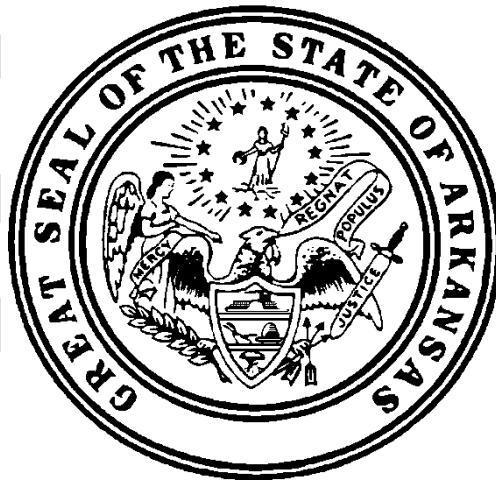


**ARKANSAS POLLUTION CONTROL  
and ECOLOGY COMMISSION**

**REGULATION NO. 35  
ARKANSAS AIR QUALITY REGULATION**



Mark-up Draft

Submitted to the Commission in **MONTH YEAR**

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## CHAPTER 1: GENERAL PROVISIONS

### **Reg. 35.101 Title**

The following rules and regulations, adopted pursuant to Subchapter 2 of the Arkansas Water and Air Pollution Control Act (Ark. Code Ann. §§ 8-4-101, *et seq.*) shall be referred to as the “Arkansas Air Quality Regulation” hereinafter “Regulation 35” or “this Regulation.”

### **Reg. 35.102 Applicability**

Regulation 35 is applicable to any source that emits or has the potential to emit any air contaminant including federally-regulated air pollutants.

### **Reg. 35.103 Intent and Construction**

- (A) Regulation 35 consists of those rules and regulations deemed necessary and desirable by the Arkansas Pollution Control and Ecology Commission for the control of air pollution pursuant to its rulemaking mandates under State law [Ark. Code Ann. § 8-4-311(b)(1) and § 8-1-203(b)(1)]; those rules and regulations that are promulgated by the Arkansas Pollution Control and Ecology Commission in satisfaction of certain requirements of the Clean Air Act, 42 United States Code §§ 7401, *et seq.*, as of July 1, 1997, and the federal regulations stemming therefrom; and 40 C.F.R. Part 70. Regulation 35 should be construed as consistent with the “Legislative Intent and Purpose” of air pollution control regulations set out in Ark. Code Ann. § 8-4-301 and § 8-4-302, as those provisions apply to the Department’s permitting, enforcement, and administrative functions (Ark. Code Ann. § 8-1-202) and the Arkansas Pollution Control and Ecology Commission’s rulemaking and adjudicatory functions (Ark. Code Ann. § 8-1-203).
- (B) By the authority of the same State law, the Arkansas Pollution Control and Ecology Commission has consolidated and replaced the provisions formerly contained in Arkansas Air Pollution Control Code (Regulation 18), Regulations of the Arkansas Plan of Implementation for Air Pollution Control (Regulation 19), Regulations of the Arkansas Operating Air Permit Program (Regulation 26), and Nonattainment New Source Review Requirements (Regulation 31) with this Arkansas Air Quality Regulation (Regulation 35). The intent of Regulation 35 is to present the air regulations in a streamlined and clear format to improve understanding of the requirements.
- (C) Federal programs that the Department is responsible for administering include, but are not limited to, the attainment and maintenance of the National Ambient Air Quality Standards (40 C.F.R. Part 50), certain delegated subparts of the New Source Performance Standards (40 C.F.R. Part 60), provisions designed for the Prevention of Significant Deterioration (40 C.F.R. 52.21), minor new source review as described in Chapter 14 of this Regulation (40 C.F.R. Part 51), and certain delegated subparts of the National Emission Standards for Hazardous Air Pollutants (40 C.F.R. Parts 61 and 63) as of July

1, 1997. Reg. 35.103(C) shall not be construed as limiting the future delegation of federal programs to the Department for administration.

- (D) To the extent consistent with State law and efficient protection of the State's air quality, Regulation 35 shall be construed in a manner that promotes a streamlined permitting process, mitigation of regulatory costs, and flexibility in maintaining compliance with regulatory mandates. Any applicable documents (e.g. "White Papers", regulatory preambles, or interpretive memoranda) issued by the EPA or the Department that are consistent with this policy and the legislative intent of State laws governing air pollution control (Ark. Code Ann. §§ 8-4-301, *et seq.*) are aids for construing the requirements of Regulation 35. Any procedure applicable to Part 70 major sources, prevention of significant deterioration major sources, and nonattainment new source review major sources that promotes operational flexibility are presumed to be authorized by this Regulation unless manifestly inconsistent with its substantive terms.
- (E) In all applications of Regulation 35, the Department and the Arkansas Pollution Control and Ecology Commission shall be guided to a resolution that categorically assures that:
  - (1) The least possible injury will be done to human, plant, or animal life, or to property;
  - (2) The public enjoyment of the State's air quality resources will be maintained; and
  - (3) The resolution is consistent with the economic and industrial well-being of the State.
- (F) Regulation 35 is further intended to limit the federal enforceability of its requirements to only those mandated by federal law. Regulation 35 is also intended to facilitate a permit system for stationary sources within the State. Each permit shall designate the provisions that are federally enforceable and the provisions that are State enforceable.
- (G) Regulation 35 presumes a single-permit system, encompassing both federal and State requirements. A regulated facility that is subject to permitting under Regulation 35 shall be required to apply for and comply with only one permit, even though that permit may contain conditions derived from the federal mandates contained in Regulation 35, as well as conditions predicated solely on State law. Regulation 35, through construction or implication, shall not support the conclusion that all conditions of a permit have become federally enforceable because the permit contains provisions derived from Regulation 35. Permits or permit conditions issued under the authority of State law, or enforcement issues arising out of State law, shall not be federally enforceable.
- (H) Nothing in Regulation 35 shall be construed as curtailing the Department's or the Arkansas Pollution Control and Ecology Commission's authority under State law.

