

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

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

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

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 51.165, 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 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
29 SECTION 4. Arkansas Code Title 8, Chapter 4, Subchapter 3, is amended to
30 add an additional section to read as follows:

31 8-4-317. State implementation plans generally.

32 (a) In developing and implementing a state implementation plan, the
33 Arkansas Department of Environmental Quality shall consider and take into
34 account the factors specified in § 8-4-312 and the Clean Air Act, 42 U.S.C. §
35 7401 et seq., as applicable.

36 (b)(1)(A) Whenever the department proposes to finalize a state

1 implementation plan submittal for review and approval by the United States
2 Environmental Protection Agency, it shall cause notice of its proposed action to
3 be published in a newspaper of general circulation in the state.

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

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

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

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

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

35 (ii) For the purposes of this section, response to
36 comments by the department should serve the roles of both developing the record

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

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

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

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

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

19 8-4-318. National Ambient Air Quality Standards implementation.

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

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

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

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

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

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

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

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

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

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

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

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

24
25 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General
26 Assembly of the State of Arkansas that the current policy of the Arkansas
27 Department of Environmental Quality of implementing the National Ambient Air
28 Quality Standards through stationary source permitting is more stringent than
29 the practices of other states in the region, thereby discouraging the
30 expenditure of capital improvement funds for economic development and
31 environmental improvement projects within the State of Arkansas; and that this
32 act is immediately necessary to align the policies for implementation of
33 National Ambient Air Quality Standards and the development of state
34 implementation plans to those of the federal government and other states.
35 Therefore, an emergency is declared to exist, and this act being immediately
36 necessary for the preservation of the public peace, health, and safety shall

1 become effective on:

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

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

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

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/s/Caldwell

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