

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

**IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 19,)
REGULATIONS OF THE ARKANSAS PLAN OF)
IMPLEMENTATION FOR AIR POLLUTION)
CONTROL)**

DOCKET NO. 16-001-R

Secretary
Arkansas Pollution Control and Ecology
101 East Capitol, Suite 205
Little Rock, AR 72201
Filed 9/14/18 *PLC*

**MOTION TO WITHDRAW RULEMAKING FOR REGULATION NO. 19,
REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR
POLLUTION CONTROL**

Comes now the Arkansas Department of Environmental Quality (ADEQ), by and through Stuart Spencer, Associate Director for the Office of Air Quality, and for its Motion to Withdraw Petition to Initiate Rulemaking to Amend Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control states:

1. On April 15, 2016, the Arkansas Department of Environmental Quality (ADEQ) filed a Petition to Initiate Rulemaking to Amend Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control. The Petition has been designated as Docket No. 16-001-R.

- (a) The purpose of the rulemaking was to revise Reg. 19.602 and Reg. 19.1004(H) in order to comply with EPA's finding that these provisions are substantially inadequate to meet Clean Air Act (CAA) requirements and to address EPA's State Implementation Plan (SIP) call to amend provisions applying to excess emissions during periods of startup, shutdown and malfunction. (80 FR 33840). The following additional revisions were included in this proposed rulemaking: Repeal of Chapter 14, CAIR NOx Ozone Season Trading Program General Provisions. EPA replaced the Clean Air Interstate Rule (CAIR) with the Cross-State Air Pollution Rule (CSAPR) on August 8, 2011. (76 FR 48208). CSAPR took effect

on January 1, 2015. Therefore, CAIR is no longer in effect.

(b) Addition of definition of “Direct PM_{2.5} emissions” to Chapter 2 to ensure consistency with the EPA’s “Clean Air Fine Particle Implementation Rule.” (72 FR 20664).

(c) Addition of t-Butyl Acetate to the list of compounds determined to have negligible photochemical reactivity in the definition of “Volatile organic compounds” in Chapter 2. This addition was prompted by EPA’s promulgation of the federal rule, “Air Quality: Revision to the Regulatory Definition of Volatile Organic Compounds—Requirements for t-Butyl Acetate. (81 FR 9339).

2. Non-substantive revisions were proposed to Regulation No. 19 as follows:

(a) Revisions for the correction of typographic errors at Reg. 19.405(B)(4) and 19.407(C)(2).

(b) Revisions for clarification and correction of typographic errors and letters in the list at Reg. 19.601.

3. On April 29, 2019, the Arkansas Pollution Control and Ecology Commission (APC&EC or Commission) granted ADEQ’s Petition to Initiate Rulemaking to Amend Regulation No. 19. The notice of public hearing was published on May 4–5, 2016, with the public hearing held on June 6, 2016, at ADEQ Headquarters in North Little Rock, Arkansas, and the public comment period expired on June 20, 2016.

4.

The public notice, public hearing, and public comment period of the regulatory amendments have been completed. However, the primary federal action that triggered the necessity of this rulemaking—“State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying

to Excess Emissions During Periods of Startup, Shutdown, and Malfunction” (SSM SIP Call)—has experienced a myriad of challenges, including petitions for reconsideration and litigation. The Arkansas Attorney General joined in a lawsuit challenging EPA’s action. Oral arguments in the legal challenge to EPA’s SSM SIP Call were originally scheduled for May 8, 2017; however, the current EPA administration requested that the oral arguments be extended to provide adequate time for the appropriate time to fully review the SSM SIP Call. EPA indicated that the prior positions taken by the Agency with respect to the SSM SIP Call “may not necessarily reflect its ultimate conclusions after [their review of that action] is complete.” To date, neither the current EPA administration nor the lawsuit has moved forward towards any resolution. ADEQ anticipates that EPA’s policy with respect to startup, shutdown, and malfunction may change and that any such change would require revisions to the amendments contained in the this rulemaking. Such changes would necessitate an additional public comment period. Therefore, ADEQ finds that the previously proposed rulemaking is not prudent at this time and requests that the rulemaking be withdrawn.

WHEREFORE, ADEQ respectfully requests that the Motion to Withdraw Petition to Initiate Rulemaking to Amend Regulation No. 19 be granted by adopting the attached Minute Order.

Respectfully submitted,



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