STATE OF ARKANSAS

Revisions to the Arkansas State Implementation Plan

Regional Haze SIP Revision for 2008–2018 Planning Period

Prepared by the
Arkansas Department of Environmental Quality
Office of Air Quality
Policy and Planning Branch

Month Year

Public Review Draft

Arkansas Department of Environmental Quality
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DRAFT

Revisions to the Arkansas State Implementation Plan

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Tab A:

State Implementation Plan

Submittal Letter

[Date Signed], Year

Name of Regional Administrator
Regional Administrator
United States EPA Region VI
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: Arkansas State Implementation Plan (SIP)

Dear Mr. or Ms. Name of Regional Administrator:

The Arkansas Department of Environmental Quality (ADEQ) hereby respectfully submits to the United States Environmental Protection Agency (EPA) Revisions to the Arkansas State Implementation Plan (SIP) for approval.

In this SIP submission, Arkansas has included revisions to address certain disapproved portions of the Arkansas Regional Haze State Implementation Plan (AR RH SIP), submitted to EPA in 2008 and to replace NOx BART emission limits for Arkansas subject-to-BART electric generating units included in the 2016 rule "Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Final Rule" (AR RH FIP). Other disapproved portions of the 2008 AR RH SIP, will be addressed in a separate submission.

The SIP package accompanying this letter consists of one hard copy and one electronic copy (on compact disc).

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Arkansas requests that EPA review and approve this SIP revision as expeditiously as possible. Arkansas also requests the stay of NOx emission limits for Arkansas subject-to-BART electric generating units included in the 2016 rule "Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Final Rule" during EPA's review and withdrawal of such limits upon approval of this SIP revision.

I certify that all documents submitted to the Regional Office in electronic form are exact duplicates of the hard copy documents. Should questions arise, please do not hesitate to contact the ADEQ Associate Director of the Office of Air Quality Stuart Spencer at (501) 682-0750, or by email at spencer@adeq.state.ar.us. Thank you for your consideration of Arkansas's submission.

Sincerely,

Asa Hutchinson,
Governor of the State of Arkansas

Enclosures

Tab B:

Introduction—

Revisions to the 2008 Regional Haze State Implementation Plan

This draft is a working document. All information contained herein is subject to change and may differ substantially from the final document. The information contained in this document should not be considered the position or views of ADEQ or the Governor.

I. Introduction

Arkansas has included in this state implementation plan (SIP) revisions to address certain disapproved portions of the Arkansas Regional Haze State Implementation Plan (AR RH SIP), submitted to the United States Environmental Protection Agency (EPA) in 2008. In 2012, EPA partially approved and partially disapproved the 2008 AR RH SIP.[1] Specifically, EPA disapproved the following elements of the 2008 AR RH SIP:

- Best available retrofit technology (BART) compliance dates;
- (BART) eligible sources and subject-to-BART Sources;
- BART determinations:
  - Sulfur dioxide (SO_2), nitrogen dioxide (NOx), and particulate matter (PM) BART determinations for Arkansas Electric Cooperative Corporation (AECC) Bailey Plant Unit 1;
  - SO_2, NOx, and PM BART determinations for AECC McClellan Plant Unit 1;
  - SO_2 and NOx BART determinations for American Electric Power (AEP)/Southwest Power Company (SWEPCO) Flint Creek Plant Boiler No. 1;
  - SO_2, NOx, and PM BART determinations for the fuel oil firing scenario and NOx BART determination for the natural gas firing scenario at Entergy Arkansas, Inc. (Entergy) Lake Catherine Plant Unit 4;
  - SO_2 and NOx BART determinations under both bituminous and sub-bituminous coal firing scenarios for Entergy White Bluff Units 1 and 2;
  - BART determination for Entergy White Bluff Plant Auxiliary Boiler;
  - SO_2 and NOx BART determinations for Domtar Ashdown Mill Power Boiler No. 1; and
  - SO_2, NOx, and PM BART determinations for Domtar Ashdown Mill Power Boiler No. 2;
- Reasonable progress goals (RPGs); and
- Long-term strategy.

