



ARKANSAS

ENERGY & ENVIRONMENT

February 27, 2023

United States Environmental Protection Agency
Docket ID No. EPA-HQ-OAR-2021-0527

Re: Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations under Clean Air Act Section 111(d), 87 FR 79176, December 23, 2022

Dear Administrator Regan:

The Arkansas Department of Energy and Environment's Division of Environmental Quality (DEQ) submits the following comments on the Environmental Protection Agency's (EPA) proposed amendments to the Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations under Clean Air Act Section 111(d) (hereinafter "the Proposed Rule").

I. The proposed fifteen months for state plan development and submission is inadequate.

DEQ opposes the proposed fifteen-month state plan limitation because the proposed, compressed timeline is simply not feasible from a technical, administrative, and rulemaking perspective. Preparing an adequate proposal for an Arkansas-specific plan to address the EPA's Proposed Rule would require a significantly greater amount of time and effort to develop than the proposed fifteen months. In Arkansas, the average timeline to develop and submit a state plan to EPA addressing a straightforward and non-controversial requirement is eighteen months. Because of the numerous federal and state administrative procedures required for such an action, plans regarding controversial or complex regulation should reasonably be expected to take longer. DEQ foresees the need for three years for development of most state plans responsive to 111(d) emission guidelines (EGs).

Both the Clean Air Act § 111(d)(1) and EPA's implementing regulations under 40 CFR 60.24a(e) require that states be allowed the opportunity to propose a method other than EPA's Best System of Emission Reductions (BSER) to achieve the required emission reductions (or to propose a standard of performance less stringent than the presumptive standard of performance under a given EG, depending on the affected source's remaining useful life and other factors). In considering how to achieve the required emission reductions under the EG, states must have time to assess all affected sources in light of their remaining useful lives, and other factors, in order to formulate a strategy to achieve the required emissions reductions. This time is in addition to the administrative process for soliciting and responding to comments on draft rules and a draft state plan.

II. EPA should establish a framework for consideration of remaining useful life and other factors rather than establishing firm requirements as proposed.

DEQ opposes the EPA's establishment of firm federal requirements for the application of remaining useful life consideration and other factors (RULOF). Cooperative federalism is intended to allow states the flexibility to develop our own plans for the implementation of federal standards. The consideration of RULOF is meant to provide this flexibility to the states in developing standards of performance for existing sources. To preserve this flexibility, EPA should not establish firm requirements for the application of RULOF. Instead, EPA should provide guidance to the states on RULOF demonstrations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caleb J. Osborne', with a long horizontal flourish extending to the right.

Caleb J. Osborne
Division of Environmental Quality, Director
Chief Administrator of the Environment
Arkansas Department of Energy & Environment