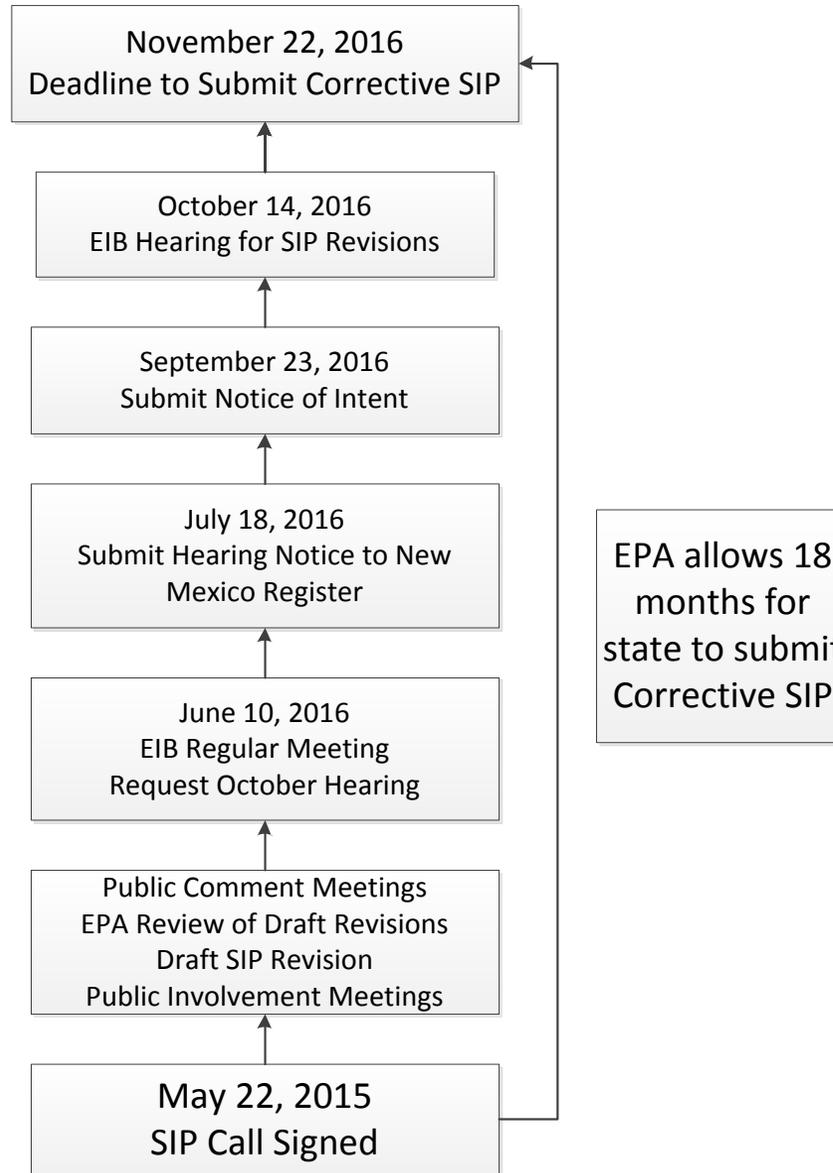


New Mexico Environment Department Air Quality Bureau

State Implementation Plan (SIP) Call
Draft Revisions to SIP Provisions at
20.2.7 NMAC Excess Emissions



Time Frame



Background

- September 14, 2009* – EPA approves October 7, 2008 SIP
 - Revisions to 20.2.7 NMAC are consistent with the CAA
- June 30, 2011 – Sierra Club’s petition
- February 22, 2013 – EPA’s proposed rule (*78 Fed. Reg. 12460*)
- May 22, 2015 – EPA’s final rule (SIP call)
- November 22, 2016 – Deadline for each affected state to submit its corrective SIP revision.

* 74 Fed. Reg. 46910



Why is Part 7 being revised?

EPA found the following sections in 20.2.7 NMAC that provide affirmative defenses for excess emissions are inconsistent with their reinterpretation of the CAA:

- 20.2.7.111 NMAC (malfunctions),
- 20.2.7.112 NMAC (startup and shutdown), and
- 20.2.7.113 NMAC (emergencies).



Alternatives to address Sip call

- Adopt narrowly-tailored revisions and retain in SIP
- Remove affirmative defense provisions from SIP and retain as state only
- Replace affirmative defense provisions with enforcement discretion provisions
- No action alternative (FIP and sanctions)



What is NMED doing?

See handout for draft SIP revisions to 20.2.7 NMAC.

Affirmative defenses are not automatic!



City of Albuquerque

- Strike any mention of “affirmative defenses” from the regulation
- Change the criteria for affirmative defenses to a non-inclusive list of factors that a source can include in a report to the Environmental Health Division (EHD). EHD then has discretion to consider those factors, or others, in making an enforcement decision



State of Colorado

- Narrowly tailored rule
- Maintains AD provisions
- Adds language that AD are not available in federal court unless court decides to recognize and adopt such AD
- Adds language to allow for the use of work practice-based alternative emission limitations



State of Oklahoma

- Strike any mention of “affirmative defenses” from the regulation
- Add alternative emission limits, and mitigating factors for excess emissions during startup and shutdown



What if revisions are not adopted?

- Creates uncertainty with regulated sources
- EPA can impose a Federal Implementation plan (FIP)
- EPA may impose sanctions on the state, including loss of highway funds



Questions or Comments