**Reg. 35.104 Severability**

If any provision of this Regulation, or the application of the provision to any person or circumstance, is held invalid, the remainder of this Regulation, or the application of the provision to persons or circumstances other than those that are held invalid, shall not be affected thereby.

**Reg. 35.105 Pre-emption of Political Subdivisions**

To avoid conflicting and overlapping jurisdiction, it is the intention of this Section to clarify the position that the Department occupies the field of control and abatement of air pollution and contamination; and no political subdivision of this State shall enact or enforce laws, ordinances, resolutions, rules, or regulations in this field; unless the laws, ordinances, resolutions, rules, or regulations are for the purpose of prohibiting burning in the open or in a receptacle having no means for significantly controlling the fuel/air ratio.

## CHAPTER 2: DEFINITIONS

**“Acid rain source”** means “affected source” as defined in Title IV of the Clean Air Act.

**“Actual emissions”** means:

- (A) The quantity of air contaminants emitted from a stationary source considering emissions control equipment and actual hours of source operation or amount of material processed with the exception of determining actual emissions for the purposes of Chapters 26 through 28 of this Regulation.
- (B) For the purposes of Chapter 26 through 28 of this Regulation, “actual emissions” shall mean the following: The actual rate of emissions of a nonattainment new source review pollutant from an emissions unit, as determined in accordance with Paragraphs (B) through (D) of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing an actuals plantwide applicability limitation under Chapter 28 of this Regulation. Instead, the definition of “projected actual emissions” and “baseline actual emissions” shall apply for those purposes;
  - (1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, that the unit actually emitted the nonattainment new source review pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period;
  - (2) The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit; and
  - (3) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

**“Administrator”** or **“EPA”** means the Administrator of the United States Environmental Protection Agency or his/her designee.

**“Affected states”** are all states:

- (A) Whose air quality may be affected and that are contiguous to the state where a Part 70 permit, permit modification or permit renewal is being proposed; or
- (B) That are within fifty (50) miles of the permitted source.

**“Air contaminant”** means any solid, liquid, gas, or combination thereof; other than water vapor, nitrogen (N<sub>2</sub>), and oxygen (O<sub>2</sub>). Federally-regulated air pollutants and nonattainment new source review pollutants are air contaminants. For the purposes of Chapters 3, 4, and 5 of this Regulation, Reg. 35.601(D), Reg. 35.805, Reg. 35.1201, Reg. 35.1301(B), Reg. 35.1305(A)(2), Reg. 35.1401(B), Reg. 35.1401(C), Reg. 35.1402, Reg. 35.1403(C), Reg. 35.1404(A)(3), 35.1405(A)(6), 35.1405(A)(7), and Reg. 35.1406(B)(1)(a), carbon dioxide (CO<sub>2</sub>) and inert gases shall not be considered air contaminants.

**“Air pollution”** means the presence in the outdoor atmosphere of one or more air contaminants in quantities, of characteristics, and of a duration that is materially injurious or can be reasonably expected to become materially injurious to human, plant, or animal life or to property, or that unreasonably interferes with enjoyment of life or use of property throughout the State or throughout the area of the State as shall be affected thereby.

**“Allowable emissions”** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limitations that restrict the operating rate, hours of operation, or both) and the most stringent of the following:

- (A) The application standards set forth in 40 C.F.R. Part 60 or 61;
- (B) Any applicable state implementation plan emissions limitation including those with a future compliance date; or
- (C) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.
- (D) For the purposes of Chapter 28 of this Regulation, the allowable emissions for any emissions unit shall be calculated considering any emissions limitations that are enforceable as a practical matter on the emission unit’s potential to emit.

**“Applicable requirement”** means all of the following as they apply to emissions units in a Part 70 source (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates):

- (A) Any standard or other requirement in the applicable state implementation plan approved or promulgated by EPA through rulemaking under Title I of the Clean Air Act that implements the relevant requirements of the Clean Air Act, including any revisions to that plan promulgated in 40 C.F.R. Part 52;
- (B) Any term or condition of any preconstruction permits issued pursuant to Chapters 16 through 25 of this Regulation approved or promulgated through rulemaking under Title I, including Parts C or D, of the Clean Air Act;
- (C) Any standard or other requirement under the Clean Air Act § 111, including § 111(d);

- (D) Any standard or other requirement under the Clean Air Act § 112, including any requirement concerning accident prevention under the Clean Air Act § 112(r)(7);
- (E) Any standard or other requirement of the Acid Rain Program under Title IV of the Clean Air Act or the regulations promulgated thereunder;
- (F) Any requirements established pursuant to the Clean Air Act § 504(b) or § 114(a)(3);
- (G) Any standard or other requirement governing solid waste incineration, under the Clean Air Act § 129;
- (H) Any standard or other requirement for consumer and commercial products, under the Clean Air Act § 183(e);
- (I) Any standard or other requirement for tank vessels, under the Clean Air Act § 183(f);
- (J) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under the Clean Air Act § 328;
- (K) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Clean Air Act, unless the Administrator has determined that the requirements need not be contained in a Title V permit; and
- (L) Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Clean Air Act, but only as it would apply to temporary sources permitted pursuant to the Clean Air Act § 504(e).

