

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S4/1/13 H4/3/13
A Bill

SENATE BILL 796

By: Senator Caldwell
By: Representative Wardlaw

For An Act To Be Entitled

AN ACT TO AMEND THE LAWS PERTAINING TO AIR POLLUTION;
TO CLARIFY THE RESPONSIBILITIES OF THE ARKANSAS
DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE ARKANSAS
POLLUTION CONTROL AND *ECOLOGY* COMMISSION WITH RESPECT
TO THE ADOPTION OF STATE IMPLEMENTATION PLANS; AND
FOR OTHER PURPOSES.

Subtitle

TO CLARIFY THE RESPONSIBILITIES OF THE
ARKANSAS DEPARTMENT OF ENVIRONMENTAL
QUALITY AND THE ARKANSAS POLLUTION
CONTROL AND *ECOLOGY* COMMISSION WITH
RESPECT TO THE ADOPTION OF STATE
IMPLEMENTATION PLANS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 8-4-303, concerning the definitions to be used in relation to air pollution, is amended to add three additional subdivisions to read as follows:

(11) "Major source construction" means the construction of a new major stationary source or a major modification of an existing major stationary source as the terms "major stationary source" and "major modification" are defined in 40 C.F.R. Part 51.165, if applicable, or 40 C.F.R. Part 51.166, as they existed on July 1, 2012;



(12) "NAAQS state implementation plan" means a state implementation plan that specifies measures to be used in the implementation of the state's duties under the Clean Air Act, 42 U.S.C. § 7401 et seq., for the attainment and maintenance of a specified National Ambient Air Quality Standard.

(13) "National Ambient Air Quality Standard" or "NAAQS" means a national primary or secondary ambient air quality standard established under Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., and 40 C.F.R. Part 50; and

(14) "State implementation plan" means a plan that specifies measures to be used in the implementation of the state's duties under the Clean Air Act, 42 U.S.C. § 7401 et seq., and that is developed by the department and submitted to the United States Environmental Protection Agency for review and approval.

SECTION 2. Arkansas Code § 8-4-311(a), concerning the powers of the Arkansas Department of Environmental Quality, is amended to add an additional subdivision to read as follows:

(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.

SECTION 3. Arkansas Code § 8-4-311(b), concerning the powers of the Arkansas Pollution Control and Ecology Commission, is amended to add an additional subdivision to read as follows:

(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.

SECTION 4. Arkansas Code Title 8, Chapter 4, Subchapter 3, is amended to add an additional section to read as follows:

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).

(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.

SECTION 5. Arkansas Code Title 8, Chapter 4, Subchapter 3, is amended to add an additional section to read as follows:

8-4-318. National Ambient Air Quality Standards implementation.

(a)(1) The Arkansas Department of Environmental Quality shall develop NAAQS state implementation plans.

(2) Each NAAQS state implementation plan shall include the measures necessary for the attainment and maintenance of the National Ambient Air Quality Standard in each air quality control region or portion of an air quality control region within the state.

(b)(1) Except with regard to permitting decisions for major source construction under Part C or D of Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., National Ambient Air Quality Standards are not effective until adopted by the Arkansas Pollution Control and Ecology Commission under § 8-4-311(b).

(2) Except as required for the permitting of major source construction under Part C or D of Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., or otherwise voluntarily proposed and agreed to by the owner or operator of a stationary source, the Department shall not mandate for any stationary source measures for the attainment and maintenance of a National Ambient Air Quality Standard until such measures are included in the applicable

NAAQS state implementation plan and the NAAQS state implementation plan has been submitted to the United States Environmental Protection Agency. However, this subdivision (b)(2) does not limit or delay the effectiveness of any applicable emission limit or standard promulgated by the United States Environmental Protection Agency under Sections 111, 112 or 129 of the Clean Air Act, 42 U.S.C. § 7411, § 7412, and § 7429.

(3) Unless otherwise voluntarily proposed and agreed to by the owner or operator of a stationary source, the Department shall not require or consider air dispersion modeling of an air contaminant for which a National Ambient Air Quality Standard has been established in air permitting decisions for stationary sources except:

(A) As required by Part C of Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., and the federal regulations promulgated thereto, for the permitting of major source construction;

(B) If necessary in the judgment of the Department, with respect to permitting of a temporary source under 42 U.S.C. § 7661c(e); or

(C) Pollutant-specific or facility-specific air dispersion modeling explicitly required by an applicable NAAQS state implementation plan submitted to the United States Environmental Protection Agency.

(c) This section does not prohibit the department from conducting and considering air dispersion modeling as necessary for the:

(1) Development of a state implementation plan; or

(2) Development of a general permit under § 8-4-203.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the current policy of the Arkansas Department of Environmental Quality of implementing the National Ambient Air Quality Standards through stationary source permitting is more stringent than the practices of other states in the region, thereby discouraging the expenditure of capital improvement funds for economic development and environmental improvement projects within the State of Arkansas; and that this act is immediately necessary to align the policies for implementation of National Ambient Air Quality Standards and the development of state implementation plans to those of the federal government and other states. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall

become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/Caldwell