Mexico Environment Department
525 Camino de los Marquez, Suite 1
Santa Fe, NM 87505-1816

Dear Ms. Bates:

Thank you for the opportunity to review and comment on the proposed revisions to the New Mexico Administrative Code, Title 20, Chapter 2, Part 7 - Excess Emissions (hereinafter "Excess Emissions Rule"). The EPA appreciates your efforts to address the EPA's June 12, 2015 (80 FR 33840) State Implementation Plan (SIP) Call. It is our understanding that New Mexico intends to withdraw the affirmative-defense-related provisions of the existing Excess Emissions Rule from the EPA-approved New Mexico SIP, and at the same time maintain the existing Excess Emissions Rule as a "state-only" rule. As proposed, the provisions to be withdrawn from the New Mexico SIP are 20.2.7.6 (B) NMAC, 20.2.7.110(B)(15) NMAC, 20.2.7.111 NMAC, 20.2.7.112 NMAC, 20.2.7.113 NMAC, 20.2.7.115 NMAC, and 20.2.7.116 NMAC. Consequently, the existing Excess Emissions Rule <u>except</u> those sections identified above will remain a part of the EPA-approved SIP for New Mexico.

As proposed, we continue to believe that an approach of retaining affirmative defense-related provisions of the Excess Emissions Rule as a matter of state law, outside of the SIP ("State-only"), would be consistent with CAA requirements, and consistent with the EPA's guidance in the Startup, Shutdown, and Malfunction (SSM) Policy. Indeed, the EPA specifically addressed this potential approach in the SSM SIP Call. See 80 FR at 33855-56. "State-only" affirmative defense provisions, even though outside the SIP, should be properly worded and not preclude enforcement by the state for violations of CAA requirements, including the authority to assess or sue to recover in court civil penalties and to seek criminal remedies for violations of any applicable requirement. See section 110(a)(2)(C), and 40 CFR 70.11(a)(3). Otherwise, this could be problematic with approvability of Infrastructure SIPs for New Mexico and/or your Operating Permit program.

Our specific comments are:

1. Your SIP submittal letter should include a statement that New Mexico is requesting the EPA's review/approval of the removal of sections of the Excess Emissions Rule identified above from the New Mexico SIP, as required by the EPA's SSM SIP Call of June 12, 2015 (80 FR 33968).

2. Due to the fact that New Mexico is proposing to remove certain provisions from the New Mexico SIP, a demonstration under Clean Air Act Section 110(l) is a necessary component of your SIP submittal to the EPA. See June 12, 2015 (80 FR 33975). If you require assistance with the requirements for an appropriate Section 110(l) demonstration, the EPA Regional staff can provide assistance.

Should you have any questions regarding this letter, please feel free to contact me at (214) 665-7242.

Sincerely,

Guy Donaldson
Chief
Air Planning Section