**“Ark. Code Ann.”** means the Arkansas Code Annotated 1987 as amended.

**“BACT”** or **“best available control technology”** means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each federally-regulated air pollutant that would be emitted from any proposed major source or major modification that the Department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for the source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of the federally-regulated air pollutant. In no event shall application of BACT result in emissions of any federally-regulated pollutant that would exceed the emissions allowed by an applicable standard under 40 C.F.R. Part 60 or 61. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. The standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of design, equipment, work practice, or operation, and shall provide for compliance by means that achieve equivalent results.



**“Baseline actual emissions”** means the rate of emissions, in tons per year, of a federally-regulated air pollutant, as determined in accordance with Paragraphs (A) through (D) of this definition.

- (A) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, where the unit actually emitted the federally-regulated air pollutant during any consecutive twenty-four-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.
  - (1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
  - (2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emissions limitation that was legally enforceable during the consecutive twenty-four-month period.
  - (3) For a nonattainment new source review pollutant, if a project involves multiple emissions units, only one consecutive twenty-four-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each nonattainment new source review pollutant.
  - (4) The average rate shall not be based on any consecutive twenty-four-month period if there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Paragraph (A)(2) of this definition.
- (B) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, where the emissions unit actually emitted the federally-regulated air pollutant during any consecutive twenty-four-month period selected by the owner or operator within the ten-year period immediately preceding either the date that the owner or operator begins actual construction of the project, or the date that a complete permit application is received by the Department for a permit required either under this Regulation or under a state implementation plan approved by the Administrator, whichever is earlier.
  - (1) The average rate shall include the fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions,
  - (2) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emissions

limitation that was legally enforceable during the consecutive twenty-four-month period.

- (3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emissions limitation with which the nonattainment new source review major source must currently comply, had the nonattainment new source review major source been required to comply with the limitations during the consecutive twenty-four-month period. However, if an emissions limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 C.F.R. Part 63, the baseline actual emissions need only be adjusted if the State has taken credit for the emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of Reg. 35.2703(H).
  - (4) For a nonattainment new source review pollutant, if a project involves multiple emissions units, only one consecutive twenty-four-month period shall be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each nonattainment new source review pollutant.
  - (5) The average rate shall not be based on any consecutive twenty-four-month period where there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Paragraphs (B)(2) and (B)(3) of this definition.
- (C) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of the unit shall equal zero; and thereafter, for all other purposes shall equal the unit's potential to emit.
- (D) For a plantwide applicability limitation for a nonattainment new source review major source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (A) of this definition, for other existing emissions units in accordance with the procedures contained in Paragraph (B) of this definition, and for a new emissions unit in accordance with the procedures contained in Paragraph (C) of this definition.

**“Begin actual construction”** means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. These activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

**“Building, structure, facility, or installation”** means all of the air contaminant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or

adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel, air contaminant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

**“Business day”** means calendar day, excluding Saturdays, Sundays, and recognized public holidays.

**“C.F.R.”** means the United States Code of Federal Regulations.

**“CEMS”** or **“continuous emissions monitoring system”** means all of the equipment that may be required to meet the data acquisition and availability requirements of this Regulation, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

**“CERMS”** or **“continuous emissions rate monitoring system”** means the total equipment required for determination and recording of the air contaminant mass emissions rate (in terms of mass per unit of time).

**“Clean Air Act”** means the federal Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* and its implementing regulations.

**“CO<sub>2</sub> equivalent emissions”** or **“CO<sub>2</sub>e”** shall represent an amount of GHG emitted, and shall be computed by multiplying the mass amount of emissions tons per year, for each of the six (6) gases in the federally-regulated air pollutant GHG, by the gas’s associated global warming potential published at Table A-1 to Subpart A of 40 C.F.R. Part 98—Global Warming Potentials (that is incorporated by reference as of the effective date of the federal final rule published by EPA in the Federal Register on November 29, 2013 [78 FR 71948]), and summing the resultant value for each to compute a tons per year CO<sub>2</sub> equivalent emissions.

**“Commence construction”** means, as applied to construction of a Part 70 major source, prevention of significant deterioration major source, nonattainment new source review major source, or major modification, that the owner or operator has all necessary preconstruction approvals or permits and either has:

- (A) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
- (B) Entered into binding agreements or contractual obligations, that cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

**“Conditions of air pollution”** as distinguished from “air pollution” in a given area shall be deemed to exist if the Director finds that the national ambient air quality standards, as established

from time to time by the EPA, have been exceeded in the area, or if the Director finds that extraordinary measures are necessary to prevent them from being exceeded.

**“Construction”** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification) of an emissions unit. See also 40 C.F.R. 60.2, 40 C.F.R. 51.165, and 40 C.F.R. 52.21.

**“Control apparatus”** means any device that prevents, controls, detects, or records the emission of any air contaminant.

**“CPMS” or “continuous parameter monitoring system”** means all of the equipment necessary to meet the data acquisition and availability requirements of this Regulation, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, oxygen, or carbon dioxide concentrations), and to record average operational parameter value(s) on a continuous basis.

**“Department”** means the Arkansas Department of Environmental Quality, or its successor. If reference is made in this Regulation to actions taken by or with reference to the Department, the reference is to the staff of the Department acting at the direction of the Director.

**“Designated representative”** shall have the meaning given to it in the Clean Air Act § 402(26) and the regulations promulgated thereunder.

**“Direct PM<sub>2.5</sub> emissions”** means solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct PM<sub>2.5</sub> emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material, metals, and sea salt).

