



APPENDIX M

Authority to Adopt and Implement the Plan

Division of Environmental Quality

Office of Air Quality

Document: A.C.A. § 8-1-203

A.C.A. § 8-1-203

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Current through all legislation of the 2020 First Extraordinary Session and the 2020 Fiscal Session (through all legislation enacted and approved in 2020)

[AR - Arkansas Code Annotated](#) [Title 8 Environmental Law](#) [Chapter 1 General Provisions](#) [Subchapter 2 — Powers of the Division and Commission](#)

8-1-203. Powers and responsibilities of the Arkansas Pollution Control and Ecology Commission.

(a) The Arkansas Pollution Control and Ecology Commission shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern.

(b) The commission's powers and duties shall be as follows:

(1)

(A) Promulgation of rules implementing the substantive statutes charged to the Division of Environmental Quality for administration.

(B) In promulgation of such rules, prior to the submittal to public comment and review of any rule or change to any rule that is more stringent than the federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule on the people of the State of Arkansas, including those entities that will be subject to the rule.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required

under subdivision (b)(1)(C) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent rule;

(2) Promulgation of rules and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules governing administrative procedures for challenging or contesting division actions;

(4) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Division of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the division. However, the director shall always remain within the plenary authority of the Governor; and

(8) Upon a majority vote, initiate review of any director's decision.

(c)

(1)

(A) In providing for adjudicatory review as contemplated by subdivisions (b)(4) and (5) of this section, the commission may appoint one (1) or more administrative law judges.

(B) An administrative law judge shall at all times serve as an agent of the commission.

(2) In hearings upon appeals of permitting or grants decisions by the director or contested administrative enforcement or emergency actions initiated by the director, the administrative law judge shall administer the hearing in accordance with procedures adopted by the commission and, after due deliberation, submit his or her recommended decision to the commission.

(3)

(A)

(i) Commission review of any appealed or contested matter shall be upon the record compiled by the administrative law judge and his or her recommended decision.

(ii) Commission review shall be de novo. However, no additional evidence need be received unless the commission so decides in accordance with established administrative procedures.

(B) The commission may afford the opportunity for oral argument to all parties of the adjudicatory hearing.

(C)

(i) By the majority vote of a quorum, the commission may affirm, reverse and dismiss, or reverse and remand to the director.

(ii) If the commission votes to affirm or reverse, such decision shall constitute final agency action for purposes of appeal.

(4) Any party aggrieved by the commission decision may appeal as provided by applicable law.

(d) The Chair of the Arkansas Pollution Control and Ecology Commission may appoint one (1) or more committees composed of commission members to act in an advisory capacity to the full commission.

History

Acts 1991, No. 1230, § 1; 1993, No. 163, § 7; 1993, No. 165, § 7; 1993, No. 1264, § 2; 1995, No. 117, § 1; 2015, No. 838, §§ 1, 2; 2019, No. 315, §§ 437-439; 2019, No. 910, §§ 2432-2434.

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Content Type:**Terms:**

Narrow By: -None-

Date and Time: Sep 23, 2020 12:20:08 p.m. CST

Document: A.C.A. § 8-4-311

A.C.A. § 8-4-311

Copy Citation

Current through all legislation of the 2020 First Extraordinary Session and the 2020 Fiscal Session (through all legislation enacted and approved in 2020)

[AR - Arkansas Code Annotated](#) [Title 8 Environmental Law](#) [Chapter 4 Arkansas Water and Air Pollution Control Act](#) [Subchapter 3 – Air Pollution](#)

8-4-311. Powers generally.

(a) The Division of Environmental Quality or its successor shall have the power to:

(1) Develop and effectuate a comprehensive program for the prevention and control of all sources of pollution of the air of this state;

(2) Advise, consult, and cooperate with other agencies of the state, political subdivisions, industries, other states, the United States Government, and with affected groups in the furtherance of the purposes of this subchapter;

(3) Encourage and conduct studies, investigations, and research relating to air pollution and its causes, prevention, control, and abatement as it may deem advisable and necessary;

(4) Collect and disseminate information relative to air pollution and its prevention and control;

(5) Consider complaints and make investigations;

(6) Encourage voluntary cooperation by the people, municipalities, counties, industries, and others in preserving and restoring the purity of the air within the state;

(7) Administer and enforce all laws and rules relating to pollution of the air:

- (8)** Represent the state in all matters pertaining to plans, procedures, or negotiations for interstate compacts in relation to air pollution control;
- (9)**
 - (A)** Cooperate with and receive moneys from the United States Government or any other source for the study and control of air pollution.
 - (B)** The division is designated as the official state air pollution control agency for such purposes;
 - (10)** Make, issue, modify, revoke, and enforce orders prohibiting, controlling, or abating air pollution, and requiring the adoption of remedial measures to prevent, control, or abate air pollution;
 - (11)** Institute court proceedings to compel compliance with the provisions of this chapter and rules and orders issued pursuant to this chapter;
 - (12)** Exercise all of the powers in the control of air pollution granted to the division for the control of water pollution under §§ 8-4-101 — 8-4-106 and 8-4-201 — 8-4-229; and
 - (13)** Develop and implement state implementation plans provided that the Arkansas Pollution Control and Ecology Commission shall retain all powers and duties regarding promulgation of rules under this chapter.
- (b)** The commission shall have the power to:
 - (1)**
 - (A)** Promulgate rules for implementing the substantive statutes charged to the division for administration.
 - (B)** In promulgation of such rules, prior to the submittal to public comment and review of any rule or change to any rule that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule on the people of the State of Arkansas, including those entities that will be subject to the rule.
 - (C)** The commission shall promptly initiate rulemaking to further implement the analysis required under subdivision (b)(1)(B) of this section.
 - (D)** The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report that shall be available for public review along with the proposed rule in the public comment period.
 - (E)** Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent rule;
 - (2)** Promulgate rules and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;
 - (3)** Promulgate rules governing administrative procedures for challenging or contesting division actions;
 - (4)** In the case of permitting or grants decisions, provide the right to appeal a permitting or grants decision rendered by the Director of the Division of Environmental Quality or his or her delegatee;
 - (5)** In the case of an administrative enforcement or emergency action, provide the right to contest any such action initiated by the director;