The remaining provisions of the 2008 AR RH SIP were approved.

This SIP revision replaces source-specific NOx BART determinations included in the 2008 AR RH SIP, as well as limits promulgated under a 2016 federal implementation plan[2] (FIP), with

[1] *Approval and Promulgation of Implementation Plans; Regional Haze State Implementation Plan; Interstate Transport State Implementation Plan to Address Pollution Affecting Visibility and Regional Haze.* (77 FR 14604, March 12, 2012)

[2] *Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Final Rule* (81 FR 66332, September 27, 2016)

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reliance on the Cross-State Air Pollution Rule (CSAPR) emissions trading program as an alternative to BART for Arkansas BART-eligible fossil fuel-fired electric generating units (EGUs) as allowed under 40 C.F.R. 308(e)(4).

II. Background

In 1977, Congress added § 169 to the Clean Air Act (CAA), which set forth the following goal for restoring pristine conditions in national parks and wilderness areas:

> Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from man-made air pollution.

In 1980, EPA issued regulations to address the visibility problem that is "reasonably attributable" to a single source or small group of sources. These regulations primarily addressed "plume blight"—visual impairment of air quality that manifests itself as a coherent plume—rather than overall haze. In 1988, EPA, the states, and federal land managers (FLMs) began monitoring fine particulate matter concentrations and visibility in thirty Class I areas to better understand the species of particulates causing visibility impairment.

When the CAA was amended in 1990, Congress added § 169(B) which authorized research and regular assessments of progress toward restoring visibility in Class I areas and authorized the creation of visibility transport commissions. Specifically, CAA §169(B)(f) mandated the creation of the Grand Canyon Visibility Transport Commission (GCVTC) to make recommendations to EPA for regions affecting the visibility of the Grand Canyon National Park. EPA relied upon the recommendations of GCVTC and research reports to develop the 1999 "Regional Haze Regulations: Final Rule" (RHR).[3]

The 1999 RHR sought to address the combined visibility effects of various pollution sources over a wide geographic region with the goal of achieving natural visibility conditions at designated Class I areas by 2064. This required all states, including those that did not have Class I areas to participate in planning, analysis, and emission control programs under the RHR. States with Class I areas were required to conduct certain analyses to establish goals for each Class I area in the state to 1) improve visibility on the haziest days and 2) ensure no degradation occurs on the clearest days. These goals and long-term strategies to achieve these goals were to be included in SIPs covering each ten-year period leading up to 2064. States were also required to

[3] 64 FR 35714

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submit progress reports in the form of SIP revisions every five years. The 1999 RHR also expanded the existing Class I visibility monitoring network to 108 Class I areas.

For the purposes of assisting with coordination and cooperation among states to address visibility issues, EPA designated five regional planning organizations (RPOs) to assist with coordination and cooperation among states in addressing visibility issues the states have in common. Arkansas was located in the Central Regional Air Planning Association (CENRAP) RPO. Figure 1 is a map depicting the five RPO regions designated by EPA.

Figure 1 Regional Planning Organizations

In SIPs covering the first ten-year period, states were also specifically required to evaluate controls for certain sources that were not in operation prior to 1962, were in existence in 1977, and have the potential to emit 250 tons per year or more of any air pollutant. These sources were referred to as "BART-eligible sources." States were required to make BART determinations for all BART-eligible sources or consider exempting some sources from BART requirements because they do not cause or contribute to visibility impairment in a Class I area. BART-eligible sources that were determined to cause or contribute to visibility impairment in a Class I area were subject to BART controls. In determining BART emission limits for each subject-to-BART source, States were required to take into account the existing control technology in place at the source, the cost of compliance, energy and nonair environmental impacts of compliance, remaining useful life of the source, and the degree of visibility improvement that is reasonably anticipated from use of each technology considered. States also had the flexibility to choose an alternative to BART, such as an emission trading program, that would achieve greater reasonable

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progress in visibility protection than implementation of source-by-source BART controls. SIPs for the first ten-year planning period were due on December 17, 2007.