**“Director”** means the Director of the Arkansas Department of Environmental Quality, or its successor, acting directly or through the staff of the Department.

**“Draft permit”** means the version of a permit that the Department offers for public participation, Administrator review, and affected state review.

**“Electric utility steam generating unit”** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than twenty-five (25) megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

**“Emissions limitation”** and **“emission standard”** mean a requirement established by the Department or the Administrator that limits the emissions of air contaminants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel

specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

**“Emissions allowable under the permit”** means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limitation (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement that the source would otherwise be subject.

**“Emissions unit”** means any article, machine, equipment, operation, or contrivance that emits or has the potential to emit any air contaminant. This term is not meant to alter or affect the definition of the term “Unit” for purposes of Title IV of the Clean Air Act. For the purposes of nonattainment new source review permitting in Chapters 26 through 28 of this Regulation, the term emissions unit means any part of a stationary source that emits or would have the potential to emit any nonattainment new source review pollutant and includes an electric steam generating unit. For purposes of Chapters 26 through 28 of this Regulation, there are two types of emission units as described in Paragraphs (A) and (B) of this definition:

- (A) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two (2) years from the date the emissions unit first operated; and
- (B) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (A) above. A replacement unit is an existing emissions unit.

**“EPA”** means the United States Environmental Protection Agency.

**“Equipment”** means any device, except equipment used for any mode of vehicular transportation, capable of causing the emission of an air contaminant into the open air, and any stack, conduit, flue, duct, vent, or similar device connected or attached to, or serving the equipment.

**“Existing Part 70 source”** means a Part 70 source that is in operation on the effective date of this Regulation.

**“Federal Land Manager”** means, with respect to any lands in the United States, the Secretary of the department with authority over those lands or his or her representative.

**“Federally enforceable”** means all limitations and conditions that are enforceable by the Administrator, including those requirements developed pursuant to 40 C.F.R. Parts 60 and 61, requirements within any applicable state implementation plan, any permit requirements established pursuant to 40 C.F.R. 52.21 or under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the state implementation plan and expressly requires adherence to any permit issued under the program.

**“Federally-regulated air pollutant”** means the following:

- (A) Nitrogen oxides or any volatile organic compounds;
- (B) Any air contaminant that has a promulgated national ambient air quality standard;
- (C) Except as provided in Paragraph (E) of this definition, any air contaminant that is subject to any standard promulgated under 42 U.S.C. §§ 7401, *et seq.*, as of the effective date of this Regulation.
- (D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, as amended as of July 1, 1997.
- (E) GHG except that GHG shall not be a federally-regulated air pollutant unless the GHG emissions are:
  - (1) From a stationary source emitting or having the potential to emit seventy-five thousand (75,000) tons per year CO<sub>2</sub>e emissions or more; and
  - (2) Regulated under Chapter 15 of this Regulation; and
- (F) Nonattainment new source review pollutants.

**“Final permit”** means the version of a Part 70 permit issued by the Department that has completed all review procedures required by Chapters 16 through 25 of this Regulation.

**“Flue”** or **“stack”** means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct, but not including flares.

**“FR”** means the United States Federal Register.

**“Fuel burning equipment”** means equipment, where the primary purpose is the production of thermal energy from the combustion of fuel by indirect heat transfer.

**“Fugitive emissions”** means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

**“Garbage”** means rejected food waste including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in, or storage of meat, fish, fowl, fruit, or vegetable.

**“GHG”** or **“greenhouse gases”** means the aggregate group of the following six (6) gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

**“Hazardous air pollutant”** means any air contaminant listed pursuant to the Clean Air Act § 112, as amended, 42 U.S.C. §§ 7401, *et seq.*, as of the effective date of this Regulation.

**“Incinerator”** means all devices where garbage, refuse, or other combustible material is reduced in volume through a combustion process where the fuel/air ratio is or can be controlled so that the remaining solid residues contain little or no combustible material.

**“Initial permit”** means the first Part 70 permit issued to a Part 70 source that is in existence on the effective date of this Regulation.

**“LAER” or “lowest achievable emission rate”** means for any source, the more stringent rate of emissions based on the following:

- (A) The most stringent emissions limitation that is contained in the state implementation plan of any state for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitations are not achievable; or
- (B) The most stringent emissions limitation that is achieved in practice by the class or category of stationary source. This limitation, if applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term allow a proposed new or modified stationary source to emit any contaminant in excess of the amount allowable under an applicable new source standard of performance.

**“MACT” or “maximum achievable control technology”** means generally, the best available control technology, taking into account cost and technical feasibility.

**“Major modification”** means:

- (A) Any physical change in or change in the method of operation of a nonattainment new source review major source that would result in:
  - (1) A significant emissions increase of a nonattainment new source review pollutant; and
  - (2) A significant net emissions increase of that nonattainment new source review pollutant from the nonattainment new source review major source.
- (B) Any significant emissions increase from any emissions units or net emissions increase at a nonattainment new source review major source that is significant for volatile organic compounds shall be considered significant for ozone.
- (C) A physical change or change in the method of operation shall not include:
  - (1) The following shall not be considered a physical change:
    - (a) Routine maintenance;
    - (b) Routine repair; and

