

# The Long and Winding Path of Arkansas' Regional Haze Regulation

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Like many others across the country, many of the Federation's members woke up on November 9 wondering what the results of the election would mean for the future of the federal government. For many Federation members, their thoughts turned quickly to curiosity about what might be in-store for the Environmental Protection Agency and, in particular, the future of the regional haze program and its implementation in Arkansas. While the answers to these questions will come over the next months and years, if history is to be our guide, then there will certainly be more twists and turns along the road to Arkansas' implementation of the regional haze program.

Last month I wrote in this spot about an overview of EPA's final rule imposing a Federal Implementation Plan (FIP) for Arkansas against the backdrop of EPA's 1999 regional haze guidelines. However, that overview omitted the events which took place in Arkansas between 2000—2015 related to implementation of the regional haze program, during which time the program took several twists and turns under two different administrations.

The EPA's 1999 guidelines included specific emissions limits for regional haze-contributing pollutants, termed "presumptive limits"—the idea being that, if adopted and implemented, these limits would presumptively satisfy a state's regional haze obligations with respect to those sources subject to the statutory requirement to operate "Best Available Retrofit Technology" or "BART." In 2007, the Arkansas Pollution Control and Ecology Commission dutifully adopted regulations requiring the BART sources (notably, the same BART sources affected by the 2016 Final Rule) to meet these presumptive emissions limits by no later than October, 2013. The Department of Environmental Quality packaged these regulations and submitted them for EPA's approval as part of the State Implementation Plan (SIP) for regional haze in 2008.

However, in 2009, a new administration took charge at EPA and, perhaps dissatisfied with the presumptive limits or simply desiring to squeeze more juice from the fruit of the regional haze program, disapproved Arkansas' reliance on, and incorporation of, the presumptive limits in the 2008 SIP. Many of the facilities which were required to install new controls to meet the Commission's deadline of 2013 had already begun the engineering and planning that would have been necessary to do so. Faced with the prospect of being required under State regulations to meet emissions limits which were apparently not satisfactory for EPA, the affected facilities had no choice but to ask the Commission for a variance from the State compliance requirement to allow time for EPA and ADEQ to coordinate their requirements, which the Commission granted. ADEQ and the affected facilities then set about trying to determine what emissions and control requirements for Arkansas' regional haze program would be satisfactory to EPA.

As mentioned in a previous article, by 2015—and while EPA's focus in the meantime had been on pursuing aggressive regional haze requirements in larger states

such as Texas—Arkansas still had not developed a regional haze SIP that would be acceptable to EPA, which had now become very aggressive in its pursuit of increasingly stringent requirements. Thus, in 2015, EPA proposed the rule imposing the Arkansas FIP for regional haze. The Arkansas FIP seeks to impose BART control requirements on the same six facilities (although more stringent) as did the Commission's regulations in 2007; and additionally on a seventh facility not subject to statutory BART requirements, the Independence plant located near Newark. As discussed in the previous article, these additional, more aggressive requirements were met with surprise by some State officials given the rapid improvements in visibility which have taken place in Arkansas in the meantime and in the absence of the controls required by the FIP.

Now, in 2016 we are faced with another changing of the guard at EPA, which at the very least casts some doubt over the finality of the requirements being imposed by the final FIP, and the outcome of which will likely be determined in court and not known for some time. The irony is that, had EPA just accepted the Commission's 2007 regulations based on EPA's own "presumptive" emissions limits, six of the seven sources covered by the final FIP would already have been operating controls for the last four years and Arkansas would already have experienced a corresponding decrease in overall emissions; and without the added bureaucracy that has taken place within EPA, ADEQ and the courts, the costs of which are ultimately borne by State and federal taxpayers and electricity consumers.

While this story could serve as an example for future regulators of inefficient administration of services for the public benefit, it also serves as a reminder to us of the need for, and importance of, organizations like the Federation which advocate for sound and sensible environmental policies and regulations to improve the quality of life for all Arkansans.

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## The Election

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- Paris Climate Change Agreement
- Clean Water Rule (WOTUS) – EPA and Corps of Engineers
- Ozone Rule – EPA
- Fracking Rule – BLM
- Regional Haze Regulations – EPA
- Coal Leasing Moratorium - BLM

No matter which side of the aisle you are on or how you voted, no one can argue that these are interesting times. Please rest assured that the Arkansas Environmental Federation will be watching every aspect of environmental policy and keeping our members apprised. It is also important to mention that the Arkansas Legislature goes into Regular Session in January and we will be front and center as always.

Happy Holidays to everyone.