

**BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

In the Matter of Amendments to Regulation No. 18, Arkansas Air Pollution Control Code)))	DOCKET NO. 14-009-R
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In the Matter of Amendments to Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control))))	DOCKET No. 14-010-R
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In the Matter of Amendments to Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program))))	DOCKET No. 14-011-R
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**COMMENTS OF THE ENERGY AND ENVIRONMENTAL ALLIANCE OF
ARKANSAS AND ITS MEMBERS CONCERNING THE PROPOSED
AMENDMENTS TO REGULATIONS 18, 19 and 26**

I. Introduction and Executive Summary

The Energy and Environmental Alliance of Arkansas (“EEAA”) and its individual members¹ appreciate the opportunity to provide the following comments on the proposed revisions to Arkansas Pollution Control and Ecology Commission (“Commission”) Regulations 18, 19 and 26 (collectively, the “Regulations”) that were proposed by the Arkansas Department of Environmental Quality (“ADEQ”) as part of a rulemaking initiated by the Commission on December 5, 2014. These comments are timely, as they were filed prior to the extended deadline of February 17, 2015.

The EEAA is an ad-hoc collaboration of Arkansas’ investor-owned, co-operative, municipal, and independent electric utilities and other energy companies formed to advocate, communicate and encourage energy and environmental policies that promote sound and predictable regulation of Arkansas’ utility industry and support an economically viable and

¹ The members of EEAA are: AEP/Southwestern Electric Power Company, Arkansas Electric Cooperative Corporation, Arkansas Municipal Power Association, Conway Corporation, Empire District Electric Company, Entergy Arkansas, Inc., Jonesboro City Water & Light, North Little Rock Electric, Oklahoma Gas & Electric Company, Plum Point Services Company, LLC, and West Memphis Utility Commission.

environmentally secure future for all Arkansans, including access to reliable and affordable energy resources. The EEAA and its members therefore have strong interests in the proposed revisions to the Regulations and the implementation of the National Ambient Air Quality Standards (“NAAQS”)² proposed for adoption as part of the aforementioned rulemakings. The EEAA members are all regulated under Regulations 18, 19, and 26, and all own or operate sources that emit one or more of the pollutants that will be subject to the new NAAQS should the Commission approve the proposed revisions at issue.

EEAA generally supports the incorporation of the new standards into the State air pollution control regulations, and recognizes that the Commission has an obligation to do so in the normal course of federal-state regulatory affairs to avoid imposition of a federal implementation plan (“FIP”).³ However, EEAA also recognizes that the Commission and ADEQ have an obligation under the CAA and the Arkansas Water & Air Pollution Control Act to develop a comprehensive State Implementation Plan (“SIP”) for attainment and maintenance of the NAAQS. [CITE 51.161 and 8-4-318]

II. **Comments That Are Common to the Proposed Revisions to Regulations 18, 19, and 26**

A. The NAAQS Should Be Implemented Through SIP Development in Accordance with the Clean Air Act

The CAA requires that SIPs provide a pre-construction review process for new sources and modifications of existing sources that includes legally-enforceable procedures including the basis for determining the types and sizes of construction or modifications which will be subject to review, an application process disclosing the nature and amounts of emissions to be emitted, the permit approval and public-participation process, and the air quality data that will be used to facilitate such review. [51.160] To “implement” the NAAQS, the state must follow the process set forth in the CAA for SIP development, a process which requires the state to look at a variety of tools (from economic incentives to emissions standards) that can be applied to a range of sources (large and small, mobile and stationary), to meet the NAAQS.

² PM_{2.5}, PM₁₀, ozone, lead, nitrogen dioxide (“NO₂”), and sulfur dioxide (“SO₂”)

³ See 42 U.S.C. § 7410(a)(2), (c).

