

**Arkansas Environmental Federation Air Seminar
Air Federal/State Judicial/Administrative Litigation
May 9th**

**Walter G. Wright
Mitchell Williams Law Firm
wwright@mwlaw.com**

MITCHELL | WILLIAMS

Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.



Survey of Clean Air Act “Cases” which include:

- Judicial/Administrative Decisions
- Enforcement/Citizen Suit Actions Filed/Pending
- Consent Administrative Orders

Arkansas Environmental Energy and Water Law Blog

<http://www.mitchellwilliamslaw.com/blog>

Three combined posts every business day addressing federal/Arkansas legislation, regulation, administrative/judicial decisions and personnel transitions

Interstate Transport/Ozone: Eighth Circuit Court of Appeals Update

EPA had issued a final rule disapproving Arkansas's and a number of other states' SIPs regarding interstate transport for the 2015 8-hour National Ambient Air Quality Standards.

Attorney General Tim Griffin subsequently filed a petition before the Eighth Circuit challenging EPA's disapproval of Arkansas's SIP.

EPA had moved to transfer the petition to the D.C. Circuit.

Interstate Transport/Ozone: Eighth Circuit Court of Appeals Rejects EPA's Motion to Transfer Arkansas's Petition (cont)

The Arkansas Attorney General's brief in response to EPA's request stated in part:

. . . EPA's disapproval of Arkansas's plan is not a nationally applicable action. The Clean Air Act's venue provision says as much: "Any denial or disapproval" of a SIP is a "locally or regionally applicable" action, only reviewable in the appropriate regional Circuit Court.

The Eighth Circuit Order issued on April 25th states in response to EPA's request:

Respondent's motion to transfer or dismiss the petition for review is denied. The briefing schedule is removed from abeyance. Petitioner's brief is due May 25, 2023.

4th, 5th, 6th and 8th Circuit courts have to date retained jurisdiction over this litigation. 10th Circuit held venue in D.C. Circuit.

Interstate Ozone Transport Update

SIP Disapproval

Arkansas and various state industries previously filed their drafts.

In jurisdictions where the SIP disapproval was not stayed and where the FIP challenge resides in the D.C. Circuit, the FIP will continue forward.

In Arkansas and other states the FIP remains not effective for a couple of reasons:

- i. the Eighth Circuit stayed the effectiveness of the SIP disapproval and
- ii. EPA published its subsequent FIP amendment declaring the FIP would not go into effect in the State of Arkansas (and other states subject to judicial stays).

EPA published an Interim Final Rule amending the FIP to make clear that the FIP requirements were not effective in a number of states subject to judicial or administrative stays of the applicable SIP disapprovals.

EPA will continue to argue that decisions based on common principles that affect dozens of states are:

- Inherently nationally applicable
- Nationwide scope of effect

Interstate Ozone Transport Update (Continued)

The Environmental Protection Agency, states, and industry will meet for arguments in 2024 over whether the U.S. Supreme Court justices should pause an ozone transport rule while challenges continue in regional courts, according to an order from the US Supreme Court.

“Counsel were asked to be prepared to address, among other issues related to the challenge based on the SIP disapprovals, whether the emissions controls imposed by the Rule are reasonable regardless of the number of States subject to the Rule,” according to the order.

Clean Air Act National Ambient Air Quality Standards

Litigation Continues to Drive EPA NAAQS and Related Activity

Examples

EPA revised the ozone NAAQS in 2015.

EPA was then required to determine which areas of the country are in attainment or nonattainment.

Areas are designated as either being:

- Attainment
- Unattainment
- Unclassifiable

Earthjustice filed a Clean Air Act citizen suit arguing that EPA had a nondiscretionary duty to complete designations and classifications for the 2015 ozone NAAQS in a timely manner for the 30 cities named in the Complaint.

Particulate Matter/Revised National Ambient Air Quality Standard: 24 State Attorneys General (including Arkansas) Challenge U.S. Environmental Agency Final Rule

Twenty-four State Attorneys General filed a Petition for Review in the United States Court of Appeals for the District of Columbia Circuit challenging a United States Environmental Protection Agency final rule which tightens the Clean Air Act National Ambient Air Quality Standard for fine particulate matter.