In 2005, EPA issued a revised BART rule pursuant to a partial remand of the 1999 RHR by the U.S. Court of Appeals of the DC District Court in 2002.[4] The Court had remanded the BART provisions of the 1999 RHR to EPA and denied industry's challenge to the RHR goals of natural visibility and no degradation. The revised BART rule included guidelines for states to use in determining which facilities must install controls and the types of controls the facilities must use.

In addition to revisions to BART, EPA has also issued rulemakings establishing the Clean Air Interstate Rule (CAIR) and its successor the Cross-State Air Pollution Rule (CSAPR) as approvable alternatives to source-by-source BART controls.[5] EPA has also amended regulatory requirements for state regional haze plans for the second planning period and beyond.[6]

On September 9, 2008, Arkansas submitted a SIP for the 2008–2018 planning period of regional haze regulations promulgated as of 2005 codified at 40 C.F.R. Part 51. In a 2012 action on the 2008 AR RH SIP, EPA partially approved and partially disapproved the SIP.[7] This partial approval/partial disapproval of the 2008 AR RH SIP triggered a requirement for EPA to either approve a SIP revision by Arkansas or promulgate a federal implementation plan (FIP) within twenty-four months of the final rule partially approving and partially disapproving the 2008 AR RH SIP.

In the 2012 partial approval/partial disapproval of the 2008 AR RH SIP, EPA approved the following elements of the 2008 AR RH SIP:

- Identification of Class I areas affected by sources in Arkansas;
- Determination of baseline and natural visibility conditions;
- Determination of a uniform rate of progress (URP);
- Select BART determinations:
    - PM determination on AEP Flint Creek Plant Boiler No. 1;
    - SO_2 and PM determinations for the natural gas firing scenario for Entergy Lake Catherine Plant Unit 4

[4] *American Corn Growers Assn. v. EPA*, 291 F.3d.1 (D.C. Cir. 2002)

[5] *Regional Haze Regulations; Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations* (71, FR 60612, October 13, 2006)
Regional Haze Regulations; Revisions to Provisions Governing Alternative to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Disapprovals, and Federal Implementation Plans (77 FR 33642, June 7, 2012).

[6] *Protection of Visibility: Amendments to Requirements for State Plans* (82 FR 3078, January 10, 2017)

[7] *Approval and Promulgation of Implementation Plans; Regional Haze State Implementation Plan; Interstate Transport State Implementation Plan to Address Pollution Affecting Visibility and Regional Haze.* (77 FR 14604, March 12, 2012)

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  - PM determinations for both bituminous and sub-bituminous coal firing scenarios for Entergy White Bluff Plant Units 1 and 2;
  - PM determination for Domtar Ashdown Mill Power Boiler No. 1
- Consultation with FLMs and other states regarding RPGs and long-term strategy;
- Coordination of regional haze and reasonably attributable visibility impairment (RAVI);
- Regional haze monitoring strategy and other SIP requirements under 40 C.F.R. 51.308(d)(4);
- A commitment to submit periodic regional haze SIP revisions; and
- A commitment to submit periodic progress reports that include a description of progress toward RPGs and a determination of adequacy of the existing SIP.

