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Regional Haze/Federal Implementation Plan: Arkansas Department of Environmental Quality Petition to U.S. Environmental Protection Agency for Reconsideration/Request for Administrative Stay

Arkansas Environmental, Energy, and Water Law Blog

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The Arkansas Department of Environmental Quality ("ADEQ") filed a November 22nd Petition for Reconsideration and Request for Administrative Stay ("Petition") asking that the United States Environmental Protection Agency ("EPA") convene a proceeding for reconsideration of the final rule, *"Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Final Rule"* ("Regional Haze FIP").

ADEQ also requests that EPA immediately stay the Regional Haze FIP pending completion of its reconsideration of the final rule.

The Petition includes a request that EPA contact ADEQ immediately:

...to discuss an appropriate schedule and process for reconsideration with an administrative stay in place. In the event that EPA has neither granted the petition nor made alternative arrangements with the consent of the ADEQ to establish a schedule for reconsideration within seventy (70) days of receipt of this request, such inaction will be deemed a denial of the petition.

The Petition was filed by Ms. Jamie L. Ewing of Arkansas Attorney General Leslie Rutledge's Office.

EPA had finalized in September a Clean Air Act Regional Haze Federal Implementation Plan for the State of Arkansas. [See previous blog post here.](#)

The Federal Regional Haze Regulations are driven by Section 169A of the Clean Air Act. Congress sought to address visibility issues in mandatory Class I Federal areas ("Class I") in which impairment results from manmade air pollution. Class I Federal areas include certain national 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 I 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. If EPA determines that an SIP does not meet the Clean Air Act's requirements, the federal agency may itself determine BART and impose an SIP. While Section 169A gives states substantial responsibility to determine appropriate BART controls, the federal agency may not disapprove reasonable state determinations that comply with the relevant statutory and regulatory requirements.

Arguments raised in support of the Petition include:

- a) The EPA should reconsider emission controls on Independence in light of recent IMPROVE monitoring data which shows that Arkansas has already achieved the amount of progress required for this planning period.
- b) The EPA should reconsider compliance with the Transport Rule as an alternative acceptable method of compliance with BART for NO_x as a result of a recent rulemaking that increased the stringency of the Transport Rule.
- c) The EPA should reconsider the use of low-sulfur coal as BART for SO₂ for White Bluff in light of its recent letter requesting additional information on BART determinations after the close of the comment period.

As to the basis for imposition of an immediate administrative stay, the Petition argues:

- a) The request meets the standard for an administrative stay.
- b) The State is likely to succeed on the merits of a challenge to the Regional Haze FIP.
- c) An administrative stay will prevent irreparable harm to ratepayers of Arkansas and is in the public interest.
- d) An administrative stay will not cause harm to other parties.

The Petition contains two appendices which include:

- Appendix A – Comments on the Use of CALPUFF Model in the US Environmental Protection Agency's Federal Implementation Plan for the Regional Haze Rule in Arkansas
- Appendix B – October 13, 2016 Letter to Mr. Stuart Spencer, Associate Director, Office of Air Quality, Arkansas Department of Environmental Quality from Mr. Mark Hansen, Associate Director for Air, Multimedia Division, United States Environmental Protection Agency (cc: Kelly McQueen, Assistant General Counsel, Entergy)

[A copy of the Petition with appendices can be downloaded here.](#)