

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: S4/1/13

A Bill

SENATE BILL 796

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.
16
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Subtitle

18 TO CLARIFY THE RESPONSIBILITIES OF THE
19 ARKANSAS DEPARTMENT OF ENVIRONMENTAL
20 QUALITY AND THE ARKANSAS POLLUTION
21 CONTROL AND *ECOLOGY* COMMISSION WITH
22 RESPECT TO THE ADOPTION OF STATE
23 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 51.166, as it existed on July 1,
36 2012;



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

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

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

14
15 SECTION 2. Arkansas Code § 8-4-311(a), concerning the powers of the
16 Arkansas Department of Environmental Quality, is amended to add an additional
17 subdivision to read as follows:

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

21
22 SECTION 3. Arkansas Code § 8-4-311(b), concerning the powers of the
23 Arkansas Pollution Control and Ecology Commission, is amended to add an
24 additional subdivision to read as follows:

25 (12) In the case of a state implementation plan, provide the
26 right to appeal a final decision rendered by the Director of the Arkansas
27 Department of Environmental Quality or his or her delegate under § 8-4-317.
28 notice, an opportunity to comment, and a hearing as required by state law and
29 the Clean Air Act, 42 U.S.C. § 7401 et seq.

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, a need for each measure in attaining or maintaining the National
17 Ambient Air Quality Standards, and that any requirements or standards are based
18 upon generally accepted scientific knowledge and engineering practices.

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

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

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

36 (ii) For the purposes of this section, response to

1 comments by the department should serve the roles of both developing the record
2 for possible judicial review of a state implementation plan decision and serving
3 as a record for the public's review of the department's technical and legal
4 interpretations on long-range regulatory issues.

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

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

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

17
18 SECTION 5. Arkansas Code Title 8, Chapter 4, Subchapter 3, is amended
19 to add an additional section to read as follows:

20 8-4-318. National Ambient Air Quality Standards implementation.

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

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

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

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

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

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

13 (A) As required by Part C of Title I of the Clean Air Act,
14 42 U.S.C. § 7401 et seq., and the federal regulations promulgated thereto,
15 for the permitting of major source construction;

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

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

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

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

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

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

1 necessary for the preservation of the public peace, health, and safety shall
2 become effective on:

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

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

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

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/s/Caldwell

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