UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

December 30, 2015

Jeff Crawford
17 State House Station
Augusta, Maine 04333-0017

Dear Mr. Crawford,

In May 2003, the Maine Department of Environmental Protection adopted amendments to Chapter 101: Visible Emissions Regulation, and sent these amendments to us with a cover letter dated May 22, 2003, for incorporation into the Maine State Implementation Plan (SIP).

On May 22, 2015, the EPA Administrator signed a final action reinstating and updating EPA's Startup, Shutdown, and Malfunction (SSM) policy applicable to SIPs and issuing SIP Calls to 36 states to amend provisions in state SIPs that apply to excess emissions during SSM periods. Maine's Chapter 101 was included in the SIP Calls. The final notice was published in the Federal Register on June 12, 2015 (see www.gpo.gov/fdsys/pkg/FR-2015-06-12/pdf/2015-12905.pdf). This action was in response to a Petition for Rulemaking filed by the Sierra Club and WildEarth Guardians. States have 18 months (until November 22, 2016) to submit SIP revisions to EPA. For more information, please see: www.epa.gov/airquality/urbanair/sipstatus/emissions.html.

In the Enclosure, we have outlined some potential issues with the approvability of the May 2003 SIP revision. This evaluation is largely based on EPA's recent articulation of our SSM policy and issuance of the SIP Call. EPA will work with Maine DEP to address these issues, so that Maine can successfully meet the SSM SIP call.

If you have any questions, please contact Alison Simcox at 617-918-1684.

Sincerely,

Anne Arnold

Anne Arnold, Manager
Air Quality Planning Unit

Enclosure

cc: Marc Cone, ME DEP

Enclosure

Potential Approvability Issues associated with Maine's Chapter 101: Visible Emissions Regulation

1. Section 2(B) "Visible Emission Standards" includes numerous exemptions from continuous emissions limits for periods of time (e.g., two 6-minute block averages in a 3-hour period) or percentages of time (e.g., 90 percent of all 6-minute block averages on a quarterly basis). These exemptions appear under Sections 2(B)(1)(a)(i), 2(B)(1)(b), 2(B)(1)(c), 2(B)(1)(d), 2(B)(1)(e), 2(B)(1)(f), 2(B)(2)(a)(i), 2(B)(2)(a)(ii), 2(B)(3)(a), 2(B)(3)(c), 2(B)(3)(d), 2(B)(5)(a), 2(B)(5)(b), 2(B)(5)(c), 2(B)(6)(a), and 2(B)(6)(b).

   As described in our June 12, 2015 action (www.gpo.gov/fdsys/pkg/FR-2015-06-12/pdf/2015-12905.pdf), automatic exemptions from otherwise applicable emission limitations are not consistent with the Clean Air Act (CAA). However, Maine could develop alternative visible emission limits that would apply during the current exemption periods. To develop such an alternative limit, the state would need to meet criteria given in our June 12, 2015 action. For an example of an alternative limit, see our approval of revisions to Connecticut's visible-emissions regulation (www.gpo.gov/fdsys/pkg/FR-2014-07-16/pdf/2014-16469.pdf). The criteria for establishing an alternative limit are:

   (1) The revision is limited to specific, narrowly defined source categories using specific control strategies (*e.g.*, cogeneration facilities burning natural gas and using selective catalytic reduction);

   (2) Use of the control strategy for this source category is technically infeasible during startup or shutdown periods;

   (3) The alternative emission limitation requires that the frequency and duration of operation in startup or shutdown mode are minimized to the greatest extent practicable;

   (4) As part of its justification of the SIP revision, the state analyzes the potential worst-case emissions that could occur during startup and shutdown based on the applicable alternative emission limitation;

   (5) The alternative emission limitation requires that all possible steps are taken to minimize the impact of emissions during startup and shutdown on ambient air quality;

   (6) The alternative emission limitation requires that, at all times, the facility is operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures; and

(7) The alternative emission limitation requires that the owner or operator's actions during startup and shutdown periods are documented by properly signed, contemporaneous operating logs or other relevant evidence.

2. Section 2(B)(2)(b) requires Kraft Recovery Boiler units to implement corrective action as specified in a Startup, Shutdown, and Malfunction (SSM) plan prepared under 40 CFR 63.866(a) when the average of 10 consecutive 6-minute block averages exceeds 20-percent opacity. As the regulation is written, it is not clear whether implementation of the SSM plan requirements (once the applicable opacity limits are exceeded) is intended to excuse the original opacity noncompliance from enforcement, or whether SSM plan implementation is not intended to shield the source from enforcement and just requires additional corrective action measures to lessen the likelihood of future opacity problems. If Maine intended the former, EPA could not approve the provision because it would effectively function as an after-the-fact exemption from the relevant opacity limits. If Maine intended the latter, EPA could approve it, but encourages Maine to clarify the intent of the requirement.

3. Section 2(B)(4) "Fugitive Emission Sources" includes an open-ended exemption (i.e., up to 100 percent opacity) of 5 minutes in any 1-hour period from a continuous emissions limit of 20 percent opacity. This is an exemption that is not allowed under CAA section 302(k) in the same way that the other exemptions noted in comment #1 are not allowed.

4. Section 3(A) "Visible Emission Standard Exemptions," provided an exception that expired on December 31, 2006 for boilers with input capacity greater than 100 million BTU/hr during the first 4 hours of cold start-up or planned shutdown. Section 3(A) also granted an exception for electrostatic precipitator (ESP) chambers, but, as written, it is not clear whether the 2006 expiration date for the exemption also applies to these units. In any case, this exemption, like others cited above, is not allowed under CAA section 302(k).

   Specifically, by having a provision that defines what would otherwise be violations of the applicable emission limitations as non-violations, the state effectively negates the ability of the EPA or the public to enforce against those violations. Even if the provision is interpreted to allow a source to make the required demonstration only in the context of an enforcement proceeding, affirmative defense provisions relating to emissions limits are not consistent with the requirements of the CAA.

5. Section 3.B. allows sources with boilers whose rated input capacity is greater than 100 million Btu/hr to amend their air-emission licenses to establish specific conditions and allowances for boiler startup and shutdown. As further explained in the "NOTE" at the end of the regulation citing to Title 38 M.R.S.A. §349, "the Commissioner may exempt emissions in excess of license limitations or the limits and allowances set forth in this Chapter occurring during periods of start-up, shutdown or malfunction." Providing sources with exemptions to emissions limits is not consistent with our SSM policy and CAA section 302(k). If Maine wants to establish alternative emissions limits for these boilers during periods of start-up, shutdown or malfunction, the state needs to demonstrate that such limit(s) meet criteria given in our June 12, 2015 action and listed under Comment #1.

6. As indicated in our comments above, Maine's revised rule, which was submitted in May 2003, does not address issues identified in our recent SSM SIP Call. We recommend that Maine withdraw this SIP submission and revise Chapter 101 so that it meets CAA statutory requirements, such as the requirement that emission limitations apply to sources continuously. Note that a new regulation promulgated by Maine may also require a 110(*l*) anti-backsliding demonstration that compares the SIP-approved rule to the revision that you would like us to approve.