Public Notice
Mississippi Commission on Environmental Quality
P. O. Box 2261
Jackson, MS 39225
Telephone No. (601) 961-5171

Public Notice Start Date: January 23, 2013
Deadline for Comment: February 22, 2013

MDEQ Contact: Jerry Beasley

Please take note that the Mississippi Commission on Environmental Quality (“Commission”) is providing draft information for comment regarding the Mississippi Certification that the State Implementation Plan for the Control of Air Pollution is adequate to comply with the requirements of Section 110(a)(1) and (2) of the Federal Clean Air Act as it pertains to the National Ambient Air Quality Standards for Nitrogen Dioxide as promulgated by the U.S. Environmental Protection Agency (EPA).

Copies of the draft certification may be obtained by writing or calling Joanne Rials at the address and telephone number listed above. The draft certification information is also available for public review from Wednesday, January 23, 2013, through Friday, February 22, 2013, at the main branch of public libraries in cities of Gulfport, Jackson, and Tupelo. For those persons with internet access, the draft certification information may be found on the Mississippi Department of Environmental Quality’s website at http://www.deq.state.ms.us by clicking on Programs; Air Quality; New Information.

Persons wishing to comment on the draft certification are invited to submit comments in writing to Jerry Beasley at the Commission’s address shown above, no later than 5:00 p.m. on Friday, February 22, 2013. All comments received by this date will be considered in preparation of the final submission of the certification information to EPA. A public hearing may be held if the Commission finds a significant degree of public interest in the draft certification.

Please bring the foregoing to the attention of persons whom you know will be interested.
Mississippi Certification
Clean Air Act Section 110(a)(1) and (2)
2010 Nitrogen Dioxide Requirements

This certification addresses Mississippi’s obligations under Section 110(a)(1) and (2) of the Clean Air Act for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards (NAAQS). The following state regulations are part of the State Implementation Plan (SIP) and are referred to in this document:

APC-S-1 Mississippi Commission on Environmental Quality
“Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants”

APC-S-2 Mississippi Commission on Environmental Quality
“Permit Regulation for the Construction and/or Operation of Air Emissions Equipment”

APC-S-3 Mississippi Commission on Environmental Quality
“Mississippi Regulations for the Prevention of Air Pollution Emergency Episodes”

APC-S-5 Mississippi Commission on Environmental Quality
“Mississippi Regulations for the Prevention of Significant Deterioration of Air Quality”

Appendix A-9 Mississippi Code Title 49

Appendix A-10 State Ethics Law as of July 1, 2011 and Mississippi Ethics Commission Advisory Opinion No. 95-042-E, May 5, 1995

Appendix A-11 State Constitution Provisions as of July 1, 2011
Section 110(a)(1)

Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

The submittal of this State Implementation Plan for Mississippi will satisfy the requirements listed above for the primary and secondary nitrogen dioxide standards.

Section 110(a)(2)(A)

Include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.

SIP Appendix A-9, Section 49-17-17(h), provides the Mississippi Department of Environmental Quality (MDEQ) the ability to adopt, modify, or repeal and promulgate ambient air quality standards and emission standards for the state under such conditions as the Mississippi Commission on Environmental Quality (Commission) may prescribe for the prevention, control, and abatement of pollution.

Section 110(a)(2)(B)

Provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

(i) monitor, compile, and analyze data on ambient air quality, and
(ii) upon request, make such data available to the Administrator.

SIP Appendix A-9 Section 49-17-17(g) provides MDEQ with the necessary statutory authority to collect and disseminate information relating to air quality and pollution and the prevention, control, supervision, and abatement thereof. This includes the authority to establish and operate nitrogen dioxide monitoring in accordance with EPA regulations. The “2012 Annual Monitoring Network Plan for Mississippi”, approved by EPA with some amendments, provides the details of the ambient air quality monitoring network, including nitrogen dioxide, in the state.
Section 110(a)(2)(C)

Include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter.