Congress set forth the basic parameters for SIP development in light of new or revised NAAQS.⁴ In its regulations implementing the CAA requirements, EPA has emphasized that states should consider a wide range of options and their potential benefits while developing their SIPs. The development process is not intended to focus solely on large stationary sources, as those sources are already covered by the New Source Performance Standards (“NSPS”), National Emission Standards for Hazardous Air Pollutants (“NESHAP”), and Prevention of Significant Deterioration (“PSD”)/Nonattainment New Source Review (“NNSR”) programs.⁵ Instead, relevant “control strategies” apply to all types of sources, stationary and mobile, and include but are not limited to:

- Economic incentive or disincentive programs;
- Scheduling, relocation, and closure programs;
- Mobile source inspection and maintenance programs;
- Fuel or fuel additive programs for mobile sources; and
- Emissions limitations on stationary sources.⁶

EPA further stipulates that nothing in its regulations should be construed, among other things, “[t]o encourage a State to adopt any particular control strategy without taking into consideration the cost-effectiveness of such control strategy in relation to that of alternative control strategies,” “[t]o encourage a State to prepare, adopt or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan,” or “[t]o encourage a State to adopt a control strategy uniformly applicable throughout a region unless there is no satisfactory alternative way of providing for attainment and maintenance of a national standard throughout such region.”⁷

These factors are echoed by some of the factors that the Arkansas legislature requires the Commission to consider when exercising its powers and responsibilities. For example, Ark. Code Ann. § 8-4-312(12) requires the Commission to consider “[i]nterference with reasonable enjoyment of life by

⁴ See 42 U.S.C. § 7410(a)(2)(A), (F).

⁵ The NSPS, NESHAP and PSD/NNSR programs apply directly to sources, depending on the pollutants at issue and their attainment status at the source location, through case-by-case application of best available technology or lowest achievable emission rates.

⁶ 40 C.F.R. § 51.100(n).

⁷ 40 C.F.R. § 51.101.

persons in the area and conduct of established enterprises that can reasonably be expected from air contaminants,” a factor it can only truly explore through the SIP development process. It is information from the SIP development steps that will inform the Commission whether emissions are interfering with business and human health and help ADEQ determine what steps to propose to maintain (or, where needed, to achieve) compliance with the new NAAQS.

B. Use of the Terms “State Implementation Plan” and “Plan” Should Be Consistent Across Regulations

Existing regulations include a definition of “Plan” in Chapter 2 of Regulation 19 which states that term means the Arkansas Plan of Implementation for Air Pollution Control. However, there are instances across Regulations 18, 19 and 26 where the terms “Plan”, “State Implementation Plan”, and “Regulation 19” appear to be used interchangeably (*see, e.g.*, introduction paragraph to Chapter 2 of Regulation 26). Recognizing that these terms are not necessarily interchangeable and that neither Regulation 19 nor Regulation 26, individually or collectively, encompasses the full scope of the Arkansas State Implementation Plan, the Commission should review the use of those terms throughout Regulations 18, 19 and 26 for consistency and to ensure that those terms are appropriately incorporated.

III. **Comments on Proposed Revisions to APC&EC Regulation No. 18**

A. Proposed Revisions Require an Environmental and Economic Benefit Analysis

Regulation No. 18 is Arkansas’ “state-only” air pollution regulation and its provisions are not federally enforceable as part of an EPA-approved SIP. As such, no changes are required to comply with federal requirements. Although the proposed revisions to Regulation No. 18 may be desirable for the sake of consistency, they are not required for Arkansas to retain delegation of the federal air program.

Arkansas statute requires that, when changes to any rule or regulation are proposed that are more stringent than federal requirements, the Commission must consider the economic impacts in the environmental benefits of such rules or regulations. Ark. Code Ann. § 8-4-311(b)(1)(B). Because the proposed revisions to Regulation No. 18 are not required to comply with federal requirements, the Commission is mandated to undertake an appropriate environmental and economic benefit analysis.

