

1 State of Arkansas *As Engrossed: S4/1/13 H4/3/13*

2 89th General Assembly

# A Bill

3 Regular Session, 2013

SENATE BILL 796

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5 By: Senator Caldwell

6 By: Representative Wardlaw

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## For An Act To Be Entitled

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

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## Subtitle

19 TO CLARIFY THE RESPONSIBILITIES OF THE  
20 ARKANSAS DEPARTMENT OF ENVIRONMENTAL  
21 QUALITY AND THE ARKANSAS POLLUTION  
22 CONTROL AND *ECOLOGY* COMMISSION WITH  
23 RESPECT TO THE ADOPTION OF STATE  
24 IMPLEMENTATION PLANS.

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

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

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



1 (12) "NAAQS state implementation plan" means a state  
2 implementation plan that specifies measures to be used in the  
3 implementation of the state's duties under the Clean Air Act, 42 U.S.C.  
4 § 7401 et seq., for the attainment and maintenance of a specified  
5 National Ambient Air Quality Standard.

6 (13) "National Ambient Air Quality Standard" or "NAAQS"  
7 means a national primary or secondary ambient air quality standard  
8 established under Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., and  
9 40 C.F.R. Part 50; and

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

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

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

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

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

30  
31 SECTION 4. Arkansas Code Title 8, Chapter 4, Subchapter 3, is amended to  
32 add an additional section to read as follows:

33 8-4-317. State implementation plans generally.

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

1 7401 et seq., as applicable.

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

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

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

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

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

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

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

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

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

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

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

21 8-4-318. National Ambient Air Quality Standards implementation.

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

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

28 (b)(1) Except with regard to permitting decisions for major source  
29 construction under Part C or D of Title I of the Clean Air Act, 42 U.S.C. §  
30 7401 et seq., National Ambient Air Quality Standards are not effective until  
31 adopted by the Arkansas Pollution Control and Ecology Commission under § 8-4-  
32 311(b).

33 (2) Except as required for the permitting of major source  
34 construction under Part C or D of Title I of the Clean Air Act, 42 U.S.C. §  
35 7401 et seq., or otherwise voluntarily proposed and agreed to by the owner or  
36 operator of a stationary source, the Department shall not mandate for any

1 stationary source measures for the attainment and maintenance of a National  
2 Ambient Air Quality Standard until such measures are included in the  
3 applicable NAAQS state implementation plan and the NAAQS state  
4 implementation plan has been submitted to the United States Environmental  
5 Protection Agency. However, this subdivision (b)(2) does not limit or  
6 delay the effectiveness of any applicable emission limit or standard  
7 promulgated by the United States Environmental Protection Agency under  
8 Sections 111, 112 or 129 of the Clean Air Act, 42 U.S.C. § 7411, § 7412,  
9 and § 7429.

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

15 (A) As required by Part C of Title I of the Clean Air Act,  
16 42 U.S.C. § 7401 et seq., and the federal regulations promulgated thereto,  
17 for the permitting of major source construction;

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

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

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

26 (1) Development of a state implementation plan; or

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

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29 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General  
30 Assembly of the State of Arkansas that the current policy of the Arkansas  
31 Department of Environmental Quality of implementing the National Ambient Air  
32 Quality Standards through stationary source permitting is more stringent than  
33 the practices of other states in the region, thereby discouraging the  
34 expenditure of capital improvement funds for economic development and  
35 environmental improvement projects within the State of Arkansas; and that this  
36 act is immediately necessary to align the policies for implementation of

1 National Ambient Air Quality Standards and the development of state  
2 implementation plans to those of the federal government and other states.  
3 Therefore, an emergency is declared to exist, and this act being immediately  
4 necessary for the preservation of the public peace, health, and safety shall  
5 become effective on:

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

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

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

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13 /s/Caldwell  
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16 **APPROVED: BECAME LAW ON 04/18/2013**Not signed by Governor  
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