SIP Sections APC-S-5 and APC-S-2, Section V. apply to the construction of any new major stationary source or any existing major stationary sources. SIP Section APC-S-2, Section V. also applies to the construction of minor sources. SIP Section APC-S-2, Section VI. provides for the enforcement of measures described in Section 110(a)(2)(A).

Section 110(a)(2)(D)

Contain adequate provisions—

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility

1. Contribute significantly to nonattainment of NAAQS for areas in another state (Prong 1).

The D.C. Circuit Circuit’s recent opinion in *EME Homer City Generation v. EPA*, 696 F.3e 7,31 (D.C. Cir.2012), concluded that a SIP cannot be deemed to lack a required submission or deemed deficient for failure to meet the 110(a)(2)(D)(i)(I) obligation until after the EPA quantifies that obligation. Therefore, since EPA has not quantified this obligation, Mississippi is not required to meet this requirement at this time.

2. Interfere with maintenance of NAAQS by any other State (Prong 2).

The D.C. Circuit Circuit’s recent opinion in *EME Homer City Generation v. EPA*, 696 F.3e 7,31 (D.C. Cir.2012), concluded that a SIP cannot be deemed to lack a required submission or deemed deficient for failure to meet the 110(a)(2)(D)(i)(I) obligation until after the EPA quantifies that obligation. Therefore, since EPA has not quantified this obligation, Mississippi is not required to meet this requirement at this time.

3. Interfere with measures required to meet the Implementation Plan for any other State related to Prevention of Significant Deterioration (Prong 3).
SIP Section APC-S-5 shows where 40 CFR 52.21 and 40 CFR 51.166 were adopted by reference into the SIP. Therefore, new major sources and major modifications are subject to PSD.

4. **Interfere with measures required to meet the implementation plan for any other State related to Regional Haze and Visibility (Prong 4).**

Mississippi submitted its Regional Haze Implementation Plan to EPA on September 22, 2008.

(ii) *Each such Plan shall [...] contain adequate provisions insuring compliance with the applicable requirements of sections 115 and 126(b) that involve nitrogen dioxide emissions (relating to interstate and international pollution abatement).” EPA has no reason to approve or disapprove any existing state rules with regard to these provisions.*

SIP Section APC-S-5 shows where 40 CFR 51.166 was adopted by reference into the SIP. These regulations require notification of potential impacts from new or modified sources to state and local agencies of neighboring states. Therefore, the SIP meets the requirements of this criterion.

**Section 110(a)(2)(E)**

Provide

(i) *necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof)*

SIP Appendix A-9, Section 49-17-17(d), grants MDEQ statutory authority to accept and administer laws and grants from the federal government and from other sources, public and private, for carrying out any of its functions, which loans and grants shall not be expended for other than the purposes for which provided.

(ii) *requirements that the State comply with the requirements respecting State boards under section 128 of this title.*

EPA proposed to approve in part, and disapprove in part, a draft revision of this section for the 1997 annual and 2006 24-hour PM$_{2.5}$ NAAQS infrastructure SIP submitted by MDEQ on July 13, 2012. EPA proposed to approve the MDEQ submission as it related to the public interest requirements of Clean Air Act (CAA) Section 128(a)(1) and the conflict of interest disclosure provisions of CAA Section 128(a)(2). EPA also proposed to disapprove the submission as it pertained to compliance with the significant portion of income requirements of CAA Section 128(a)(1). These EPA actions are detailed in Federal Register Vol. 77, No. 154, 47573. The MDEQ submission is stated below.
SIP Appendix A-9, Section 49-17-17(a), states that the Mississippi Commission on Environmental Quality shall have powers and duties to issue and supervise enforcement orders. SIP Appendix A-9, Section 49-17-28, states the Mississippi Department of Environmental Quality (MDEQ) Permit Board has the power to issue, modify, revoke, or deny permits. These are the only boards that have authorization to issue enforcement orders and permits.

