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Regional Haze/State Implementation Plans: U.S. Environmental Protection Agency and Sierra Club Enter into Consent Decree Providing Deadlines for Agency Review for 32 States (Including Arkansas)

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The United States Environmental Protection Agency (“EPA”) and Sierra Club entered into a July 12th Consent Decree (“CD”) addressing agency review of 32 states’ Clean Air Act State Implementation Plans (“SIP”) related to Regional Haze. See Case No. 1:23-cv-01744-JDB.

The Sierra Club, National Parks Conservation Association, and Environmental Integrity Project (collectively “Sierra Club”) had filed a Clean Air Act citizen’s suit action alleging that EPA had failed to undertake certain non-discretionary duties.

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

Section 169A requires that certain sources contributing to visibility air permit install Best Available Retrofit Technology (“BART”). The states are responsible for determining the appropriate BART controls for certain stationary sources. EPA reviews the states’ SIP submissions for consistency with the statute and corresponding 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. Section 169A give states substantial responsibility to determine appropriate BART controls and EPA may not disapprove reasonable state determinations that apply with the relevant statutory and regulatory requirements.

Sierra Club had filed its citizen suit in the United States District Court for the District of Columbia alleging that EPA had failed to take final action on the second planning period Regional Haze SIP revisions submitted by 34 states. Arkansas was included as one of the targeted states.

The CD ultimately addresses 32 states and establishes deadlines for EPA to sign a Notice of Proposed Rulemaking for SIPs included in the action and a Notice of Rulemaking for each of the SIPs included in the action.

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