EPA disapproved the following elements of the 2008 AR RH SIP:

- BART compliance dates;
- BART-eligible sources and subject-to-BART sources;
- Select BART determinations:
  - SO_2, NOx, and PM BART determinations for AECC Bailey Plant Unit 1;
  - SO_2, NOx, and PM BART determinations for AECC McClellan Plant Unit 1;
  - SO_2 and NOx BART determinations for AEP Flint Creek Plant Boiler No. 1;
  - SO_2, NOx, and PM BART determinations for the fuel oil firing scenario and NOx BART determination for the natural gas firing scenario at Entergy Lake Catherine Plant Unit 4;
  - SO_2 and NOx BART determinations under both bituminous and sub-bituminous coal firing scenarios for Entergy White Bluff Units 1 and 2;
  - BART determination for Entergy White Bluff Plant Auxiliary Boiler;
  - SO_2 and NOx BART determinations for Domtar Ashdown Mill Power Boiler No. 1; and
  - SO_2, NOx, and PM BART determinations for Domtar Ashdown Mill Power Boiler No. 2;
- RPGs; and
- Long-term strategy.

On September 27, 2016, EPA finalized a regional haze FIP for Arkansas (AR RH FIP).[8] This FIP established new BART requirements for those sources whose BART determinations in the 2008 AR RH SIP were disapproved. The FIP also required the installation of controls at units of an electric generating unit (EGU) that was not BART-eligible—Entergy Independence Units 1 and 2. Despite the previous disapproval of ADEQ's determination in the 2008 AR RH SIP that

[8] *Promulgation of Air Quality Implementation Plans; State of Arkansas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan; Final Rule* (81 FR 66332, September 27, 2016)

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Georgia Pacific Crossett Mill Boiler 6A and 9A did not cause or contribute to visibility impairment in a Class I area, EPA reversed its decision and concurred with ADEQ that Georgia Pacific Crossett Mill Boiler 6A and 9A are not subject to BART.

On November 22, 2016, the State of Arkansas filed a Petition for Reconsideration and Administrative Stay of the AR RH FIP. In the petition, the State of Arkansas requested that EPA reconsider the AR RH FIP based on new information not raised during the comment period that is of central relevance to the outcome of the FIP. Arkansas asserted that EPA should reconsider controls on Entergy Independence in light of recent data from the IMPROVE monitoring network that shows that Arkansas has already achieved the amount of progress required for the 2008–2018 planning period without having implemented the controls required in the FIP. Arkansas requested that EPA reconsider NOx emission limitations placed on BART-eligible facilities in light of the recent rulemaking that increased the stringency of the CSAPR. Compliance with the previous, less stringent CSAPR rule was a legally sound alternative to source-by-source BART controls. Arkansas also requested reconsideration of the use of low-sulfur coal as BART for SO_2 at Entergy White Bluff during the 2008–2018 planning period. Arkansas requested an immediate administrative stay pending completion of EPA's reconsideration of the AR RH FIP.

On February 3, 2017, the State of Arkansas filed a Petition for Review of the AR RH FIP with the United States Court of Appeals for the Eighth Circuit. On March 8, 2017, the Court held the Petition for Review in abeyance for ninety days. On April 14, 2017, EPA issued a letter notifying Arkansas that the Agency was convening the reconsideration process for the following:

- Compliance dates for NOx emission limits for Flint Creek Unit 1, White Bluff Units 1 and 2, and Independence Units 1 and 2;
- Low-load NOx limits applicable to White Bluff Units 1 and 2 and Independence Units 1 and 2 during periods of operation at less than fifty percent of the unit's maximum heat input rating;
- SO_2 emission limits for White Bluff Units 1 and 2; and
- Compliance dates for SO_2 emission limits for Independence Units 1 and 2.

On April 25, 2017, EPA published in the Federal Register a partial stay of the effectiveness of the AR RH FIP (82 FR 18994). Specifically, EPA stayed from April 25, 2017 until July 24, 2017 (ninety days) the compliance dates for the NOx emission limits at AECC Flint Creek Unit 1, White Bluff Units 1 and 2, and Independence Units 1 and 2, as well as the compliance dates for the SO_2 emission limits for White Bluff units 1 and 2 and Independence Units 1 and 2. This action did not alter or extend the ultimate compliance dates for these units nor did it stay requirements for other units subject to the FIP.