MDEQ is proposing that provisions of the Mississippi State Constitution and of the Mississippi Code are substantially equivalent to the requirements of the Federal Program by providing for unbiased decisions of the Commission on all matters, including final decisions on permits, and the disclosure of any potential conflicts of interest.

SIP Appendix A-11, Article 4, Section 109 of the Mississippi Constitution provides “No public officer or member of the legislature shall be interested, directly or indirectly, in any contract with the state, or any district, county, city, or town thereof, authorized by any law passed or order made by any board of which he may be or may have been a member, during the term for which he shall have been chosen, or within one year after the expiration of such term.” Simply being a commission member constitutes a violation of Constitutional Section 109 regardless of voting or not voting if the interest being voted on is a contract prohibited by the provision. Thus, there can be no Commission member with any interest in a governmental contract with the agency.

In addition to the Constitutional prohibition, Mississippi has an ethical charter set forth in SIP Appendix A-10 Mississippi Code Section 25-4-101, et. seq. These Code sections define the terms used and prohibit conflicts of interests by Commission members.

SIP Appendix A-10 Mississippi Code Section 25-4-103 provides the following definitions, in pertinent part:

(b) “Benefit” means any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

(c) “Business” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, self-employed individual, joint-stock company, receivership, trust or other legal entity or undertaking organized for economic gain, a nonprofit corporation or other such entity, association or organization receiving public funds.

(d) “Business with which he is associated” means any business of which a public servant or his relative is an officer, director, owner, partner, employee or is a holder of more than ten percent (10%) of the fair market value or from which he or his relative derives more than Two Thousand Five Hundred Dollars ($2,500.00) in annual income or over which such public servant or his relative exercises control.

(f) “Contract” means:
(i) Any agreement to which the government is a party; or

(ii) Any agreement on behalf of the government which involves the payment of public funds.

(g) “Government” means the state and all political entities thereof, both collectively and separately, including, but not limited to:

(v) Any department, agency, board, commission, institution, instrumentality, or legislative or administrative body of the state, counties or municipalities created by statute, ordinance or executive order including all units that expend public funds.

(h) “Governmental entity” means the state, a county, a municipality or any other separate political subdivision authorized by law to exercise a part of the sovereign power of the state.

(l) “Pecuniary benefit” means benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain. Expenses associated with social occasions afforded public servants shall not be deemed a pecuniary benefit.

(p) “Public servant” means:

(i) Any elected or appointed official of the government;

(ii) Any officer, director, commissioner, supervisor, chief, head, agent or employee of the government or any agency thereof, or of any public entity created by or under the laws of the State of Mississippi or created by an agency or governmental entity thereof, any of which is funded by public funds or which expends, authorizes or recommends the use of public funds; or

(iii) Any individual who receives a salary, per diem or expenses paid in whole or in part out of funds authorized to be expended by the government.

SIP Appendix A-10 Mississippi Code Section 25-4-105(1), (3) and (5) state, in pertinent part:

(1) No public servant shall use his official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated.
(3) No public servant shall:

   (d) Perform any service for any compensation during his term of office or employment by which he attempts to influence a decision of the authority of the governmental entity of which he is a member.

(5) No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information.

The interests of each of the Board member are made public by the required filing of a statement of economic interest pursuant to SIP Appendix A-10 Mississippi Code Section 25-4-25, which provides in pertinent part:

Each of the following individuals shall file a statement of economic interest with the commission in accordance with the provisions of this chapter:

   (e) Members of any state board, commission or agency, including the Mississippi Ethics Commission, charged with the administration or expenditure of public funds, with the exception of advisory boards or commissions; provided, however, in order to fulfill the legislative purposes of this chapter, the commission may require, upon a majority vote, the filing of a statement of economic interest by members of an advisory board or commission;

   (f) Executive directors, heads, or members of any board, committee, commission or council of any of the following entities, by whatever name designated:

The application of the above referenced statutes has been addressed by the Mississippi Ethics Commission in SIP Appendix A-10 Advisory Opinion 95-042-E, as follows:

State commission members [should] not use their official positions to obtain a pecuniary benefit for themselves, their relatives or any business with which they are associated in violation of SIP Appendix A-10 Code Section 25-4-105(1).

