

Regional Haze/Arkansas: 8th Circuit Court of Appeals Grants Motion to Stay



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The United States Court of Appeals for the 8th Circuit addressed a Motion to Stay related to litigation involving application of the Clean Air Act Regional Haze requirements to Arkansas.

The Order was issued on March 7th.

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 impairment install Best Available Retrofit Technology ("BART"). The states are responsible for determining the appropriate BART controls for certain stationary sources. The United States Environmental Protection Agency ("EPA") reviews the states' State Implementation Plan ("SIP") submissions for consistency with the statute 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 and regulatory requirements.

EPA had previously proposed a Regional Haze FIP for Arkansas. However, the agency recently approved a portion of a revised Arkansas Regional Haze SIP.

Entergy, Arkansas, Inc.; Entergy, Mississippi, Inc.; Entergy Power, LLC; and Energy Environmental Alliance of Arkansas had asked for a stay in regards to addressing other parts of the Arkansas SIP that are still under EPA review. The 8th Circuit Order states:

The Amended and Substituted Motion to Stay Final Rule of the Environmental Protection Agency by Entergy, Arkansas, Inc., Entergy, Mississippi, Inc., Entergy Power, LLC, and Energy Environmental Alliance of Arkansas (Entergy) is GRANTED to the extent it seeks to stay the SO₂ emission limits. Because we grant Entergy's Motion for Stay, we need not reach the States' Motion for Stay.

As a result, a stay is in place for the remainder of the FIP addressing SO₂ emission limits.

[A copy of the 8th Circuit Order can be downloaded here.](#)