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III. BART Requirements for NOx for Subject-to-BART Units Participating in the CSAPR Program

Arkansas meets all current requirements under 40 C.F.R. § 51.308(e)(4), which states the following:

> A State subject to a trading program established in accordance with § 52.38 or § 52.39 under a Transport Rule Federal Implementation Plan need not require BART–eligible fossil fuel-fired steam electric plants in the State to install, operate, and maintain BART for the pollutant covered by such trading program in the State.

Arkansas is currently subject to a trading program established in accordance with 40 C.F.R. § 52.38 under a Transport Rule Federal Implementation Plan for NOx during the ozone season. As a result, Arkansas need not require BART-eligible fossil fuel-fired steam electric plant units participating in the CSAPR program in the State to install, operate, and maintain BART for NOx.

On June 7, 2012, EPA published a final rule (77 FR 33642) allowing states participating in the CSAPR trading program, which is also known as the Transport Rule (76 FR 48208) to use CSAPR to satisfy BART, including states participating only for ozone season NOx. Reliance on the CSAPR trading program as better than source-specific BART has repeatedly withstood legal scrutiny.[9]

Since promulgating the use of CSAPR as an alternative that achieves greater visibility improvements than source-specific BART, EPA has promulgated an update to the CSAPR program with more stringent budgets (81 FR 74504). Revisions to the program as a result of this update are codified at 40 C.F.R. § 52.318. The CSAPR Update revised the ozone season NOx budget for Arkansas units from 15,110 tons in 2015 to 12,048 tons in 2017 with a further reduction to 9,210 in 2018 and beyond.

ADEQ has determined that it is appropriate under 40 C.F.R § 51.308 and provides additional flexibility for CSAPR participating subject-to-BART units in Arkansas to rely upon participation in the CSAPR ozone season NOx trading program rather than source-specific BART requirements for NOx. Participation in CSAPR for ozone season NOx is federally enforceable under 40 C.F.R. 52.38 for the following BART-eligible units:

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[9] *e.g. Nat'l Parks Conservation Ass'n v. McCarthy*, 816 F.3d 989, 995 (8th Cir. 2016)
(The Eighth Circuit upheld EPA's approval of CSAPR as better than BART for units in Minnesota's SIP).

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- Arkansas Electric Cooperative Corporation (AECC) Bailey Plant Unit 1;
- AECC McClellan Plant Unit 1;
- American Electric Power (AEP)/Southwest Power Company (SWEPCO) Flint Creek Plant Boiler No. 1;
- Entergy Arkansas, Inc. (Entergy) Lake Catherine Plant Unit 4;
- Entergy White Bluff Units 1 and 2 and Auxiliary Boiler;

As of the effective date of EPA's final approval of this SIP revision, compliance with the CSAPR trading program for ozone season NOx as set forth in 40 C.F.R. 52.38 shall supersede NOx emission limits for the units listed above previously adopted into Arkansas Pollution Control and Ecology Commission Regulation No. 19 Chapter 15.

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Tab C:

Evidence of Participation in the Cross-State Air Pollution Rule

Tab D:
Legal Authority to Adopt and Implement the Plan

State's Legal Authority to Adopt and Implement the Plan

The State's legal authority to adopt and implement this State Implementation Plan revision can be found in Arkansas Code Annotated (Ark. Code Ann.) §§ 8-1-203(b)(1), 8-4-311(a)(1), 8-4-317.

Ark. Code Ann. § 8-1-203

8-1-203. Powers and responsibilities of the Arkansas Pollution Control and Ecology Commission.

(a) The Arkansas Pollution Control and Ecology Commission shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern.

(b) The commission's powers and duties shall be as follows:

(1) **(A)** Promulgation of rules and regulations implementing the substantive statutes charged to the Arkansas Department of Environmental Quality for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than the federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department. However, the director shall always remain within the plenary authority of the Governor; and

(8) Upon a majority vote, initiate review of any director's decision.

(c) (1) In providing for adjudicatory review as contemplated by subdivisions (b)(4) and (5) of this section, the commission may appoint one (1) or more administrative hearing officers. The administrative hearing officers shall at all times serve as agents of the commission.