- (6)** Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;
- (7)** Make recommendations to the director regarding overall policy and administration of the division, provided, however, that the director shall always remain within the plenary authority of the Governor and the Secretary of the Department of Energy and Environment;
- (8)** Upon a majority vote, initiate review of any director's decision;
- (9)** Adopt, after notice and public hearing, reasonable and nondiscriminatory rules requiring the registration of and the filing of reports by persons engaged in operations that may result in air pollution;
- (10)**
- (A)** Adopt, after notice and public hearing, reasonable and nondiscriminatory rules, including requiring a permit or other regulatory authorization from the division, before any equipment causing the issuance of air contaminants may be built, erected, altered, replaced, used, or operated, except in the case of repairs or maintenance of equipment for which a permit has been previously used, and revoke or modify any permit issued under this chapter or deny any permit when it is necessary, in the opinion of the division, to prevent, control, or abate air pollution.
- (B)** A permit shall be issued for the operation or use of any equipment or any facility in existence upon the effective date of any rule requiring a permit if proper application is made for the permit.
- (C)** No such permit shall be modified or revoked without prior notice and hearing as provided in this section.
- (D)** Any person that is denied a permit by the division or that has such permit revoked or modified shall be afforded an opportunity for a hearing in connection therewith upon written application made within thirty (30) days after service of notice of such denial, revocation, or modification.
- (E)** The operation of any existing equipment or facility for which a proper permit application has been made shall not be interrupted pending final action thereon.
- (F)**
- (i)** An applicant or permit holder that has had a complete application for a permit or for a modification of a permit pending longer than the time specified in the state rules promulgated pursuant to Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. § 7661 et seq., or any person that participated in the public participation process, and any other person that could obtain judicial review of such actions under state laws, may petition the commission for relief from division inaction.
- (ii)** The commission will either deny or grant the petition within forty-five (45) days of its submittal.
- (iii)** For the purposes of judicial review, either a commission denial or the failure of the division to render a final decision within thirty (30) days after the commission has granted a petition shall constitute final agency action;
- (11)**

(A) Establish through its rulemaking authority, either alone or in conjunction with the appropriate state or local agencies, a system for the banking and trading of air emissions designed to maintain both the state's attainment status with the national ambient air quality standards mandated by the Clean Air Act and the overall air quality of the state.

(B) The commission may consider differential valuation of emission credits as necessary to achieve primary and secondary national ambient air quality standards, and may consider establishing credits for air pollutants other than those designated as criteria air pollutants by the United States Environmental Protection Agency.

(C) Any rule proposed pursuant to this authorization shall be reported to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor prior to its final promulgation; and

(12) In the case of a state implementation plan, provide the right to appeal a final decision rendered by the director or his or her delegate under § 8-4-317.

History

Acts 1949, No. 472, [Part 2], § 5, as added by Acts 1965, No. 183, § 7; A.S.A. 1947, § 82-1935; Acts 1993, No. 994, § 1; 1995, No. 895, § 4; 1997, No. 179, § 1; 1997, No. 1219, § 6; 1999, No. 1164, § 31; 2013, No. 1302, §§ 2, 3; 2019, No. 315, §§ 490-499; 2019, No. 910, §§ 2527-2536.

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Document: A.C.A. § 8-4-317

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[AR - Arkansas Code Annotated](#) [Title 8 Environmental Law](#) [Chapter 4 Arkansas Water and Air Pollution Control Act](#) [Subchapter 3 – Air Pollution](#)

8-4-317. State implementation plans generally.

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

(b)

(1)

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

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

(C)

(i) In the case of any emission limit, work practice or operational standard, environmental standard, analytical method, air dispersion modeling requirement, or monitoring requirement that is incorporated as an element of the proposed state implementation plan submittal, the record of

the proposed action shall include a written explanation of the rationale for the proposal, demonstrating the reasoned consideration of the factors

in § 8-4-312 as applicable, the need for each measure in attaining or maintaining the National Ambient Air Quality Standards as applicable, and that any requirements or standards are based upon generally accepted scientific knowledge and engineering practices.

(ii) For any standard or requirement that is identical to the applicable Arkansas Pollution Control and Ecology Commission rule or federal regulation, the demonstration required under subdivision (b)(1)(C)(i) of this section may be satisfied by reference to the rule or federal regulation. In all other cases, the division shall provide its own justification with appropriate reference to the scientific and engineering literature considered or the written studies conducted by the division.

(2)

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

(B)

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

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

(iii) This section does not limit the division's authority to raise all relevant issues of regulatory concern upon adjudicatory review by the commission of a particular state implementation plan decision.

(c)

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

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

History

Acts 2013, No. 1302, § 4; 2017, No. 455, § 2; 2019, No. 315, § 501; 2019, No. 910, §§ 2543-2547.

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Date and Time: Sep 23, 2020 12:17:17 p.m. CST



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