The final rule tightened the level of PM_{2.5} standard to 9.0 micrograms per cubic meter. The previous PM_{2.5} standard was 12.0 micrograms per cubic meter.

The Clean Air Act does not allow EPA to consider either economics or cost in setting or revising a NAAQS.

Environmental groups and other states will defend EPA's revision of NAAQS.

Issue will be whether the science supports the change.

Nitrogen/Clean Air Act: Center for Biological Diversity Notice of Intent to Sue EPA for Failure to Review National Ambient Air Quality Standards

The Center for Biological Diversity sent a Notice of Intent to Sue to the United States Environmental Protection Agency alleging a failure to undertake a mandatory obligation under the Clean Air Act.

CBD alleges that EPA has failed to undertake a review of the National Ambient Air Quality Standards for Nitrogen Oxides.

The Clean Air Act requires that EPA review every five years both the air quality criteria and the NAAQS (108 and 109).

CBD alleged that it has been more than five years since EPA last completed such a review of the primary NAAQS for.

Consequently, the organization states that EPA should have completed a review of the primary NO_x NAAQS no later than May 18, 2023.

Clean Air Act National Ambient Air Quality Standards (cont)

Other Examples

1.) Earthworks enters into Consent Decree with EPA to resolve Clean Air Act citizen suit arguing the agency failed to timely review general control device requirements for flares under Section 111(b) NSPS.

2.) Clean Air Task Force petitions EPA to eliminate startup, shutdown, and malfunction exemption in Section 111 of NSPS.

3.) Sierra Club Notice of Intent to Sue EPA for failure to promulgate a Federal Implementation Plan for SO₂ for two counties in Texas.

(Both Texas and a power plant had filed petitions challenging the designation based on modeling but Sierra Club argued designation stays in effect during appeal.)

Challenge to Clean Air Act standards and emission guidelines for oil and gas source category.

Texas v. EPA – D.C. Circuit Court of Appeals

States challenged EPA regulations for greenhouse gas emissions in oil and gas sector.

Challenge to U.S. Environmental Protection Agency's final Clean Air Act rule revising New Source Performance Standards for:

- greenhouse gas and volatile organic compound emissions in the oil and natural gas sector.
- establishing emission guidelines for greenhouse gas emissions from existing sources in that sector.

24 states ask for a stay of the rule.

Challenge to Louisiana LNG Permit/Use of Significant Impact Levels

- LDEQ's use of SIL's challenged by opponents of LNG facility.
- Purpose of SIL's? To determine whether emissions from a proposed source will cause or contribute to air pollution in excess of NAAQS.
- SIL's are a numerical value below which EPA considers a source to have an insignificant impact on air quality.
- Rationale – extensive air modeling is costly and requiring it for every source is burdensome.
- Court found neither CAA nor LA SIP mandate specific modeling analysis.

Liquid Natural Gas Plant/Clean Air Act: Federal Appellate Court Addresses Challenge to Texas Commission on Environment Quality PSD BACT Determination

The United States Court of Appeals for the Fifth Circuit addressed in a November 14th decision a challenge to a Clean Air Act Prevention of Significant Deterioration permit issued by the Texas Commission on Environmental Quality (“TCEQ”). See *Port Arthur Community Action Network v. Texas Commission on Environmental Quality*, 2023 WL 7528906.

The issue involved TCEQ’s Best Available Control Technology (“BACT”) determination for a new natural gas plant/export terminal.

Port Arthur LNG, L.L.C. applied for a PSD permit from TCEQ to build a liquified natural gas plant and export terminal.

TCEQ issued a preliminary decision and draft permit that included Port Arthur’s proposed emission rate for the refrigeration compression turbines.

Port Arthur Community Action Network argued the Rio Grande facility permit issued by TCEQ had lower emission limits for the refrigeration combustion turbines. It would be using different pollution control equipment (Dry-Low NOx and combustors) but had not been constructed.