(2) In hearings upon appeals of permitting or grants decisions by the director or contested administrative enforcement or emergency actions initiated by the director, the administrative hearing officer shall administer the hearing in accordance with procedures adopted by the commission and, after due deliberation, submit his or her recommended decision to the commission.

(3) (A) (i) Commission review of any appealed or contested matter shall be upon the record compiled by the administrative hearing officer and his or her recommended decision.

(ii) Commission review shall be de novo. However, no additional evidence need be received unless the commission so decides in accordance with established administrative procedures.

(B) The commission may afford the opportunity for oral argument to all parties of the adjudicatory hearing.

(C) (i) By the majority vote of a quorum, the commission may affirm, reverse and dismiss, or reverse and remand to the director.

(ii) If the commission votes to affirm or reverse, such decision shall constitute final agency action for purposes of appeal.

(4) Any party aggrieved by the commission decision may appeal as provided by applicable

law.

(d) The chair of the Arkansas Pollution Control and Ecology Commission may appoint one (1) or more committees composed of commission members to act in an advisory capacity to the full commission.

HISTORY: Acts 1991, No. 1230, § 1; 1993, No. 163, § 7; 1993, No. 165, § 7; 1993, No. 1264, § 2; 1995, No. 117, § 1.

Ark. Code Ann. § 8-4-311

8-4-311. Powers generally.

(a) The Arkansas Department of Environmental Quality or its successor shall have the power to:

(1) Develop and effectuate a comprehensive program for the prevention and control of all sources of pollution of the air of this state;

(2) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the federal government, and with affected groups in the furtherance of the purposes of this chapter;

(3) Encourage and conduct studies, investigations, and research relating to air pollution and its causes, prevention, control, and abatement as it may deem advisable and necessary;

(4) Collect and disseminate information relative to air pollution and its prevention and control;

(5) Consider complaints and make investigations;

(6) Encourage voluntary cooperation by the people, municipalities, counties, industries, and others in preserving and restoring the purity of the air within the state;

(7) Administer and enforce all laws and regulations relating to pollution of the air;

(8) Represent the state in all matters pertaining to plans, procedures, or negotiations for interstate compacts in relation to air pollution control;

(9) (A) Cooperate with and receive moneys from the federal government or any other source for the study and control of air pollution.

(B) The department is designated as the official state air pollution control agency for such purposes;

(10) Make, issue, modify, revoke, and enforce orders prohibiting, controlling, or abating air pollution and requiring the adoption of remedial measures to prevent, control, or abate air pollution;

(11) Institute court proceedings to compel compliance with the provisions of this chapter and rules, regulations, and orders issued pursuant to this chapter;

(12) Exercise all of the powers in the control of air pollution granted to the department for the control of water pollution under §§ 8-4-101 -- 8-4-106 and 8-4-201 -- 8-4-229; and

(13) Develop and implement state implementation plans provided that the commission shall retain all powers and duties regarding promulgation of rules and regulations under this chapter.

(b) The Arkansas Pollution Control and Ecology Commission shall have the power to:

(1) **(A)** Promulgate rules and regulations for implementing the substantive statutes charged to the department for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report that shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgate rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgate rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, provide the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor;

(8) Upon a majority vote, initiate review of any director's decision;

(9) Adopt, after notice and public hearing, reasonable and nondiscriminatory rules and regulations requiring the registration of and the filing of reports by persons engaged in operations that may result in air pollution;

(10) (A) Adopt, after notice and public hearing, reasonable and nondiscriminatory rules and regulations, including requiring a permit or other regulatory authorization from the department, before any equipment causing the issuance of air contaminants may be built, erected, altered, replaced, used, or operated, except in the case of repairs or maintenance of equipment for which a permit has been previously used, and revoke or modify any permit issued under this chapter or deny any permit when it is necessary, in the opinion of the department, to prevent, control, or abate air pollution.

