



E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

March 15, 2013

**VIA REGULATIONS.GOV
& E-MAIL**

Acting Administrator Bob Perciasepe
Office of the Administrator
United States Environmental Protection
Agency
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Gina McCarthy
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
EPA West
1200 Pennsylvania Avenue, NW
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Washington, DC 20460

Re: Request for Extension of Comment Period from the Attorney's General of the States of Alabama, Alaska, Arizona, Arkansas, Colorado, Georgia, Louisiana, Michigan, Mississippi, Montana, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, West Virginia and the Wyoming Department of Environmental Quality

Docket ID No. **EPA-HQ-OAR-2012-0322**, 78 Fed. Reg. 12460, February 22, 2013, 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 ("**Proposed Rule**").

Dear Acting Administrator Perciasepe and Assistant Administrator McCarthy:

The Attorney's General of the States of Alabama, Alaska, Arizona, Arkansas, Colorado, Georgia, Louisiana, Michigan, Mississippi, Montana, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, West Virginia and the Wyoming Department of Environmental Quality respectfully request that the public comment period in the above-referenced Proposed Rule, which is scheduled to end on April 11, 2013, be extended. Because of the sweeping nature of the proposal set forth in the Proposed Rule, the significant impact it would have on a majority of states and the fact that the Proposed Rule comes as a result of a consent decree that no state was

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a party to, the states request that EPA extend the comment period a minimum of 120-days from February 22, 2013.

The Proposed Rule is an action in response to a petition for rulemaking filed by the Sierra Club with the U.S. Environmental Protection Agency (“**EPA**”) on June 30, 2011. The Proposed Rule seeks action by EPA on the “treatment of excess emissions in state rules by sources during periods of startup, shutdown, or malfunction (SSM).” 78 Fed. Reg. 12,460/1. In its Proposed Rule, EPA is proposing to grant in part and to deny in part the Sierra Club’s request:

1. “[T]o rescind [EPA’s] policy interpreting the Clean Air Act (CAA) to allow states to have appropriately drawn state implementation plan (SIP) provisions that provide affirmative defenses to monetary penalties for violations during periods of SSM.” *Id.*
2. To find that specific existing SIP provisions related to SSM for certain states identified by the Sierra Club are inconsistent with the CAA. *Id.*

The Proposed Rule is more than 80-pages and is accompanied by a 24-page memorandum from EPA “that supplements [the Proposed Rule] and provides a more detailed discussion of the statutory, regulatory and policy background for the EPA’s proposed action.” 78 Fed. Reg. 12,468/3.

EPA’s Proposed Rule identifies 39 states as purportedly having SIP provisions that are “inconsistent with the CAA” and proposes a “SIP call” for these states which requires they submit to EPA a “corrective” SIP revision. *Id.* More plainly stated, EPA’s Proposed Rule seeks to force 39 states to rewrite regulations previously adopted in accordance with state and federal law and **approved by EPA**. EPA’s Proposed Rule represents a substantial change in state and federal relations. While there has been no change in the CAA since 1990, EPA’s Proposed Rule states it is based upon “EPA’s authority and responsibility to review and approve SIP submissions in the first instance, as well as the EPA’s authority to require improvements to SIPs if the EPA later determines that to be necessary for a SIP to meet CAA requirements.” 78 Fed. Reg. 12,468/2. However, we are greatly concerned that EPA’s Proposed Rule impermissibly seeks to intrude on the states’ clear authority to determine the means to achieve attainment of the National Ambient Air Quality Standards.

The issues raised by the Proposed Rule are sweeping and affect the SIPs of many states. To allow a mere thirty-days for states to consider, analyze and respond to why the Proposed Rule is or is not appropriate under the CAA will take considerable state effort, time and resources. Thirty days is an entirely inadequate amount of time for states to undertake these important analyses and to file written comments. SSM rules impact a broad range of industries and lawful economic activities in our respective states and the Proposed Rule will potentially have a wide-ranging effect on the economies of our states.

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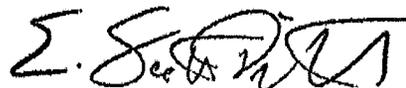
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Additionally, as explained in the Proposed Rule, (78 Fed. Reg. 12,464/2), EPA's action on the Sierra Club's petition for rulemaking comes as a result of a settlement agreement entered into by EPA, the Sierra Club and WildEarth Guardians. *See* Settlement Agreement executed Nov. 30, 2011, to address a lawsuit filed by Sierra Club and WildEarth Guardians in the United States District Court for the Northern District of California: Sierra Club et al. v. Jackson, No. 3:10-cv-04060-CRB (N.D. Cal.) ("**Sierra Club Suit**"). Despite the fact that the Sierra Club Suit demands that EPA give priority to addressing the issue of SSM provisions in SIPs, no state whose SIP is affected by the Proposed Rule was a party to the Sierra Club Suit or the settlement agreement that precipitated the issuance of the Proposed Rule. As such, the Proposed Rule is the first opportunity that the affected states will have to comment on the important issue of whether their SIPs are in fact consistent with the CAA as it relates to SSM.

EPA's Proposed Rule also further highlights an area of critical and mounting concern to the states. Under the CAA the states are partners with EPA in designing and implementing programs that improve our nation's air quality. Our citizens rely on and expect the states to implement federal environmental law. Often, these implementation efforts require the states to design plans to meet the individual circumstances of the state, while protecting and advancing the goals and requirements of federal environmental law. When EPA coordinates with non-governmental organizations regarding how federal law should be applied and implemented in an individual state, yet excludes the state from that effort the state and its citizens are harmed. This practice is not acceptable to the states under the cooperative federalism framework set forth in the CAA.

Accordingly, the undersigned states request that the comment period immediately be extended no less than 120-days from February 22, 2013, and that a response to our request be made as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", with a stylized flourish at the end.

E. SCOTT PRUITT
Oklahoma Attorney General

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Luther Strange
Attorney General
State of Alabama



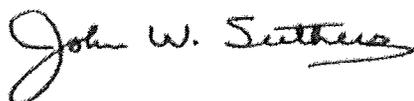
Michael C. Geraghty
Alaska Attorney General



Tom Horne
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Dustin McDaniel
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Sam Olens

Georgia Attorney General



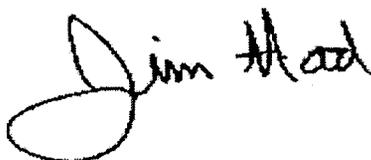
James "Buddy" Caldwell

Louisiana Attorney General



Bill Schuette

Michigan Attorney General



Jim Hood

Mississippi Attorney General



Tim Fox

Montana Attorney General

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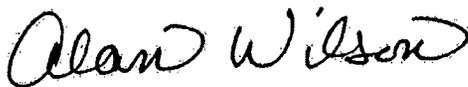
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Wayne Stenehjem
Attorney General
State of North Dakota



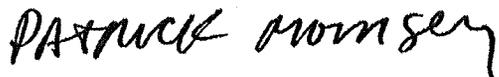
MICHAEL DEWINE
OHIO ATTORNEY GENERAL



Alan Wilson
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Patrick Morrissey
West Virginia Attorney General

s/ Todd Parfitt, Director
Wyoming Department of Environmental Quality