

Regional Haze/Arkansas: Arkansas Department of Environmental Quality Proposes Revised State Implementation Plan



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

07/26/2017

The Arkansas Department of Environmental Quality ("ADEQ") announced it is proposing to revise its Regional Haze State Implementation Plan ("SIP").

ADEQ states that the revised SIP would achieve greater reductions in nitrogen oxides than the Federal Implementation Plan ("FIP") promulgated by the United States Environmental Protection Agency's ("EPA") in 2016.

The federal regional haze regulations are driven by Section 169A of the Clean Air Act. Congress sought to address visibility issues in mandatory Class 1 federal areas in which impairment results from manmade air pollution. Class 1 federal areas include certain natural wilderness areas and national parks.

Section 169A requires that certain sources contributing to visibility impairment install best available retrofit technology ("BART"). States must review all major stationary sources built between 1962 and 1977 to determine whether the source "emits any air pollutant which may reasonably be anticipated to cause or contribute any impairment or visibility in" any Class 1 area. The states are then responsible for determining the appropriate BART controls for each source. EPA reviews the states' State Implementation Plan ("SIP") submissions for consistency with the statute and regulations.

In the event EPA determines that an SIP does not meet the Clean Air Act's requirements, the federal agency may itself make certain choices and impose a FIP. Section 169A gives states substantial responsibility to determine appropriate BART controls and EPA may not disapprove reasonable state determinations that comply with the relevant statutory and regulatory requirements. EPA had previously finalized a regional haze FIP for the State of Arkansas that was then subsequently challenged in federal court by the state.

The ADEQ document proposing revisions to the state's regional haze SIP is titled:

Revisions to the Arkansas State Implementation Plan

Regional Haze SIP Revision for 2008-2018 Planning Period

The agency, in announcing the plan, states:

The state plan revision will allow Arkansas electricity generating units to comply with regional haze through participation in a Clean Air Act Trading program for nitrogen oxides called the Cross State Air

Pollution Rule. In addition to providing additional flexibility to facilities for compliance with the Regional Haze Rule, the state plan revision will substantially reduce cost to ratepayers.

The revised SIP includes (besides the introduction) sections addressing:

- Evidence of Participation in the Cross State Air Pollution Rule
- Legal Authority to Adopt and Implement the Plan
- Consultations and Public Participation

[A link to the ADEQ announcement of the revised SIP along with background on the state's regional haze procedural history and the proposed SIP itself can be downloaded here.](#)