(B) A permit shall be issued for the operation or use of any equipment or any facility in existence upon the effective date of any rule or regulation requiring a permit if proper application is made for the permit.

(C) No such permit shall be modified or revoked without prior notice and hearing as provided in this section.

(D) Any person that is denied a permit by the department or that has such permit revoked or modified shall be afforded an opportunity for a hearing in connection therewith upon written application made within thirty (30) days after service of notice of such denial, revocation, or modification.

(E) The operation of any existing equipment or facility for which a proper permit application has been made shall not be interrupted pending final action thereon.

(F) (i) An applicant or permit holder that has had a complete application for a permit or for a modification of a permit pending longer than the time specified in the state regulations promulgated pursuant to Title V of the Clean Air Act Amendments of 1990, or any person that participated in the public participation process, and any other person that could obtain judicial review of such actions under state laws, may petition the commission for relief from department inaction.

(ii) The commission will either deny or grant the petition within forty-five (45) days of its submittal.

(iii) For the purposes of judicial review, either a commission denial or the failure of the department to render a final decision within thirty (30) days after the commission has granted a petition shall constitute final agency action;

(11) (A) Establish through its rulemaking authority, either alone or in conjunction with the appropriate state or local agencies, a system for the banking and trading of air emissions designed to maintain both the state's attainment status with the national ambient air quality standards mandated by the Clean Air Act and the overall air quality of the state.

(B) The commission may consider differential valuation of emission credits as necessary to achieve primary and secondary national ambient air quality standards, and may consider establishing credits for air pollutants other than those designated as criteria air pollutants by the United States Environmental Protection Agency.

(C) Any regulation proposed pursuant to this authorization shall be reported to the House Interim Committee on Public Health, Welfare, and Labor and the Senate Interim Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof prior to its final promulgation; and

(12) In the case of a state implementation plan, provide the right to appeal a final decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegate under § 8-4-317.

HISTORY: Acts 1949, No. 472, [Part 2], § 5, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1935; Acts 1993, No. 994, § 1; 1995, No. 895, § 4; 1997, No. 179, § 1; 1997, No. 1219, § 6; 1999, No. 1164, § 31; 2013, No. 1302, §§ 2, 3.

Ark. Code Ann. § 8-4-317

8-4-317. State implementation plans generally.

(a) In developing and implementing a state implementation plan, the Arkansas Department of Environmental Quality shall consider and take into account the factors specified in § 8-4-312 and the Clean Air Act, 42 U.S.C. § 7401 et seq., as applicable.

(b) (1) (A) Whenever the department proposes to finalize a state implementation plan submittal for review and approval by the United States Environmental Protection Agency, it shall cause notice of its proposed action to be published in a newspaper of general circulation in the state.

(B) The notice required under subdivision (b)(1)(A) of this section shall afford any interested party at least thirty (30) calendar days in which to submit comments on the proposed state implementation plan submittal in its entirety.

(C) (i) In the case of any emission limit, work practice or operational standard, environmental standard, analytical method, air dispersion modeling requirement, or monitoring requirement that is incorporated as an element of the proposed state implementation plan submittal, the record of the proposed action shall include a written explanation of the rationale for the proposal, demonstrating the reasoned consideration of the factors in § 8-4-312 as applicable, the need for each measure in attaining or maintaining the National Ambient Air Quality Standards, and that any requirements or standards are based upon generally accepted scientific knowledge and engineering practices.

(ii) For any standard or requirement that is identical to an applicable federal regulation, the demonstration required under subdivision (b)(1)(C)(i) of this section may be satisfied by reference to the regulation. In all other cases, the department shall provide its own justification with appropriate reference to the scientific and engineering literature considered or the written studies conducted by the department.

(2) (A) At the conclusion of the public comment period and before transmittal to the Governor for submittal to the United States Environmental Protection Agency, the department shall provide written notice of its final decision regarding the state implementation plan submittal to all persons who submitted public comments.