Public servants must keep the performance of their official duties entirely separate and distinct from any private interests. In order for the private interests to remain separate and distinct, public servants must recuse themselves from discussing or acting on any subject matter in which they have a pecuniary interest.

A proper recusal occurs when the public servant totally removes himself or herself from the pertinent matter by not officially or unofficially taking part or
action regarding the subject matter and leaves the room or area where such
discussions, considerations or actions take place. The minutes of the state
commision should state that the member left the meeting by showing him or her
absent for that matter.

A commission member(s) should not vote on or take part in a matter
concerning regulations or licensing restrictions that would affect the pecuniary
interest and/or benefit of the commission member, a relative or a business in
which he or she is associated.

Violations of SIP Appendix A-10 Code Section 25-4-105 are punishable in accordance with SIP
Appendix A-10 Code Sections 25-4-109, which provides in pertinent part:

(1) Upon a finding by clear and convincing evidence that any elected public
servant or other person has violated any provision of this article, the
commission may censure the elected public servant or impose a civil fine
of not more than Ten Thousand Dollars ($10,000.00), or both. The
commission may further recommend to the Circuit Court for Hinds
County that the elected public servant be removed from office.

(2) Upon a finding by clear and convincing evidence that any nonelected
public servant has violated any provision of this article, the commission
may censure the nonelected public servant or impose a civil fine of not
more than Ten Thousand Dollars ($10,000.00), or both. The commission
may further recommend to the Circuit Court for Hinds County that the
nonelected public servant be removed from office, suspended, or subjected
to a demotion or reduction in pay.

(3) The commission may order restitution or other equitable or legal remedies
to recover public funds or property unlawfully taken, as well as unjust
enrichment, although not public funds. Any pecuniary benefit received by
a public servant in violation of this article may be declared forfeited by the
commission for the benefit of the governmental entity injured.

(4) In the event a public servant does not appeal the decision or
recommendation of the commission, the commission may petition the
Circuit Court for Hinds County for the removal, suspension, demotion or
reduction of pay of the public servant as provided by law.

Under the provisions of its Ethics laws, members of the Mississippi Commission on
Environmental Quality and the MDEQ Permit Board are considered public servants, bound by all
the provisions of the State’s Ethics laws. It is clear that members of the Commission and Permit
Board are prohibited taking any action in their personal interests, on penalty of removal,
sanction, fines and restitution orders.

MDEQ is proposing that SIP Appendix A-10 Code Sections 25-4-25, as stated above, 25-4-27
and 25-4-29 meet the requirements of Clean Air Act Section 128(a)(2). As aforesated, Code
Section 24-4-25 provides for the filing of a statement of economic interest by every Commission member. Code Section 25-4-27(a) through (f) define the information required to be submitted by filers of the statement of economic interest. The MDEQ Executive Director, the Mississippi Commission on Environmental Quality, and the MDEQ Permit Board are required to file such statements. The failure to file such a statement is addressed in Code Section 25-4-29(2), which sets a monetary penalty for failing to file.

(i) Mississippi proposes that the combination of SIP Appendix A-11 Mississippi Constitution, Article 4, Section 109, and the SIP Appendix A-10 Mississippi Code Sections of the State’s ethical charter is substantially equivalent to the requirements of the Federal program by providing for unbiased decisions of the Board on all matters, including final decisions on permits, and the disclosure of any potential conflicts of interest.

(iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision.

SIP Appendix A-9, Section 49-17-17(h), provides for authority under State law to carry out its SIP and related issues. The State does not rely on a local regional government, agency, or instrumentality for the implementation of any plan provision.

