

Time: 1:00 p.m. – 3:00 p.m.

Location: DEQ Headquarters, 4th Floor Large Conference Room

Attendees: Mark Allison – DDH
Stan Chivers – Entergy
Ann Faitz – Faitz Law Firm, PLLC
Courtney Garland – Trinity Consultants
Kelly Jobe – Division of Environmental Quality (DEQ), Office of Air Quality – Policy and Planning
Will Montgomery – DEQ, Office of Air Quality – Policy and Planning
Paula Parker – DEQ, Office of Air Quality – Permits
Iris Pennington – DEQ, Office of Air Quality – Policy and Planning
Tricia Treece – DEQ, Office of Air Quality – Policy and Planning
David Triplett – Entergy Arkansas
Jacob Wesson – Flywheel Energy

OPENING

DEQ Policy and Planning staff opened the meeting at 1:00 p.m. Staff explained a need to put the workgroup meetings on hiatus until around Spring 2020 due to a number of recent state and federal actions that require rulemaking. DEQ staff proposed to include a number of the changes that the workgroup has previously discussed and may be in agreement about. During the meeting, the workgroup worked from the *Proposal to Incorporate Certain EASE Workgroup Changes into Upcoming Rulemakings* document that DEQ staff emailed out last week and discussed provisions incorporated by reference in Regulation 26.

Caveat: At least one of the workgroup members indicated that tentative consensus on various proposed changes were in principle and that a review of the actual language of the changes and discussion with other affected parties is necessary to determine the acceptability of these changes.

MEETING AGENDA

1. Potential Timeline for Implementation

DEQ introduced the draft timeline below to the workgroup for rulemakings for Regulations 18, 19, 26, and 31 with the caveat that this timeline is subject to change.

Strawman Draft Development	August–September 2019
Pre-Proposal Stakeholder Feedback	October–December 2019
Petition for Initiation Package Development	January–February 2020
Rulemaking Initiation	March 2020
Public Comment Period and Hearing	April 2020
Response to Comments	May 2020–July 2020
Legislative Review	August–September 2020

Adoption

October 2020

The workgroup expressed concern that the timeline might interfere with implementation of the Affordable Clean Energy (ACE) Rule and Regional Haze planning period II requirements. DEQ considered multiple factors when drafting the timeline, including many of the changes not being substantive, concurrent dockets for multiple rulemaking projects, the timeline being informal and changeable, and any EASE proposal being seen as controversial. It will probably be October before DEQ has a more concrete picture of how this timeline may change due to Regional Haze and ACE planning needs.

DEQ plans to release strawman drafts of each rule for feedback beginning in early October.

2. **Reduce redundancies between Rule 18 and other APC&EC Rules**

Because members of the group expressed concerns regarding the vagueness of this topic, DEQ staff opened a mark-up strawman version of Rule 18 to provide a flavor for the extent of suggested changes, including

- Removal of Appendix B because of its repetitiveness to Rule 19
- Incorporation by references of certain definitions in Rule 19 like National Ambient Air Quality Standards (NAAQS)
- Addition of definition for Business Day
- Removal of the need to go to Regulation 8 to interpret how laws are incorporated by reference.

Concerns and observations that came from the group included maybe using capitalization of a word to signify its presence in the definitions, changes to the definition of Title I modification, and that referring to definitions outside of Rule 18 might cause other problems, and Rule 18 being approved before the revised Rule 8.

DEQ will consider methods to make words from the definitions stand out in the text. Rule 18.105 fixes the issue of potentially causing problems by referring to definitions outside of Rule 18.

The workgroup inquired about the status of Reg. 8. The Office of Air Quality is not involved in rulemaking for Reg. 8.

In addition to the redundancies, DEQ has been looking at occurrences of personification, use of undefined terms (air contaminant vs air pollution), ambiguity, etc. DEQ plans to make certain non-substantive changes for consistency with the 2010 BLR drafting manual and will mention this in the petition to initiate documents.

3. **Simplify Incorporation by References where Possible**

Previously discussed in an earlier EASE meeting and based on the discussion will be included in the strawman draft for pre-proposal feedback.

4. Update Incorporation by References in PSD Chapter

Discussed in an earlier EASE meeting and the certain of the updates will be included in the strawman draft for pre-proposal feedback. DEQ will not update the items that there were particular concerns/questions about.

5. Add Chemical Names and make corrections to VOC List.

The Rule needs to be updated to reflect the names of two chemicals t-Butyl Acetate and cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mz-Z). At the request of former Commissioner Stites some other chemical names need to be corrected. These changes will be included for discussion purposes in the strawman draft.

6. Outdated Transition Provisions

Provisions such as Regulation 18.311 and Regulation 19.409 that require facilities subject to the regulations to be in full compliance within 180 days are outdated since it has been more than 180 days since these regulations were initial promulgated. The provisions will be stricken in the strawman draft.

7. Rule 18.1104 – Department’s Authority

The workgroup discussed that this provision may not be necessary to preserve the Department’s authority. It will be stricken in the strawman draft.

8. Greenhouse Gas Tailoring Rule provisions

The workgroup was curious as to whether there had been conversations with EPA about pulling out non-PSD elements. DEQ has discussed this with EPA several times over the last two to three years. However, there has never been a sense of urgency to act on it.

