

The Arkansas Regional Haze FIP: A Remedy in Search of a Problem?

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In 1977, Congress enacted an amendment to the Clean Air Act requiring states to develop implementation plans (SIPs) containing measures necessary to make reasonable progress toward elimination of visibility impairment caused by manmade air pollution at 156 of the nation's parks and wilderness areas. Congress further provided that in determining reasonable progress, there should be taken into consideration the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of each source subject to the plan requirements. By the mid-1990's, a majority of affected states had not developed the required SIPs; and in 1999, spurred by Congress and the courts, EPA issued guidelines requiring states to improve visibility on the haziest 20% of days and to establish a projected glide path based on the uniform rate of progress that would be needed to restore visibility to natural conditions by 2064. So began the modern era of the regional haze program.

Skip forward some 15 years, and Arkansas was one of the few remaining states which—in EPA's estimation—had not developed an appropriate SIP. Thus, on September 27, EPA issued a Final Rule imposing a Federal Implementation Plan (FIP) for control of regional haze visibility impairment at Arkansas' two affected wilderness areas: Upper Buffalo and Caney Creek. The Final Rule requires installation and operation of controls or other changes in operation to reduce emissions at seven facilities located in Arkansas; including most notably: the Flint Creek power plant located near Gentry; the Independence plant located near Newark; the White Bluff plant located near Redfield; and the Ashdown Mill located near Ashdown. All of these facilities are owned by members of the Arkansas Environmental Federation. By EPA's own extremely conservative estimates, the combined cost of controls and operational changes required by the Final Rule will exceed \$1.5 Billion over the next five years. And, since all of the affected facilities except Ashdown Mill are power plants operated by public

utilities, most of these costs will ultimately be borne by residents and businesses in Arkansas.

Although the costs imposed by the Arkansas FIP are less than those imposed by similar state or federal plans in many other states on a dollar-for-dollar basis, when one accounts for Arkansas' rural and relatively sparse population, the median household income and total amount of megawatts of electricity produced within the State, the costs of the Final Rule are among the most burdensome ever imposed under the regional haze program. By way of example, EPA's vastly underestimated costs of \$1.5 Billion represents 1.3% of Arkansas' 2015 gross domestic product. Keep in mind that these costs are not being imposed under regulation to protect the health of Arkansas' citizens (those regulations are actually less stringent), but regulations aimed at improving the aesthetic scenic visibility at two federal wilderness areas in the State. As a lifelong Arkansan, I appreciate and value the aesthetic beauty of the Natural State as much as anyone; but one might look across the scenic vista at one of these areas and wonder exactly what problem the Arkansas FIP is trying to remedy. That fact is further borne out through multiple analyses by EPA and regulated sources which show that Arkansas' air quality has been, and is projected to, continue improving well ahead of the rate of progress otherwise necessary to achieve EPA's goal of returning to natural visibility conditions by the year 2064—and all that without the controls mandated by this Rule. Equally important, the science tells us that, to the extent the visibility at these areas is impaired by regional haze, the sources affected by this Rule are contributing only a fraction of a percent to that haze. Indeed, the main contributions to regional haze are from wildfires (including manmade controlled burns) and transportation—neither of which EPA even attempts to regulate under this program. All of which begs the question: What is the true necessity and justification for imposing such a burdensome mandate on the people and industries of Arkansas?

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However, if you think the staggering costs and misguided purpose of this Rule are the most troubling aspects of the Arkansas regional haze FIP, you would be incorrect. More troubling is the precedent this Rule seeks to establish for EPA to require virtually any stationary source to install and operate controls or fundamentally change its manufacturing processes at EPA's sole discretion and without regard to whether there is a measurable benefit to air quality. The philosophy that EPA advances in its May, 2016, proposed revisions to its regional haze guidelines—and which EPA now bases its justification for the controls being required at the Independence plant—is that, if there are any additional emission reduction measures that can be applied to a source or sources reasonably anticipated to contribute to impairment of visibility (no matter how small the contribution); then EPA may require a strategy for taking such measures as long as the strategy addresses the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of the source. This is troubling because additional control measures are available to practically each and every stationary source at limitless costs; and EPA's position is that it can require implementation of such measures regardless of whether they will actually result in any perceptible visibility improvement. In EPA's view, its authority to require additional control measures is unconstrained by the costs and resource requirements associated with implementing such measures, as long as the strategy for installing and operating the controls accounts for those costs and resource requirements. This philosophy represents a vast expansion of authority over that traditionally afforded EPA under other Clean Air Act programs. Meanwhile, Congressional gridlock allows EPA's power-grab to go unchecked. How EPA will ultimately impose its newfound discretion on industry sources remains to be seen, but the Arkansas FIP may provide an early indication.

As one peels back the layers of the Arkansas regional haze FIP, one may come to the conclusion that Arkansas is becoming a test case for the use of unprecedented authority to impose an ineffective

remedy in response to a nonexistent problem. However, there remain a multitude of potential paths available for State and industry representatives to guide Arkansas through this quagmire. As these issues bear out over the coming weeks and months, the affected AEF members will continue to examine the facts and history behind the regional haze program. The Federation plans to provide a forum for discussion of these complex issues, and to help its members better understand and navigate the near- and long-term implications of the regional haze program both locally and nationwide.

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