(B) (i) The department's final decision shall include a response to each issue raised in any public comments received during the public comment period. The response shall manifest reasoned consideration of the issues raised by the public comments and shall be supported by appropriate legal, scientific, or practical reasons for accepting or rejecting the substance of the

comment in the department's final decision.

(ii) For the purposes of this section, response to comments by the department should serve the roles of both developing the record for possible judicial review of a state implementation plan decision and serving as a record for the public's review of the department's technical and legal interpretations on long-range regulatory issues.

(iii) This section does not limit the department's authority to raise all relevant issues of regulatory concern upon adjudicatory review by the Arkansas Pollution Control and Ecology Commission of a particular state implementation plan decision.

(c) (1) Only those persons that submit comments on the record during the public comment period have standing to appeal the final decision of the department to the commission upon written application made within thirty (30) days after service of the notice under subdivision (b)(2)(A) of this section.

(2) An appeal under subdivision (c)(1) of this section shall be processed as a permit appeal under § 8-4-205. However, the decision of the Director of the Arkansas Department of Environmental Quality shall remain in effect during the appeal.

HISTORY: Acts 2013, No. 1302, § 4.

Tab E

Public Participation

SIP revisions:

-Public Notice Information and Public Hearing Documentation

-Public Comments and Responsive Summary

Arkansas Department of Environmental Quality

Public Notice

The Arkansas Department of Environmental Quality (ADEQ) is publishing this Public Notice to provide interested persons the opportunity to comment on ADEQ's proposed state implementation plan (SIP) revision.

ADEQ is proposing revisions to certain disapproved portions of the Arkansas Regional Haze SIP. This SIP revision replaces source-specific nitrogen dioxide (NOx) best available retrofit technology (BART) determinations included in the 2008 Arkansas Regional Haze SIP, as well as limits promulgated under the 2016 federal implementation plan (FIP), with reliance on the Cross-State Air Pollution Rule emissions trading program as an alternative to BART for Arkansas BART-eligible fossil fuel-fired electric generating units as allowed under 40 C.F.R. 308(e)(4). Other disapproved portions of the 2008 Arkansas Regional Haze SIP, will be addressed in a separate submission.

ADEQ will accept written and electronic comments received no later than 4:30 p.m. on July xx, 2017. Written comments should be mailed to Tricia Treece, Office of Air Quality, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118. Electronic comments should be sent to: treecep@adeq.state.ar.us.

A member of the public may also request a hearing. If a hearing request is received by 4:30 p.m. on June xx, 2017, ADEQ will hold a public hearing on July xx, 2017 at 2:00 p.m. in the Commission Room on the first floor of ADEQ headquarters located at 5301 Northshore Drive, North Little Rock, Arkansas. If no request is received by the deadline, ADEQ will not hold a public hearing, and ADEQ will announce the cancellation of the hearing on its Internet web site at https://www.adeq.state.ar.us/air/planning/sip/RH.aspx by 4:30 p.m. June xx, 2017. If a public hearing is requested, but inclement weather or unforeseen circumstances require ADEQ to postpone the hearing, ADEQ will post this decision on the same web page. To request a public hearing or to find out whether the public hearing has been cancelled, please contact Kelly Jobe by email at jobe@adeq.state.ar.us or by phone at 501-682-0084.

A copy of Arkansas's proposed SIP revision is available for public inspection during normal business hours at the Office of Communications in the ADEQ headquarters building in North Little Rock. In addition, Arkansas's SIP revision is available for viewing or downloading on ADEQ's website at: https://www.adeq.state.ar.us/air/planning/sip/RH.aspx. Public libraries hosting ADEQ information depositories will also be available to assist interested persons access the SIP from ADEQ's website. These information depositories are located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy, Stuttgart, Texarkana, and West

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Memphis; in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway; and in the Arkansas State Library, 900 W. Capitol, Suite 100, Little Rock.

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