The workgroup expressed concern of the EPA’s approval of a current SIP containing recession language. However, by reading Rule 19.104 it became apparent that leaving in rescission language could impact the implementation of future rules such as ACE. The conversation expanded to discuss the scope of GHG rescission clause. Caution was advised because of the EPA’s history of approving then changing positions. This will be a follow-up item when DEQ prepares for initiation changes for the purpose of implementing ACE. Changes to the rescission clause to follow more recent EPA recommendations for rescission clauses may be necessary to ensure approvability if this provision is modified for consistency with the ACE plan.

DEQ will include suggested changes to address the vacatur of the Greenhouse Gas Tailoring Rule Step 2 in the strawman draft, but will not remove the rescission clause.

The workgroup discussed the similarities in the definition of regulated air pollutant as found in Rule 26 and federally-regulated air pollutant as found in Rule 19. Given the changes necessary to reflect the vacatur of the Greenhouse Gas Tailoring Rule, it may be possible to consolidate the terms on a single definition. A change to reflect this will be included in the strawman draft for discussion purposes.

9. Rule 19, Chapter 10 – Pulaski County VOC regulations

Based on the workgroup discussion, DEQ will include removal of the VOC chapter in the strawman draft for pre-proposal feedback.

10. Rule 19.1803 – Sulfuric Acid Plants (111(d))

The only sulfuric acid plant that was subject to the regulation is no longer subject. The consensus was to remove the provision in the strawman draft for pre-proposal feedback.

11. Reduction in the Frequency of TRS testing requirements for 111(d) subject sources

The AEF requested this change.

Based on the workgroup discussion, DEQ will include this change in the strawman draft for Rule 19 for pre-proposal feedback.

12. Rule 19.804(C) – Kraft Pulp Mills (Continuous Monitoring Requirements)

Need to make changes to facilities listed in this section.

Based on the workgroup discussion, DEQ will include this change in the strawman draft for Rule 19 for pre-proposal feedback.

13. Rule 19, Chapter 14 – Clean Air Interstate Rule (CAIR)

The Clean Air Interstate Rule has been replaced by the Cross-State Air Pollution Rule, which invalidates Chapter 14.

Based on the workgroup discussion, DEQ will include removal of Chapter 14 in the strawman draft for Rule 19 for pre-proposal feedback.

14. Rule 19, Chapter 15 – Non-regulatory and disapproved portions of Regional Haze Program

19.1505 currently contain two “A” bullets. DEQ will include removal of the non-regulatory portions of Chapter 15 and retain the SIP approved pieces as well as clean up any typos such as the double “A” bullets in the strawman draft for pre-proposal feedback.

15. Rule 26 Incorporation by Reference

Many of Rule 26 provisions include incorporation by reference dates that are obsolete. The following are the tentative recommendations of the workgroup to include in the pre-proposal strawman draft:

26.102: Strike “as promulgated July 21, 1992 and last modified November 27, 2001,” then continue with the rest of the sentence.

Chapter 2 Definitions

Act: Strike “as amended by July 23, 1993” and end the sentence.

CO2 Equivalent Emissions: Strike entire definition.

Part 70 program or *State program*: Strike “ as promulgated July 21, 1992, and last modified November 27, 2001” and end the sentence. Then consolidate the two terms on a single term

26.303(B): Strike “as of July 23, 1993.” The workgroup discussed whether DEQ should actually consider striking the whole provision because residential wood heaters would not be subject. The workgroup decided to retain the provision with the date removed just to make it clear that they are not subject.

26.303(C): Strike “as of July 23, 1993.” The workgroup discussed whether DEQ should actually consider striking the whole provision because asbestos would not be subject to this regulation. The workgroup decided to retain the provision with the date removed just to make it clear that they are not subject.

26.401: Strike “as promulgated June 3, 2010 (75 FR 31607),” then continue the sentence.

26.603(B): Strike “, as promulgated July 21, 1992, and last modified June 3, 2010 (75 FR 31607)” then end sentence.

26.604(B): Strike “,as promulgated July 21, 1992, and last modified June 3, 2010 (75 FR 31607)” then end sentence.

The workgroup also asked for clearer language in this provision.

26.803: Strike “as promulgated July 21, 1992, and last modified June 3, 2010 (75 FR 31607),” then continue sentence.

26.1101: Strike “as promulgated July 21, 1992, and last modified June 3, 2010 (75 FR 31607),” then continue sentence.

26.1202: Strike “as in effect on October 15, 1999,” then continue sentence.

The effect of removal of these dates is that the wording that is incorporated by reference would be incorporated as of the effective date of the Arkansas Pollution Control and Ecology Regulation.

TOPICS FOR NEXT MEETING

The workgroup did not discuss topics for the next meeting. The workgroup will go on hiatus until completion of certain rulemaking that are required by law to be implemented.

DEQ informed the workgroup that the next meeting will occur after the APC&EC initiates rulemaking on the proposed set of clean up items in addition to certain other changes required by law.

FOLLOW-UP ITEMS

DEQ will notify EASE collaborative participants when a copy of the strawman draft is available on the webpage.

The Office of Air Quality will speak with Legal about allowed methods of identifying defined terms in the text and referencing the 2010 Legislative Drafting Manual.

CLOSING

DEQ expressed their appreciation for the workgroup member's participation in review of the air regulations.

The meeting adjourned at 2:51 p.m.