B. Proposed Revisions Not Exempt from Small Business Administration Act Requirements

Item number 3 of the Questionnaire for filing proposed rules and regulations with the Arkansas Legislative Council and Joint Interim Committee states that the proposed amendments to Regulation No. 18 are “required to comply with a federal statute, rule, or regulation”, and therefore are exempt from the requirements of the Small Business Administration Act, Ark. Code Ann. § 25-15-301 et seq. However, as discussed above, the proposed revisions to Regulation No. 18 are not required by federal law and do not codify existing federal law. As such, in the event Regulation No. 18 is revised, Arkansas statute requires completion of a proper economic impact statement with respect to the effects that the proposed revisions to Regulation No. 18 will have on small businesses.

C. *De minimis* Changes Should Consider Corresponding Emissions Reductions

In the event Regulation No. 18 is revised, in order to maintain uniformity and consistency between Regulation Nos. 18 and 19, the proposed revision to Regulation 18.307(C)(2) should correspond to the proposed revision to Regulation 19.407(C)(2). Specifically, Regulation 18.307(C)(2) should be revised as follows:

The environmental impact of a proposed change generally will be considered trivial if the ~~potential emissions increase from the change alone, without taking into account any corresponding emission reductions,~~ will:

Additionally, to maintain consistency and uniformity across Regulations 18, 19 and 26, in the event it is revised, Regulation 18 should be amended to add a definition of “emission increase” consistent with that found in Regulations 19 and 26 (*see* Comments IV.B. and V.A., below).

D. Definitions of PM_{2.5} and PM₁₀ Should be Amended

The proposed definition of “PM_{2.5} in Regulation 18, Chapter 2, defines PM_{2.5} by how it is measured (*e.g.* “by a reference method based on Appendix L of 40 C.F.R. Part 50, as of the effective date of the federal rule published by

EPA in the Federal Register on October 17, 2006 (71 FR 61226), or by an approved regional method designated in accordance with Appendix C of 40 C.F.R. Part 53”). However, the methods at issue are for determining PM_{2.5} concentrations in the ambient air, not in emissions. There is no separate definition of “PM_{2.5} Emissions” in Regulation 18 as is proposed for Regulation 19, but there are several instances in Regulation 18 where PM_{2.5} is intended to refer to emissions (*e.g.* Regulation 18.307(C)(2)). The proposed definition of PM_{2.5} (and PM₁₀) should be amended to mirror those definitions proposed for Regulation No. 19.

IV. **Comments on Proposed Revisions to APC&EC Regulation No. 19**

A. Regulation 19.305(A) Should Directly Adopt *De minimis* Thresholds

ADEQ proposes to add a provision at Regulation 19.305(A) stating that, for modifications to existing sources which involve emissions increases of less than the pollutant-specific amounts established in 19.407(C), the resulting environmental impact is trivial and no further air quality analysis is required for each such pollutant. However, many of the provisions of Regulation 19.407(C) do not reference emissions increases of pollutant-specific amounts. To eliminate potential confusion and provide further consistency between the regulations, the proposed language for Regulation 19.305(A) should be revised to state:

For construction of a new stationary source or modification of an existing stationary source involving emissions increases, over permitted rates, of less than the pollutant-specific amounts established in 19.407(C)(2), the resulting environmental impact is trivial and no further air quality analysis is required for each such pollutant for the modification.

B. “Emission increase” Should Exclude Emission Changes Subject to PSD

ADEQ proposes to add a definition for “Emission increase” to Regulation 19, Chapter 2. However, the proposed definition for “Emission increase” should clarify that the definition in no way supersedes the Prevention of Significant Deterioration (PSD) applicability determination calculation requirements found in Regulation 19, Chapter 9. To eliminate potential confusion among the regulated community and provide clarity to regulators

and third parties, the proposed definition of “Emission increase” should be revised to state:

“Emissions increase” means, for emission changes not subject to Prevention of Significant Deterioration applicability under Chapter 9 of Regulation 19, the calculated sum for each air pollutant, based on the difference between the sum of the proposed permitted rates for all emissions units and the sum of the previously permitted emission rates for all emissions units.

