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Interstate Transport/Ozone: U.S. Environmental Protection Agency Final Rule Imposing Federal Implementation Plan for 23 States (Including Arkansas)

03/16/2023

The United States Environmental Protection Agency ("EPA") issued a March 15th prepublication final rule imposing a Federal Implementation Plan ("FIP") regarding interstate transport for the 2015 8-hour National Ambient Air Quality Standards ("NAAQS").

Arkansas is one of the states subject to the FIP.

By way of background, in 2015, EPA promulgated a revision to the 8-hour NAAQS. The federal agency lowered the level of both primary and secondary standards to 0.070 parts per million.

Air transport refers to pollution from upwind emission sources that impact air quality in a particular location downwind. The total pollution in any area forms from the combination of local and upwind sources. Transport of pollution across state borders is often denominated "interstate air pollution transport." Transport of interstate air pollution may in some cases affect down states' ability to meet the NAAQS for ozone.

The Clean Air Act contains a "Good Neighbor" provision which requires that EPA and the states address interstate transport of air pollution that affects down states' ability to attain and maintain NAAQS. Clean Air Act Section 110(a)(2)(B) requires each state in its SIP to prohibit the emissions that will:

- Significantly contribute to nonattainment of NAAQS
- Interfere with maintenance of NAAQS in a downwind state

A state's SIP must prohibit sources in that state from "emitting any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance of, NAAQS in another state." If EPA determines that an SIP is inadequate, it must require that the state revise the SIP (i.e., a SIP-call).

EPA had issued on February 13th a final rule disapproving SIP submissions for 19 states (including Arkansas) regarding interstate transport for the 2015 8-hour NAAQS. See 88 Fed. Reg. 9336.

The Arkansas Department of Energy & Environment – Division of Environmental Quality had submitted comments opposing the disapproval of Arkansas's SIP. Further, Attorney General Griffin filed a Petition before the Eighth Circuit Court of Appeals on February 16th challenging EPA's disapproval of Arkansas's SIP.

A number of other states have filed similar Petitions in other federal Circuit Courts of Appeal similarly challenging their SIPs' disapproval. A Motion for Stay filed by Utah in the Tenth Circuit Court of Appeals is pending.

The federal agency had also previously proposed an FIP for Arkansas and the other states.

By way of brief summary, EPA notes the following in regards to the FIP:

- Power plants in 22 states will participate in a revised Cross-State Air Pollution Rule ozone season trading program (basing the initial control stringency on the level of reductions achievable through immediately available measures)
- Additional power plant reductions are phased in starting in 2024 (reflecting emissions that could be achieved through installation of new emission controls)
- Beginning in 2026 ozone season, enforceable NOx emission control requirements for certain sources at existing and new industrial facilities in 20 states that include the following types:
- Reciprocating internal combustion engines in Pipeline Transportation of Natural Gas;
- Kilns in Cement and Cement Product Manufacturing;
- Reheat furnaces in Iron and Steel Mills and Ferroalloy Manufacturing;
- Furnaces in Glass and Glass Product Manufacturing;
- Boilers in Iron and Steel Mills and Ferroalloy Manufacturing, Metal Ore Mining, Basic Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Pulp, Paper, and Paperboard Mills; and
- Combustors and incinerators in Solid Waste Combustors or Incinerators.

The State of Arkansas and other states are expected to similarly challenge EPA's FIP on a variety of grounds.

The FIP rule can be found [here](#) and Response to Public Comments on the Proposed Rule [here](#).