Liquid Natural Gas Plant/Clean Air Act: Federal Appellate Court Addresses Challenge to Texas Commission on Environment Quality PSD BACT Determination (Continued)

The Court framed the issue as to whether TCEQ committed legal error by disregarding the Rio Grande emission limits because that proposed facility was “not in operation.” It initially noted:

“ . . . Contrary to the Commission's analysis, both state and federal guidelines direct the agency to adhere to previously imposed emissions limits in evaluating BACT.”

Both the TCEQ guidance document (APDG. 6110) and EPA’s New Source Review Manual were cited for the proposition that it is sufficient justification to assume technical feasibility if the technology or emission limit has been or is soon to be deployed.

The Court concluded that TCEQ departed from its policy of adhering to earlier permit limits and required TCEQ to adequately explain why it made this decision.

Note that the Court stated that TCEQ is not:

“ . . . forever bound to the emission limits that it set for Rio Grande LNG for all subsequent permits.”

BACT determinations were recognized as case-by-case determinations. However, in making such individualized determination, TCEQ must:

- Demonstrate that it is treating permit applications consistently
- Adequately explain why it made a different decision

Reactivation/New Source Review: EPA Determination that Refinery Must Obtain PSD Permit

EPA stated in a November 16, 2022, letter that an oil refinery on St. Croix in the U.S. Virgin Islands may not resume operations without going through Clean Air Act New Source Review.

The St. Croix oil refinery was built in the 1960s and was shut down approximately 11 years ago.

Port Hamilton had asked EPA whether the existing permits could be used to restart the refinery.

EPA has had in place for a number of years a document known as the “*Reactivation Policy*.”

The *Reactivation Policy* presumes that a major stationary source that has been inactive for two years or more is intended to be permanently out of service (i.e., shut down).

Presumption could be rebutted.

Reactivation/New Source Review: EPA Determination that Refinery Must Obtain PSD Permit (cont)

EPA articulated in the November 16th letter the application of its guidance document (*Monroe*) which spells out the factors applied to the Port Hamilton oil refinery to determine whether there is a permanent shutdown.

The factors used include:

- Length of time the facility has been shut down
- Time and capital needed to restart
- Evidence of intent and concrete plans to restart
- Cause of the shutdown
- Status of permits
- Maintenance and inspection during shutdown

Refinery Challenged EPA Determination and Federal Appellate Court Overturned EPA's Decision in *Port Hamilton Refining v. EPA*

- Court determined that EPA determining a new PSD permit must be obtained prior to restarting operations was incorrect.
- EPA was held to have exceeded its Clean Air Act authority.
- EPA reactivation policy was held to contradict unambiguous language in the Clean Air Act that PSD only applies to stationary sources constructed or modified after August 7, 1977, regardless of operational status.

Challenge to the California Air Resources Board's Advanced Clean Fleets regulation, which set zero emission vehicle requirements

California Trucking Association v. California Air Resources Board (Federal District Court, California).

Lawsuit challenges California's Advanced Clean Fleets Regulations.

CTA asserts that the Clean Air Act and Federal Aviation Administration Authorization Act of 1994 preempted the ACF regulation, that it violated the dormant Commerce Clause, and that it violated the Fifth and Fourteenth Amendments of the Constitution due to its vague standards and the discretion granted to CARB's executive officer to determine whether to grant exemptions.

Chevron Doctrine/Pending U.S. Supreme Court Decision

- U.S. Supreme Court will soon issue opinion in a challenge to the 40-year-old Chevron decision.
- Degree of deference to be given to federal agency interpretations
- Oral arguments in were January.
- Two-step framework to determine whether federal receive deference to their interpretation of the statute:
 1. Is the statute ambiguous?
 2. If so, agency interpretation will prevail if it is reasonable.

Effect on challenges to EPA, etc. rulemakings, decisions, etc.?

Who is the appropriate decision maker?

Future/Upcoming Litigation

- Republican Attorney Generals will challenge EPA cuts to emission limits for large municipal waste combustors.
- Mercury and Air Toxics Standards (MATS) for powerplants will be challenged.
- Greenhouse Gas standards for power plants will be challenged.
- Environmental organizations challenge to EPA Exceptional Events Rule/Policy
- U.S. Steel/Cleveland Cliffs LLC filed challenge yesterday to recently tightened NESHAP for Taconite Iron Ore processing plants.