C. The Qualitative Analysis of Ambient Air Impacts Should be Mandatory

The proposed revisions to Regulation 19.305(D) provide that, for the construction of a new stationary source or the modification of an existing stationary source, the air quality analysis *may* be qualitative in nature where the need and specific criteria for air dispersion modeling has not been adopted on a pollutant- or facility-specific basis in the applicable NAAQS SIP. To ensure the most comprehensive consideration of ambient air impacts where air dispersion modeling is not mandated by an applicable NAAQS SIP, the provisions of Regulation 19.305(D) should be revised to mandate consideration of qualitative factors, as follows:

For all other permits not described in 19.305(A) through 19.305(C) for the construction of a new stationary source or the modification of an existing stationary source, the air quality analysis ~~may be qualitative in nature and may~~, except as set forth in (D)(1) and (D)(2) below, shall consider such factors as the nature, type location, and emission parameters of the source, the existing attainment status of the area, the level of the proposed emissions increase relative to the area’s permitted emission rates, the existing ambient air levels of the pollutant based on the state monitoring network, and historical monitored trends in ambient air levels of the federally regulated air pollutant.

D. Approval Criteria for Minor New Source Review Should be Based on Contents of the Permit Application

The approval criteria for minor new source air permits under Regulation 19.402 currently directs review of the application to the demonstration by the owner/operator that the stationary source will be constructed or modified to

operate without resulting in a violation of applicable portions of Regulation 19 or without interfering with the attainment or maintenance of a NAAQS. To align the minor new source approval criteria with the proposed provisions of Regulation 19.305 which requires the *Department* to consider potential ambient air quality impacts from a proposed increase in emissions for any pollutant for which a NAAQS is in effect, Regulation 19.402 should be revised to state “No permit shall be granted or modified under this chapter unless the *review of the application* demonstrates to the reasonable satisfaction of the Department that the stationary source will be constructed or modified to operate without resulting in a violation of applicable portions of this regulation or without interfering with the attainment or maintenance of a national ambient air quality standard.”

V. **Comments on Proposed Revisions to APC&EC Regulation No. 26**

A. “Emission increase” Should Exclude Emission Changes Subject to PSD

ADEQ proposes to add a definition for “Emission increase” to Regulation 26, Chapter 2. However, the proposed definition for “Emission increase” should clarify that the definition in no way supersedes the Prevention of Significant Deterioration (PSD) applicability determination calculation requirements found in Regulation 19, Chapter 9. To eliminate potential confusion among the regulated community and provide clarity to regulators and third parties, the proposed definition of “Emission increase” should be revised consistent with the above comment on the definition of “Emission increase” found at Chapter 2 of Regulation 19:

“Emissions increase” means, for emission changes not subject to Prevention of Significant Deterioration applicability under Chapter 9 of Regulation 19, the calculated sum for each air pollutant, based on the difference between the sum of the proposed permitted rates for all emissions units and the sum of the previously permitted emission rates for all emissions units.

VI. **Conclusion**

While the EEAA and its members support incorporation of the new NAAQS, ADEQ and the Commission must do so in a reasoned manner that takes into full account the consequences of its actions. Congress envisioned

that states, in the first instance, would determine both the amount of pollution control necessary to achieve and maintain NAAQS and the most appropriate control strategies, in light of the costs and benefits of each available tool in the broad toolkit available to the states. Neither Congress nor EPA—nor the Commission—require the application of NAAQS to individual stationary sources, except where PSD requirements are triggered.

To the extent ADEQ and the Commission are concerned with achieving or maintaining the NAAQS, they should follow the process envisioned by Congress. Air quality is impacted by many types of sources, mobile and stationary, from residential to industrial. All options should be explored, and a reasoned SIP should be developed as needed. It is equally clear that the state should *not* exceed the federal requirements for NAAQS by making those standards disproportionately applicable to certain stationary sources through routine modeling requirements or NAAQS permit limits.

DATED: February 17, 2015

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Chad L. Wood". The signature is written in a cursive, flowing style.

Chad L. Wood

*Counsel for Energy and Environmental
Alliance of Arkansas*