- (c) Routine replacement.
- (2) Use of an alternative fuel or raw material by reason of an order under §§ 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;
- (3) Use of an alternative fuel by reason of an order promulgated under the Clean Air Act § 125;
- (4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
- (5) Use of an alternative fuel or raw material by a stationary source that:
  - (a) The source was capable of accommodating before December 21, 1976, unless the change would be prohibited under any federally enforceable permit condition that was established after December 21, 1976 pursuant to 40 C.F.R. 52.21 or under regulations approved pursuant to 40 C.F.R. Part 51 Subpart I or 40 C.F.R. 51.166; or
  - (b) The source is approved to use under any permit issued under regulations approved pursuant to 40 C.F.R. Part 165.
- (6) An increase in the hours of operation or in the production rate, unless the change is prohibited under any federally enforceable permit condition that was established after December 21, 1976 pursuant to 40 C.F.R. 52.21 or regulations approved pursuant to 40 C.F.R. Part 51 Subpart I or 40 C.F.R. 51.166.
- (7) Any change in ownership at a stationary source.
- (D) This definition shall not apply with respect to a particular nonattainment new source review pollutant if the nonattainment new source review major source is complying with the requirements under Chapter 28 of this Regulation for a plantwide applicability limitation for that nonattainment new source review pollutant. Instead, the definition at Reg. 35.2802(E) of this Regulation shall apply.
- (E) For the purpose of applying the requirements of Reg. 35.2707 of this Regulation to modifications at nonattainment new source review major sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to Subpart 2, Part D, Title I of the Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.
- (F) Any physical change in, or change in the method of operation of, a nonattainment new source review major source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other nonattainment new source review pollutant emitting activity at the source shall be



considered a significant net emissions increase and a major modification for ozone, if the nonattainment new source review major source is located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Clean Air Act.

**“Mandatory Class I federal area”** means any area identified in 40 C.F.R. Part 81, Subpart D.

**“Modification”** means any physical change in or change in the method of operation of a stationary source that increases the emission rate of any federally-regulated air pollutant over permitted rates or that results in the emission of a federally-regulated air pollutant not previously emitted, except:

- (A) The following shall not be considered a physical change:
  - (1) Routine maintenance;
  - (2) Routine repair; and
  - (3) Routine replacement.
- (B) The following shall not be considered a change in the method of operation:
  - (1) Any change in the production rate, if the change does not exceed the permitted operating capacity of the source;
  - (2) Any change in the hours of operation, as long as it does not violate applicable air permit conditions; or
  - (3) The use of an alternative fuel or raw material, as long as it does not violate applicable air permit conditions.
- (C) *De Minimis* changes, as specified in 35.1507(C), and changes in ownership shall not be considered modifications.

**“National ambient air quality standard”** means those ambient air quality standards promulgated by the EPA in 40 C.F.R. Part 50 as of the effective date of the federal final rule published by EPA in the Federal Register on October 26, 2015 (80 FR 65292), as set forth in Appendix B of this Regulation.

**“Necessary preconstruction approvals or permits”** means those federal air quality control laws and regulations that are part of the applicable state implementation plan.

**“NESHAP”** or **“National emission standard for hazardous air pollutants”** is a technology-based standard of performance prescribed for hazardous air pollutants from certain stationary source categories under § 112 of the Clean Air Act.

**“Net emissions increase”** means, with respect to any nonattainment new source review pollutant emitted by a nonattainment new source review major source, the amount where the sum of the

following exceeds zero: the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Chapter 27 of this Regulation and any other increases and decreases in actual emissions at the nonattainment new source review major source that are contemporaneous with the particular change and are otherwise creditable. When calculating increases and decreases under this definition, Paragraphs (A)(3) and (B)(4) of the definition for baseline actual emissions shall not apply.

- (A) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs.
- (B) An increase or decrease in actual emissions is creditable only if:
  - (1) It occurs between:
    - (a) The date five (5) years before construction on the particular change commences, and
    - (b) The date that the increase from the particular change occurs.
  - (2) The Department has not relied on it in issuing a permit for the source under Chapters 26 through 28 of this Regulation, if the permit is in effect when the increase in actual emissions from the particular change occurs.
- (C) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
- (D) A decrease in actual emissions is creditable only to the extent that:
  - (1) The old level of actual emissions or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions.
  - (2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;
  - (3) The Department has not relied on it in issuing any permit under regulations approved pursuant to 40 C.F.R. Part 51, Subpart I or the State has not relied on it in demonstrating attainment or reasonable further progress; and
  - (4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
- (E) An increase that results from a physical change at a source occurs if the emissions unit where construction occurred becomes operational and begins to emit a particular nonattainment new source review pollutant.

- (F) Paragraph (B) of the definition of actual emissions shall not apply for determining creditable increases and decreases or after a change.

**“Nonattainment major new source review program”** means a nonattainment new source review major source pre-construction permit program that has been approved by the Administrator and incorporated into the state implementation plan to implement the requirements of 40 C.F.R. 51.165, or a program that implements Part 51, Appendix S, § I through § VI. Any permit issued under this program is a major new source review permit.

**“Nonattainment new source review major source”** means a major source as defined in Part D of Title I of the Clean Air Act, including:

- (A) For ozone nonattainment areas, sources with the potential to emit:
- (1) One hundred (100) tons per year or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate”;
  - (2) Fifty (50) tons per years or more in areas classified as “serious”;
  - (3) Twenty-five (25) tons per year or more in areas classified as “severe”; and
  - (4) Ten (10) tons per year or more in areas classified as “extreme”;
  - (5) The references in Paragraphs (A)(1–4) of this definition to one hundred (100), fifty (50), twenty-five (25), and ten (10) tons per year of nitrogen oxides shall not apply with respect to any source where the Administrator has made a finding, under the Clean Air Act § 182(f)(1) or (2), that requirements under the Clean Air Act § 182(f) do not apply;
- (B) For ozone transport regions established pursuant to the Clean Air Act § 184, sources with the potential to emit fifty (50) tons per year or more of volatile organic compounds;
- (C) For carbon monoxide nonattainment areas that are classified as “serious” and where stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential emit fifty (50) tons per year or more of carbon monoxide; and
- (D) For PM<sub>10</sub> nonattainment areas classified as “serious”, sources with the potential to emit seventy (70) tons per year or more of PM<sub>10</sub>.