Scope of Title V Petition to Object Review

Can Clean Air Act Title I preconstruction permitting issues be considered?

Are challenges to permit conditions based on preconstruction permitting authority under Title I of the CAA considered by EPA in reviewing or considering a petition to object to a Title V operating permit?

Purpose of Title V permit is to provide each source a single permit that consolidates all information needed to comply with the CAA.

EPA has taken a position that the Title V permitting process was not the appropriate forum to review preconstruction permitting issues even when the NSR permit terms were developed at the same time as the Title V permit and included in the same permit document.

Especially relevant to Arkansas since we use this consolidated permit.

New York State Sued Beef Producer for Allegedly Misleading Claims (Greenwashing) Regarding Net-Zero Commitment.

LFF IV Timber Holding LLC v. Heartwood Forestland Fund IV, LLC (N.C. Super. Ct.).

New York State Attorney General Letitia James filed a complaint in New York Supreme Court against JBS USA Food Company and JBS USA Food Company Holdings (JBS USA) alleging that the defendants – the “largest producer of beef products in the world” – made unsubstantiated and misleading environmental marketing claims about their commitment to reducing greenhouse gas emissions in violation of New York State’s consumer protection statutes.

The complaint alleges that beef production contributed significantly to climate change through emissions of greenhouse gases and through land-use changes that reduce or eliminate carbon sinks, and that the top five meat and dairy corporations are responsible for more annual greenhouse gas emissions than ExxonMobil, Shell, or BP.

Lawsuit seeking indemnification for costs allegedly incurred as a result of the defendants' overstating of the amount of carbon sequestered by timberlands in West Virginia in application for carbon offsets from California Air Resources Board.

LFF IV Timber Holding LLC v. Heartwood Forestland Fund IV, LLC (N.C. Super. Ct.).

Companies sought indemnification from sellers who allegedly misrepresented property's carbon inventory.

Two companies filed a lawsuit in state court in North Carolina asserting that they had incurred substantial liability to the California Air Resources Board, as well as other costs, due to misrepresentations by a defendant company (Heartwood Forestland Fund IV Limited Partnership (Heartwood)) regarding the amount of carbon sequestered from timberlands in West Virginia that one of the plaintiffs acquired from one of the defendants in 2017.

The plaintiffs alleged that Heartwood “significantly overstated the carbon stocking” on the property when it sought carbon offsets, which CARB granted in 2017.

Cryptocurrency Mining Facility/Natural Gas-Fired Electric Generating Plant: New York ALJ Upholds Denial of Clean Air Act Title V Permit Renewal

These facilities are suddenly becoming radioactive in many states including Arkansas (energy use, noise, etc.).

A New York Administrative Law Judge issued a decision Ruling on Issues and Party Status upholding the State of New York Department of Conservation decision to deny a Clean Air Act Title V permit renewal for Greenidge Generation, LLC.

GGL had filed an application to renew a Title V air permit for the continued operation of a natural gas-fired electric generating facility in the Town of Torrey, New York.

The Facility is described as a primarily natural gas-fired electric generating plant. Generating capacity is estimated to be approximately 107 megawatts with a maximum heat input limited to 1,117 million BTUs per hour.

Cryptocurrency Mining Facility/Natural Gas-Fired Electric Generating Plant: New York ALJ Upholds Denial of Clean Air Act Title V Permit Renewal (cont.)

The Facility's primary purpose has been described as providing energy behind-the-meter to a cryptocurrency mining operation.

NYDEC is stated to have determined that the Facility is operating primarily to meet a significant new energy load caused by its GGL PoW cryptocurrency mining operation.

The NYDEC denied GGL's application for the Title V air permit renewal in 2022.

The denial was based on application of New York's Climate Leadership and Community Protection Act ("CLCPA").

Cryptocurrency Mining Facility/Natural Gas-Fired Electric Generating Plant: New York ALJ Upholds Denial of Clean Air Act Title V Permit Renewal (cont.)

The CLCPA requires NYDEC to establish a statewide greenhouse gas emissions limit as a percentage of 1990 emissions. A 60% reduction of 1990 emissions is required by 2030 and 15% of 1990 emissions by 2050.

