



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

# Interstate Transport/Ozone: Arkansas Department of Energy & Environment - Division of Environmental Quality Comments on U.S. Environmental Protection Agency Federal Implementation Plan

07/07/2022

The Arkansas Department of Energy & Environment - Division of Environmental Quality ("DEQ") submitted on June 21st comprehensive comments on the United States Environmental Protection Agency ("EPA") proposed rule:

*Federal Implementation Plan Addressing Regional Ozone Transport for the 2015 Ozone National Ambient Air Quality Standard ("Transport FIP")*

EPA disapproved on February 22nd Arkansas's State Implementation Plan ("SIP") addressing interstate transport for the 2015 8-hour Ozone National Ambient Air Quality Standard ("NAAQS"). See 87 Fed. Reg. 9798.

A number of other states' SIP s were similarly disapproved.

EPA proposed a Federal Implementation Plan ("FIP") for Arkansas and 25 other states on April 6th. See 87 Fed. Reg. 20036.

By way of background, in 2015 EPA promulgated a revision to the 8-hour NAAQS. The federal agency had 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. The transport of pollutants across state borders is often denominated "interstate air pollution transport." Transport of interstate air pollution transport may in some cases affect downwind 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. See Clean Air Act Section 110(a)(2)(B)(i)(I). The provision requires that each state in its SIP prohibit 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. A SIP call can be issued to multiple states at the same time. EPA can in appropriate circumstances issue a FIP in the event the state SIP cannot result in the ability to meet the relevant requirements.

DEQ in its June 21st comments opposes the Transport FIP for the State of Arkansas. The state agency states by way of introduction:

. . . Addressing the issue of interstate transport of pollution is a complex endeavor, and the Arkansas Department of Energy and Environment's Division of Environmental Quality (DEQ) respectfully provides these comments on the proposed Transport FIP to assist EPA in development of an appropriate path forward for implementation of the Good Neighbor provision.

The DEQ comments argue that EPA's disapproval of Arkansas's 2015 Ozone Transport SIP "is an example of a failure in cooperative federalism."

The agency further argues that its existing SIP contains adequate revisions to prohibit any source or other type of emissions activity from emitting NO<sub>x</sub> in amounts that will contribute significantly to nonattainment or interfere with maintenance by any other states with respect to the 2015 ozone NAAQS.

The comments include a request that EPA:

- Perform a more thorough review of the robust evidence provided in the Arkansas Transport SIP submittal
- Withdraw its proposed disapproval of the Arkansas Transport SIP submittal
- Approve the Arkansas SIP submittal
- Correct its emission inventories and rerun the model using the updated 2016v2 platform using source-specific and sector contribution tagging
- Issue a Notice of Data Availability based on EPA's updated modeling prior to finalizing action on the Arkansas Transport SIP

A copy of DEQ comments can be downloaded [here](#).