



**“State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction.”
EPA-HQ-OAR-2012-0322**

U.S. Environmental Protection Agency
Public Hearing
Washington, D.C.

Statement of the National Mining Association
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2:40 PM

Good Afternoon. I am Alex Bond, the Director of Air Quality at the National Mining Association (NMA). NMA represents the producers of most of America’s coal, metals, industrial and agricultural minerals. The U.S. Environmental Protection Agency’s (EPA) proposed State Implementation Plan (SIP) Call to revise state standards during startup, shutdown and malfunction (SSM) periods will have significant impacts on mining operations. While NMA is still reviewing the rule to try and correctly gauge its potential impacts, my comments today highlight not only the potential impacts on mining operations from EPA’s proposal, but also the need for EPA to extend the comment period in this instance to ensure robust public comment and truly understand the national impacts of the proposed rule. Further, EPA should realize that its proposal seems to ignore the significant difficulties in running pollution equipment during SSM periods, unnecessarily limits or eliminates using an affirmative defense, and should thus grant great deference to the states upon submittal of their SIP revisions. NMA would further like to note that EPA’s proposed rule marks a significant re-interpretation of longstanding policy, and it is our

belief that such a sudden change of the status quo will have significant operational impacts on a broad variety of sources.

The current comment period and rulemaking timeline for the proposed SIP Call is too short to properly allow for EPA to hear from states and the regulated community. NMA has already requested that the Agency provide an extension of the comment period deadline of no less than 60 days past the initial deadline of March 25, 2013. Given the complexity and potential implications of EPA's proposed rule, the approach proposed by the Agency requires serious analysis and consideration by both the named states and the regulated community. Accordingly, NMA once again asks EPA that the Agency extend the subject comment period no less than 60 extra days in order to allow for the extra time that is necessary to provide a truly robust public comment process on the proposed SIP call. NMA understands that EPA is under a consent decree deadline to issue a final rule in this matter by August 27, 2013. However, NMA urges EPA to avoid the trap of hurried and unreasoned rulemaking in order to meet such a rushed deadline and to ensure that it can fully engage the public on a proposal that will likely have national implications.

EPA's proposal could have far reaching consequences for regulated sources. By proposing to have 36 states rewrite portions of their SIPs regarding SSM provisions, EPA is committing the states to an effective rewrite of emissions limits for the entire regulated community that produces electricity or on site power. This could have impacts on the mining sector both for coal mines and the utilization of coal in the production of power, but also for both coal and hard rock mining that rely heavily on on-site power sources in order to produce coal and minerals. Rewriting the permits for these sites will be difficult, costly and time consuming. NMA urges EPA to reconsider committing so many states to an

across the board re-write of already permitted emissions limits at a time of budgetary uncertainty for the Agency and the states.

Running pollution control devices during startup, shutdown and malfunction periods is problematic for many sources. It is often not feasible to operate or use pollution control equipment during SSM periods without causing damage to that equipment. Some types of pollution control equipment cannot operate at full efficiency during startup periods, and some facilities and equipment must use alternative fuels during startup periods that pollution control equipment was not designed to target. Malfunctions are by definition unanticipated and unpredictable. As such, NMA urges EPA to avoid trying to set a “one size fits all” approach to implementing this rulemaking, especially given the site specific issues this will raise.

EPA should allow states to retain an affirmative defense during SSM periods. Further, NMA believes that having an affirmative defense available to the regulated community for all SSM periods is an important way of ensuring appropriate compliance while helping to shield facilities from unwarranted enforcement actions – should states want to retain such an option, EPA should let them do so. As EPA correctly notes, there will be instances where a malfunction will occur despite the best efforts of the owner or operator. Disallowing an affirmative defense is merely irrationally punitive and will do nothing to prevent the occurrence of such an event. Should emissions during SSM periods (or any period) adversely impact compliance with the National Ambient Air Quality Standards (NAAQS) a state is obligated under the Clean Air Act (CAA) to revise its SIP to address the problem and demonstrate attainment with the NAAQS – enforcement provisions for areas demonstrating attainment are superfluous.

As such, should EPA feel obligated to move forward with this rulemaking, it should grant exceptional deference to the revised plans that each state submits. Given the diverse and separate impacts this rulemaking is likely to have on a state by state and source by source basis, it would be appropriate for EPA to grant great deference to the submittal of each of the 36 states. The bedrock of the CAA is cooperative federalism between the Agency and the states – and only each state will be able to craft SSM SIP revisions that can truly account for the unique set of sources within that state. Thus, NMA urges EPA to move forward in the spirit of cooperative federalism by granting significant deference to state plans as they are modified for SSM provisions.

NMA will submit more detailed written comments before the end of the comment deadline. Thank you for your time today.