The NYDEC permit renewal denial was stated to be based on the determination that the Facility would not comply with the requirements of the CLCPA. Factors that NYDEC are stated to have considered in the denial included:

- Increase in greenhouse gas emissions from the Facility since the passage of the CLCPA
- Referenced increase driven by the change in the primary purpose of its operations

Cryptocurrency Mining Facility/Natural Gas-Fired Electric Generating Plant: New York ALJ Upholds Denial of Clean Air Act Title V Permit Renewal (cont.)

An issue considered by NYDEC was the Facility's change from primarily providing energy to New York's electricity grid to instead providing energy behind-the-meter to support the demands of GGL's cryptocurrency mining operations.

The ALJ upheld the NYDEC's decision that the GGL Facility's operations will interfere with the greenhouse gas emissions limits of the CLCPA. The ALJ stated:

. . . the increasing actual GHG emissions from the facility, and Greenidge's projections that the actual GHG emissions would continue to increase to match the maximum permitted PTE [Potential to Emit], were sufficient to establish that renewal of the facility was inconsistent with the GHG emissions goal of the CLCPA.

Whistleblower Complaint/Safe Drinking Water Act: OSHA Addresses Alleged North Dakota Dept. of Environmental Quality Retaliation Against Staff Environmental Scientist

OSHA issued an August 23rd news release summarizing the results of a whistleblower investigation that it undertook regarding the North Dakota Department of Environmental Quality.

OSHA alleges that NDEQ retaliated against an environmental scientist that had reported safety concerns about a public water system to both management and subsequently the United States Environmental Protection Agency.

The following federal environmental statutes include whistleblower protection provisions:

- Clean Water Act
- Clean Air Act
- Safe Drinking Water Act (“SDWA”)
- Toxic Substances Control Act
- Solid Waste Disposal Act
- Comprehensive Environmental Response, Compensation, and Liability Act

Whistleblower Complaint/Safe Drinking Water Act: OSHA Addresses Alleged North Dakota Dept. of Environmental Quality Retaliation Against Staff Environmental Scientist (cont.)

The SDWA prohibits employers from retaliating against employees for engaging in protective activities pertaining to alleged violations of actual or potential drinking water from above or underground sources designed for consumption.

Coverage extends to all private sector, federal, state, and municipal employees.

The SDWA prohibits the discharge or in any manner retaliation against an employee because the employee:

- Provided (or is about to provide) information relating to a violation of the SDWA to the EPA or other appropriate federal agency or department;
- Testified (or was about to testify) on any such proceeding under the statute;
- Refused to perform duties in good faith, based on a reasonable belief that the working conditions are unsafe and unhealthful;
- Participated or assisted in a proceeding under the SDWA

Whistleblower Complaint/Safe Drinking Water Act: OSHA Addresses Alleged North Dakota Dept. of Environmental Quality Retaliation Against Staff Environmental Scientist (cont.)

OSHA stated that it determined that the NDEQ employee:

. . . raised safety concerns to their supervisor over a six-month period and alerted the EPA about defects in reporting and data collection and concerns that sanitary violations were being downgraded to minor violations.

The NDEQ supervisor is stated to have requested that the employee stop communicating with EPA and issued a written reprimand for doing so.

OSHA has ordered NDEQ to remove the written reprimand from the employee's personnel file.

NDEQ and the employee may file objections or request a hearing with the Office of Administrative Law Judges within 30 days of receiving OSHA's order.

EPA Clean Air Act Enforcement

EPA Undertaking Various Enforcement Initiatives Including those related to the Clean air Act

Example

Stationary Engines Enforcement Initiative

40 CFR Part 63 ZZZZ

40 CFR Part 60 III

40 CFR Part 60 JJJJ

Serious violations identified by EPA include:

- Failure to retrofit existing engines with necessary pollution controls
- Failure to conduct testing in accordance with regulatory requirements on the installed pollution controls

EPA Fiscal Year 2024-2027 National Enforcement and Compliance Incentives

EPA's Office of Enforcement and Compliance Assurance announced its selection of six priority areas as the National Enforcement and Compliance Initiatives for Fiscal Years 2024-2027.

