



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

National Emission Standards for Hazardous Air Pollutants/Clean Air Act: U.S. Environmental Protection Agency Final Rule Approving Arkansas Updated Delegation

08/30/2022

The United States Environmental Protection Agency (“EPA”) issued a final rule on August 29th approving updated delegation of Clean Air Act National Emission Standards for Hazardous Air Pollutants (“NESHAP”) authority to the Arkansas Department of Energy & Environment – Division of Environmental Quality (“DEQ”). See 87 Fed. Reg. 52692.

DEQ had previously requested an update of its NESHAP delegation to which EPA proposed to approve on November 11, 2021. See 86 Fed. Reg. 66990.

NESHAPs are stationary source standards for hazardous air pollutants (“HAPs”). HAPs are those pollutants that are known or suspected to cause cancer or other serious health effects.

Two types of facilities are addressed by NESHAPs:

- Major sources that have the potential to emit more than 10 tons per year of a single HAP or 25 tons per year of any combination of HAPs
- Area sources that have the potential to emit less than 10 tons per year of a single HAP or 25 tons per year of any combination of HAPs

Congress required in the 1990 amendments to the Clean Air Act that pursuant to Section 112 an initial list of 188 HAPs was required to be addressed. This required EPA to list categories of sources emitting these HAPs and promulgate NESHAPs in order to reduce such emissions from these sources.

Like other Title I Clean Air Act programs, the NESHAP implementation and enforcement can be delegated to the states. This authority is provided by Section 112(l) of the Clean Air Act and Subpart E of 40 C.F.R. Part 63. To obtain delegation of a particular program the state must satisfy the statutory and regulatory requirements.

DEQ has for many years been delegated various aspects of the federal NESHAP program and this approval incorporates necessary updates.

The Federal Register Notice describes:

- What criteria must Arkansas’s program meet to be approved?
- How did DEQ meet the NESHAP program approval criteria?

- How are sources subject to certain listed standards going to be handled since DEQ did not accept delegation of these standards?
- What is being delegated?
- What is not being delegated?

A copy of the Federal Register Notice can be downloaded [here](#).