**“Nonattainment new source review pollutant”** means the following:

- (A) Nitrogen oxides or any volatile organic compounds;
- (B) Any air contaminant that has a promulgated national ambient air quality standard; or

- (C) Any air contaminant that is a constituent or precursor of a general air contaminant listed under Paragraphs (A) or (B) of this definition, provided that a constituent or precursor pollutant may only be regulated under new source review as part of regulation or the general air contaminant.

**“NSPS” or “New source performance standard”** is an emission standard prescribed under § 111 of the Clean Air Act for air contaminants that have a promulgated national ambient air quality standard and are emitted from certain stationary source categories.

**“Opacity”** means the degree that air emissions reduce the transmission of light and obscure the view of an object in the background.

**“Open burning”** means a fire where a material is burned in the open or in a receptacle having no means for significantly controlling the fuel/air ratio.

**“Operator”** means any person who leases, operates, controls, or supervises any equipment affected by this Regulation.

**“Owner”** means any person who has legal or equitable title to any source, facility, or equipment affected by this Regulation.

**“Part 70 major source”** means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person [or persons under common control]) belonging to a single major industrial grouping and that are described in Paragraphs (A), (B), or (C) of this definition. For the purposes of defining “Part 70 major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the federally-regulated-air-pollutant-emitting activities at the source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

- (A) A major source under the Clean Air Act § 112, is defined as:

- (1) For federally-regulated air pollutants other than radionuclides, any stationary source or group of stationary sources location within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, ten (10) tons per year or more of any hazardous air pollutant that has been listed pursuant to the Clean Air Act § 112(b), twenty-five (25) tons per year or more of any combination of hazardous air pollutants, or any lesser quantity as the Administrator may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources; or

- (2) For radionuclides, “major source” shall have the meaning specified by the Administrator by rule.
- (B) A major source of federally-regulated air pollutants, as defined in the Clean Air Act § 302, that directly emits, or has the potential to emit, one hundred (100) tons per year or more of any federally-regulated air pollutant (including any major source of fugitive emissions of any federally-regulated air pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major source for the purposes of the Clean Air Act § 302(j), unless the source belongs to one of the following categories of stationary source:
- (1) Coal cleaning plants (with thermal dryers);
  - (2) Kraft pulp mills;
  - (3) Portland cement plants;
  - (4) Primary zinc smelters;
  - (5) Iron and steel mills;
  - (6) Primary aluminum ore reduction plants;
  - (7) Primary copper smelters;
  - (8) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day;
  - (9) Hydrofluoric, sulfuric, or nitric acid plants;
  - (10) Petroleum refineries;
  - (11) Lime plants;
  - (12) Phosphate rock processing plants;
  - (13) Coke oven batteries;
  - (14) Sulfur recovery plants;
  - (15) Carbon black plants (furnace process);
  - (16) Primary lead smelters;
  - (17) Fuel conversion plant;
  - (18) Sintering plants;

- (19) Secondary metal production plants;
- (20) Chemical process plants;
- (21) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input;
- (22) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels;
- (23) Taconite ore processing plants;
- (24) Glass fiber processing plants;
- (25) Charcoal Production Plants
- (26) Fossil-fuel-fired steam electric plants or more than two hundred fifty million (250,000,000) British thermal units per hours heat input; or
- (27) Any other stationary source category, that as of August 7, 1980, is being regulated under the Clean Air Act § 111 or § 112.

(C) Any nonattainment new source review major source

**“Part 70 permit”** means any permit or group of permits covering a Part 70 source that is issued, renewed, amended, or revised pursuant to Chapters 16 through 25 of this Regulation.

**“Part 70 program”** means a program approved by the Administrator under 40 C.F.R. Part 70.,

**“Part 70 source”** means any source subject to the permitting requirements of Chapters 16 through 25 of this Regulation.

**“Particulate matter”** means any airborne finely divided solid or liquid material with an aerodynamic diameter equal to or less than one hundred (100) micrometers.

**“Particulate matter emissions”** means all particulate matter, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternate method, specified in 40 C.F.R. Part 60, Appendix A as of the effective date of the federal final rule published by EPA in the Federal Register on February 27, 2014 (79 FR 11257), or by a test method specified in this Regulation or any supplement thereto, with the exception of condensable particulate matter.

**“PEMS” or “Predictive emissions monitoring system”** means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, oxygen or carbon dioxide concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

**“Permit modification”** means a revision to a Part 70 permit that meets the requirements of Chapter 23 of this Regulation.

**“Permit revision”** means any permit modification or administrative permit amendment.

**“Permitting authority”** means either of the following:

- (A) The Arkansas Department of Environmental Quality; or
- (B) The Administrator, in the case of EPA-implemented programs.

**“Person”** means any individual or other legal entity or their legal representative or assignee.

**“Plantwide applicability limitation”** means an emissions limitation expressed in tons per year, for a pollutant at a nonattainment new source review major source, which is enforceable as a practical matter and established source-wide in accordance with Chapter 28 of this Regulation.

