

ARKANSAS 2013 AIR POLLUTION CONTROL LEGISLATION: COLUMBIA JOURNAL OF ENVIRONMENTAL LAW ARTICLE ADDRESSES ACT 1302

Arkansas Environmental, Energy, and Water Law Blog

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Author: [Walter G. Wright](#)

As noted in previous blog posts, <http://www.mitchellwilliamslaw.com/arkansas-department-of-environmental-quality-guidance-document-addressing-implementation-of-act-1302-of-2013-air-permitting-modeling-the-89th-arkansas-general-assembly-enacted-legislation-related-to-arkansas-implementation-of-the-clean-air-act-program>.

Sections 108 and 109 of the Clean Air Act requires that the United States Environmental Protection Agency ("EPA") establish National Ambient Air Quality Standards ("NAAQS") for criteria air pollutants. Section 110 of the Clean Air Act then requires that the states prepare State Implementation Plans ("SIPs") to attain and/or maintain the NAAQS for each of the criteria air pollutants in their air quality control regions.

Equally important, Sections 108 and 109 of the Clean Air Act require that EPA revise the National Ambient Air Quality Standards as needed in response to new data, scientific studies, research, etc. that demonstrate a need for additional stringency. In the past several years, certain NAAQS have become more stringent. Section 110 of the Clean Air Act requires that the states in kind modify their SIPs to attain and/or maintain any NAAQS that have been revised.

The SIP process can be complex. This complexity can be exuberated by the fact that both the federal and state agencies play a role in the SIP process (i.e., EPA must approve initial or revised SIPs).

The 89th Arkansas General Assembly addressed Arkansas's SIP process with the enactment of Act 1302 in this past spring's legislative session. Act 1302 addresses some aspects of the process that the Arkansas Department of Environmental Quality ("ADEQ") can utilize in the SIP process. The legislation prevents the agency from utilizing air dispersion modeling with certain exceptions. The legislation lists three exceptions:

1. If applied to new or modified sources subject to the Clean Air Act Prevention of Significant Deterioration Program;
2. In fulfillment of NAAQS obligations under a current or future Non-Attainment Plan or NAAQS SIP; or
3. The owner/operator of the source consents.

ADEQ (like all states) obtains information from various air pollution monitoring stations around the state to determine compliance with NAAQS. Act 1302 requires that such information be utilized in addressing the impacts of sources not covered by the three previously cited exceptions.

Act 1302 is subject of a December 13th article by Christian D. Petrangelo in the *Columbia Journal of Environmental Law*. The article is titled *Conflict in the Air? Federalism, the Clean Air Act, and Arkansas's Act 1302*.

The article focus includes an overview of Act 1302 and the arguments for it and against. Further, the article analyzes recent trends in Clean Air Act and broader preemption jurisprudence and its potential application to Act 1302. Arguments both for and against preemption of law are examined. The author's view on the implication of this conflict for industry operating in Arkansas and other jurisdiction passing similar laws is considered.

A link to the article can be downloaded below.

<http://www.columbiaenvironmentallaw.org/articles/conflict-in-the-air-federalism-the-clean-air-act-and-arkansas-s-act-1302>