

Regional Haze/Arkansas: Sierra Club Petition for Review Challenging U.S. Environmental Protection Agency Approval of Plan Revisions



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The Sierra Club and National Parks Conservation Association (collectively “Sierra Club”) filed a Petition for Review (“Petition”) challenging the United States Environmental Protection Agency (“EPA”) approval of revisions to the State of Arkansas’s plan for addressing regional haze.

The Petition filed before the United States Court of Appeals for the Eighth Circuit seeks review of a final rule entitled:

Approval and Promulgation of Implementation Plans: Arkansas; Approval of Regional Haze State Implementation Plan Revision for Electric Generation Units in Arkansas. . .

The final rule was published at 84 Fed. Reg. 51033 (Sept. 27, 2019).

The challenged final rule is attached to the Petition as Exhibit A.

The federal Regional Haze Program is driven by 169A of the Clean Air Act. Congress sought to address visibility in mandatory Class I federal areas in which an impairment results from manmade air pollution.

Section 169A requires that certain sources contributing to visibility impairments install Best Available Retrofit Technology (“BART”). The states are responsible for determining the appropriate BART controls for certain stationary sources. EPA reviews the State Implementation Plan (“SIP”) submissions for consistency with the relevant 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 Federal Implementation Plan (“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 regulatory requirements.

EPA previously issued a Regional Haze FIP for Arkansas. The FIP was largely withdrawn in a final rule published at 84 Fed. Reg 51056 (Sept. 27, 2019).

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