**Section 110(a)(2)(F)**

Require, as may be prescribed by the Administrator—

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

SIP Appendix A-9, Section 49-17-21, states that the Commission may require the installation, maintenance, and use of such monitoring equipment and methods at such locations and intervals as the Commission deems necessary.

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

SIP Section APC-S-2, Section VI lists requirements for compliance testing and reporting that is required to be included in any MDEQ air pollution permit.

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection.

SIP Appendix A-9, Section 49-17-21, states that MDEQ has the authority to require the maintenance of records related to the operation of air contaminant sources and any authorized representative of the Commission may examine and copy any such records or memoranda pertaining to the operation of such contaminant source. SIP Section APC-S-2, Section IX
requires that copies of records relating to the operation of air contamination sources shall be submitted to the Permit Board as required by the permit or upon request.

**Section 110(a)(2)(G)**

*Provide for authority comparable to that in section 303 of this title and adequate contingency plans to implement such authority.*

SIP Appendix A-9, Section 49-17-27, states that in the event an emergency is found to exist by the Commission, it may issue an emergency order as circumstances may require.

SIP Section APC-S-3 states then the MDEQ Director determines that an Air Pollution Emergency Episode condition exists at one or more monitoring sites solely because of emissions from a limited number of sources, he may order such source or sources to put into effect the emission control programs which are applicable for each episode stage. SIP Section APC-S-3 also lists regulations to prevent the excessive buildup of air pollutants during air pollution episodes.

**Section 110(a)(2)(H)**

*Provide for revision of such plan—*

(i) *from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and*

(ii) *except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter.*

(i) SIP Appendix A-9, Section 49-17-17(h) provides MDEQ with the necessary statutory authority to revise the SIP to accommodate changes to the NAAQS.

(ii) SIP Appendix A-9, Section 49-17-17(h) provides MDEQ with the necessary statutory authority to revise the SIP if the Administrator finds the plan to be substantially inadequate to attain the NAAQS.

**Section 110(a)(2)(I)**

*In the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas).*

Currently, Mississippi is in attainment with the nitrogen dioxide NAAQS. However, if the State is designated as nonattainment in the future, SIP Appendix A-9, Section 49-17-17, provides MDEQ with the necessary statutory authority to revise the SIP.
**Section 110(a)(2)(J)**

Meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection).

SIP Section APC-S-5, in addition to provisions in separate implementation plans (such as the Regional Haze Implementation Plan) provide for continued consultation with government officials. SIP Appendix A-9, Section 49-17-17(c), provides MDEQ with the necessary statutory authority to advise, consult, cooperate, or enter into contracts, grants, and cooperative agreements with any federal or state agency or subdivision thereof.

MDEQ has public notice mechanisms in place to notify the public of nitrogen dioxide. Certain regulatory actions may also be published in newspapers and/or public hearings. SIP Section APC-S-3 requires that MDEQ notify the public of any air pollution alert, warning, or emergency.

SIP Section APC-S-5 addresses PSD applicable requirements of Part C. The Regional Haze Implementation Plan addresses visibility protection applicable requirements of Part C.

**Section 110(a)(2)(K)**

Provide for—

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

SIP Sections APC-S-2, V.B. and APC-S-5 require that air modeling be conducted to determine permit applicability.

**Section 110(a)(2)(L)**

Require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator’s approval of a fee program under subchapter V of this chapter.

SIP Appendix A-9, Section 49-17-30, provides for the assessment of Title V permit fees to cover these costs.
Section 110(a)(2)(M)

Provide for consultation and participation by local political subdivisions affected by the plan.

SIP Appendix A-9, Section 49-17-17(c), gives the Commission the statutory authority to advise and consult with any political subdivisions in the State. SIP Appendix A-9, Section 49-17-19(b) requires the Commission to conduct public hearings in accordance with EPA regulations prior to establishing, amending, or repealing standards of air quality.