The six FY 2024-2027 NEICs are:

- Mitigating Climate Change (new)
- Addressing Exposure to PFAS (new)
- Protection Communities from Coal Ash Contamination (new)
- Reducing Air Toxics in Overburdened Communities (modified)
- Increasing Compliance with Drinking Water Standards (continued)
- Chemical Accident Risk Reduction (continued)

EPA Clean Air Act Enforcement (cont.)

EPA Stationary Engine Enforcement Initiative

EPA provides what it describes as recent examples of the types of facilities that have been the subject of enforcement:

- Electric utility operating two diesel engines (violation of Subpart ZZZZ)
- Sand and gravel plant using two diesel engines (violation of Subpart ZZZZ)
- Concrete and stone producer using three diesel engines (violation of Subpart ZZZZ)
- Metal shredder utilizing a diesel engine (violation of Subpart ZZZZ)
- Compressor station using a 760 horsepower engine (violation of Subpart JJJJ)

Other EPA Clean Air Enforcement Initiatives

Current

- Flares (Chevron/petro-chemical plants assessed \$3.4 million penalty and perform \$118 million for pollution upgrade)
- Cement manufacturing
- Glass manufacturing
- Fertilizer manufacturing
- Explosive manufacturing
- Refineries

Strategic Civil-Criminal Enforcement Policy: U.S. Environmental Protection Agency April 17th Memorandum

What is civil/what is criminal? (knowing)

The United States Environmental Protection Agency issued an April 17th memorandum addressing Strategic Civil-Criminal Enforcement Policy.

The policy described by the Memorandum requires the following measures:

- Increased collaboration between the civil and criminal enforcement programs on the development and implementation of EPA's national and regional priorities, including the National Enforcement and Compliance Initiatives and regional strategic plans;
- Enhanced case screening to promote fairness and consistency and robust discussion of what enforcement option should be utilized to address violations, including whether parallel proceedings should be initiated, and continued coordination throughout each enforcement action to ensure those initial case choices protect public health and the environment;
- Improved case management through enhanced tracking of case screening that promotes information sharing about violations and ensures ready access to compliance histories and case developments, while maintaining enforcement confidentiality

Criminal Enforcement/Clean Air Act – False Statement/Risk Management Program

United States charged Defendant Terri Settle with making a false statement in violation of 42 U.S.C. § 7413(c)(3), a provision of the Clean Air Act.

Settle was the Director of Human Resources and Environmental Coordinator at Airosol Company, Inc., a manufacturer of chemical aerosol and liquid products in Neodesha, Kansas.

Indictment alleges that on October 3, 2016, Settle submitted a Risk Management program (40 CFR Part 68) to EPA which falsely stated that various environmental regulatory requirements had been met.

Approximately seven weeks later, the Airosol plant experienced an extensive fire, which led to subsequent investigations by OSHA and EPA.

United States of America v. Terri Settle

The fan used by Airosol employees in the flammable drum storage area on or about Nov. 22, 2016, was not designed for use in an environment where explosive fumes could gather.

Airosol had not compiled required process safety information for its mixing or transfer process, nor had it conducted a process hazard analysis that would have revealed such dangers.

-Note-

- Impact on or endangering employees can be a trigger for federal environmental criminal enforcement (often in combination with OSHA)
- Extensive 112(r) EPA civil enforcement including El Dorado facility issued penalty for failure to update Risk Management Plan.

United States v. Hart (S.D. Cal)

Criminal prosecution of individual who allegedly smuggled greenhouse gases into the United States from Mexico.

San Diego man charged with illegal importation and selling of greenhouse gases.

The U.S. Attorney's Office for the Southern District of California announced on March 4, 2024 that a San Diego resident had been arrested and charged with smuggling greenhouse gases into the U.S. from Mexico and selling for profit.

The indictment alleged that the defendant purchased refrigerants in Mexico, brought them into the U.S. in his vehicle, and posted them for sale on various websites, and sold them for a profit.