**“PM<sub>2.5</sub>”** means particulate matter with an aerodynamic diameter less than or equal to a nominal two and five-tenths (2.5) micrometers as measured by a reference method based on Appendix L of 40 C.F.R. Part 50 as of the effective date of the federal final 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.

**“PM<sub>2.5</sub> emissions”** means PM<sub>2.5</sub> emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. Part 51, Appendix M as of the effective date of the federal final rule published by EPA in the Federal Register on April 2, 2014 (79 FR 18452), or by a test method specified in this Regulation or any supplement thereto.

**“PM<sub>10</sub>”** means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based upon Appendix J of 40 C.F.R. Part 50 as of the effective date of the federal rule published by EPA in the Federal Register on August 7, 1987 (52 FR 29467), or by an equivalent method designated in accordance with 40 C.F.R. Part 53 as of December 8, 1984.

**“PM<sub>10</sub> emissions”** means PM<sub>10</sub> emitted to the ambient air as measured by an applicable reference method, or by an equivalent or alternate method, specified in 40 C.F.R. Part 51, Appendix M as of the effective date of the federal final rule published by EPA in the Federal Register on April 2, 2014 (79 FR 18542), or by a test method specified in this Regulation or any supplement thereto.

**“Pollution prevention”** means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air contaminants (including fugitive emissions) to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain “in-process recycling” practices), energy recovery, treatment, or disposal.

**“Potential to emit”** means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design.

- (A) Any physical or operational limitation on the capacity of the source to emit an air contaminant that is not a federally-regulated air pollutant, including, but not limited to, air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is practically enforceable.
- (B) Any physical or operational limitation on the capacity of the source to emit a federally-regulated air pollutant, including, but not limited to, air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable to the extent it is regulated by the federal Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* as of February 15, 1999.
- (C) Secondary emissions do not count in determining the potential to emit of a stationary source.
- (D) This term does not alter or affect the use of this term for any other purposes under the Clean Air Act, or the term “capacity factor” as used in Title IV of the Clean Air Act or the regulations promulgated thereunder.

**“Prevention of significant deterioration major source”** means:

- (A) Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants (with thermal dryers), primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140), fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;
  - (1) Notwithstanding the stationary source size specified in paragraph (A) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or



- (2) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph (A) of this section, as a prevention of significant deterioration major source, if the changes would constitute a prevention of significant deterioration major source by itself.
- (B) A prevention of significant deterioration major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.
- (C) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a prevention of significant deterioration major source, unless the source belongs to one of the following categories of stationary sources:
  - (1) Coal cleaning plants (with thermal dryers);
  - (2) Kraft pulp mills;
  - (3) Portland cement plants;
  - (4) Primary zinc smelters;
  - (5) Iron and steel mills;
  - (6) Primary aluminum ore reduction plants;
  - (7) Primary copper smelters;
  - (8) Municipal incinerators capable of charging more than two hundred fifty (250) tons of refuse per day;
  - (9) Hydrofluoric, sulfuric, or nitric acid plants;
  - (10) Petroleum refineries;
  - (11) Lime plants;
  - (12) Phosphate rock processing plants;
  - (13) Coke oven batteries;
  - (14) Sulfur recovery plants;
  - (15) Carbon black plants (furnace process);
  - (16) Primary lead smelters;
  - (17) Fuel conversion plant;

- (18) Sintering plants;
- (19) Secondary metal production plants;
- (20) Chemical process plants;
- (21) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million (250,000,000) British thermal units per hour heat input;
- (22) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand (300,000) barrels;
- (23) Taconite ore processing plants;
- (24) Glass fiber processing plants;
- (25) Charcoal production plants
- (26) Fossil-fuel-fired steam electric plants or more than two hundred fifty million (250,000,000) British thermal units per hours heat input; or
- (27) Any other stationary source category, that as of August 7, 1980, is being regulated under the Clean Air Act § 111 or § 112.

**“Prevention of significant deterioration permit”** means any permit that is issued under Chapter 15 of this Regulation.

**“Project”** means a physical change in or change in the method of operation of, any existing major source.

**“Projected actual emissions”** means:

- (A) The maximum annual rate, in tons per year, where an existing emissions unit is projected to emit a nonattainment new source review pollutant in any one of the five (5) years (twelve-month period) following the date that the unit resumes regular operation after the project, or in any one of the ten (10) years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit the nonattainment new source review pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the nonattainment new source review major source.
- (B) In determining the projected actual emissions under Paragraph (A) of this definition before beginning actual construction, the owner or operator of the nonattainment new source review major source;
  - (1) Shall consider all relevant information, including but not limited to, historical operational data, the company’s own representations, the company’s expected

business activity and the company's highest projections of business activity, the company's filings with the State or federal regulatory authorities, and compliance plans under the approved state implementation plan;

- (2) Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;
- (3) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
- (4) In lieu of using the method set out in Paragraphs (B)(1) through (B)(3) of this definition, may elect to use the emissions unit's potential to emit, in tons per year.

**“RACT”** or **“Reasonably available control technology”** means control technology that is reasonably available, and both technologically and economically feasible. RACT is usually applied to existing sources in nonattainment areas, and, in most cases, is less stringent than new source performance standards.

**“Recognized air contaminant emissions”** means those air contaminant emissions that may reasonably be assumed to be present according to mass balance calculations or applicable published literature on air contaminant emissions or those air contaminant emissions that cause or present a threat of harm to human health or the environment due to their characteristics, toxicity, rate and quantity of emissions, or duration of their presence in the atmosphere.

**“Refuse”** means any combustible waste material containing carbon in a free or combined state, other than liquid or gases.