Unmanned Aerial Vehicle Systems/Landfill Methane Leak Detection: EPA Approves Alternative Test Method (SnifferDRONE)

December 15, 2022 letter approves new method that can be used as an alternative to the surface emission monitoring procedures currently set forth in certain Federal landfill regulations:

EPA's December 15th letter states that the new method would be used as an alternative to the surface emission monitoring procedures currently set forth in the following Federal landfill regulations:

- 40 CFR Part 60, Subparts WWW, XXX, and Cf (Emission Guidelines),
- 40 CFR Part 62, Subpart OOO (Federal Plan), and
- 40 CFR Part 63, Subpart AAAA.

Unmanned Aerial Vehicle Systems/Landfill Methane Leak Detection: EPA Approves Alternative Test Method (SnifferDRONE) (cont)

The referenced regulations require that certain affected landfills (i.e., some with a gas collection and control system installed to comply with the applicable landfill standard) perform SEM test procedures on a quarterly basis to demonstrate compliance with the 500 parts per million above background concentration operational standard at the surface of the landfill.

Sniffer requested approval for use of a UAS-based alternative to conduct the SEM.

The alternative was stated to replicate the SEM-related testing requirements.

Specifically, it would replicate Method 21 in the Federal landfill regulations to the extent possible that use a UAS-based approach:

. . . in order to improve safety and performance by automating a portion of the SEM procedures.

Arkansas Air Enforcement Examples

Type of Facilities Involved Over Last 12 Months:

- Forest Products
- Hot Mix Facility
- Lumberyard/Sawmill
- Hazardous Flooring Manufacturing Plant
- Tire Manufacturing
- Natural Gas Compression Station
- Commercial Bakery
- Energy Recovery Facility
- Steel Mill
- Building Products
- Lumberyard/Sawmill
- Coal-Fired Generating Station
- Papermill
- Packaging Company
- Bath Manufacturing
- Police Department
- Boat Manufacturer
- Prison
- School Bus Fabrication

Arkansas Air Enforcement Examples (cont.)

Type of Facilities Involved Over Last 12 Months:

- Railcar Repair Facility
- Natural Gas-Fired Power Plant
- Custom Manufacturing/Product Purification
- Rendering Plant
- Coke Processing
- Asphalt Production
- Crude Oil Handling Facility
- Tubing Manufacturing Facility
- Cotton Gin
- Bulk Oil Plant
- Meat Processing Facility
- Municipal Landfill
- Aircraft Structural Parts Facility
- Electronic Assembly Manufacturing Facility
- Pellet Mill Facility
- Charcoal Production Plant
- Air Curtain Incinerator

Arkansas Air Enforcement Examples (cont.)

Type of Violations:

- Failure to report deviations
- Exceedance of opacity limit
- Failure to list emissions in air permit
- Failure to maintain records of monthly inspections of bags for leaks
- Failure to maintain records of visible emissions
- Failure to maintain dust recovery auger in good condition
- Failure to conduct 5 year retest
- Failure to operate cyclone properly
- Failure to provide documentation of implementation of a maintenance and housekeeping plan
- Use of unauthorized hazardous pollutants
- Operating without a permit or registration (including failure to renew)
- Failure to maintain differential gas pressure prep range
- Failure to comply with monthly and annual total production limits

Arkansas Air Enforcement Examples (cont.)

Type of Violations:

- Failure to document maintenance on an engine
- Exceedance of Opacity and PM emission limits, NO_x, HCL, CO
- Untimely submission of compliance test
- Construction or modification of a stationary source without obtaining an air permit and/or modification
- Create a nuisance (odors)
- Emission exceedance
- Untimely submission of air permit renewal application
- Failure to keep records five years
- Failure to file Notice of Intent for General Air Permit
- Failure to report upset conditions
- Unpermitted generator
- Igniting kilns prior to reaching minimum temperature

Arkansas Air Enforcement Examples (cont)

Type of Violations:

- Late submission or failure to complete compliance certification or semi-annual monitoring report
- Failure to maintain monthly records/12-month rolling totals of total hazardous air pollutants
- Failure to correctly operate CEMS
- Failure to maintain equipment in good condition
- Allowing unnecessary amounts of air contaminants to become airborne
- Failure to undertake performance test
- Violating threshold limit value for hazardous air pollutant

Note: Continued use of ADEQ voluntary disclosure policy.