**“Renewal”** means the process of reissuing a permit at the end of its term.

**“Renewal permit”** means a Part 70 permit that is reissued at the end of its term.

**“Replacement unit”** means an emissions unit for which all the criteria listed in Paragraphs (A) through (D) of this definition are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

- (A) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
- (B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
- (C) The replacement does not alter the basic design parameters of the process unit.

- (D) The replaced emissions unit is permanently removed from the nonattainment new source review major source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**“Responsible official”** means one of the following:

- (A) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of the person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
- (1) The facilities employ more than two hundred fifty (250) persons or have gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 United States dollars); or
  - (2) The delegation of authority to the representative is approved in advance by the Department;
- (B) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
- (C) For a municipality, State, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Regulation, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or
- (D) For acid rain sources:
- (1) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act for the regulations promulgated thereunder are concerned; and
  - (2) The designated representative for any other purposes under Part 70.

**“Salvage”** means an operation conducted in whole or part for the reclaiming of any product or material.

**“Secondary emissions”** means:

- (A) Those emissions of air contaminants that, although associated with a source, are not emitted from the source itself.
- (B) For the purpose of Chapters 26 through 28 of this Regulation:

- (1) Secondary emissions from a nonattainment new source review major source or major modification shall be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification that causes the secondary emissions.
- (2) Secondary emissions include emissions from any off-site support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the nonattainment new source review major source or major modification; and
- (3) Secondary emissions do not include any emissions that come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

**“Shutdown”** means the cessation of operations of equipment.

**“Significant emissions increase”** means, for a nonattainment new source review pollutant, an increase in emissions that is significant for that nonattainment new source review pollutant.

**“Significant”** means:

- (A) In reference to a net emissions increase or the potential of a source to emit any of the following federally-regulated air pollutants, a rate of emissions that would equal or exceed any of the following rates:
  - (1) Carbon monoxide: one hundred (100) tons per year
  - (2) Nitrogen oxides: forty (40) tons per year
  - (3) Sulfur dioxide: forty (40) tons per year
  - (4) Ozone: forty (40) tons per year of volatile organic compounds or nitrogen oxides
  - (5) Lead: six-tenths (0.6) tons per year
  - (6) PM<sub>10</sub>: fifteen (15) tons per year
- (B) Notwithstanding the significant emissions rate for ozone in Paragraph (A) of this definition, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a nonattainment new source review major source located in a serious or severe ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Clean Air Act, if the emissions increase of volatile organic compounds exceeds twenty-five (25) tons per year.
- (C) For the purpose of applying the requirements of Reg. 35.2707 of this Regulation to modifications at nonattainment new source review major sources of nitrogen oxides

located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in Paragraphs (A), (B), and (E) of this definition shall apply to nitrogen oxide emissions.

- (D) Notwithstanding the significant emissions rate for carbon monoxide under Paragraph (A) of this definition, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in method of operation of, a nonattainment new source review major source in a serious nonattainment area for carbon monoxide if the increase equals or exceeds fifty (50) tons per year, provided the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.
- (E) Notwithstanding the significant emissions rates for ozone under Paragraphs (A) and (B) of this definition, any increase in actual emissions of volatile organic compounds from any emissions unit at a nonattainment new source review major source of organic compounds located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Clean Air Act shall be considered a significant net emissions increase.

**“Startup”** means the setting in operation of equipment.

**“State”** means any non-federal permitting authority, including any local agency, interstate association, or statewide program. The term “state” also includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Where the meaning is clear from the context “state” shall have its conventional meaning. For the purposes of the Acid Rain Program, the term “state” shall be limited to authorities within the 48 contiguous states and the District of Columbia as provided in the Clean Air Act § 402(14).

**“State ambient air quality standard”** means the maximum amount of an air contaminant that is permissible in outdoor air.

**“State implementation plan”** means a plan that specifies measures to be used in the implementation of the State’s duties under the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, and that is developed by the Department and submitted to the EPA for review and approval.

**“Stationary source”** means any building, structure, facility, or installation that emits or may emit any air contaminant.

**“Title I modification”** means any modification as defined under any regulation promulgated pursuant to Title I of the Clean Air Act. *De Minimis* changes under this Regulation, changes to State-only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications.

**“Total suspended particulate”** means any solid, liquid, or gaseous material resulting from construction or the undertaking of any business, trade or industry, or any demolition operation including, but not limited to, plastics, cardboard cartons, grease, oil, chemicals, and cinders.

**“Trade secret”** means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (A) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use;
- (B) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

**“Twelve-month period”** means a period of twelve (12) consecutive months determined on a rolling basis with a new twelve-month period beginning on the first day of each calendar month.

**“Volatile organic compounds”** means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

- (A) This includes any organic compound other than the following, which have been determined to have negligible photochemical activity:

acetone;  
methane;  
ethane;  
methylene chloride (dichloromethane);  
1,1,1-trichloroethane (methyl chloroform);  
tetrachloroethylene (perchloroethylene);  
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);  
trichlorofluoromethane (CFC-11);  
dichlorodifluoromethane (CFC-12);  
chlorodifluoromethane (HCFC-22);  
trifluoromethane (HFC-23);  
1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114);  
chloropentafluoroethane (CFC-115);  
1,1,1-trifluoro-2,2-dichloroethane (HCFC-123);  
1,1,1,2-tetrafluoroethane (HFC-134a);  
1,1-dichloro-1-fluoroethane (HCFC-141b);  
1-chloro-1,1-difluoroethane (HCFC-142b);  
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);  
pentafluoroethane (HCFC-125);  
1,1,2,2-tetrafluoroethane (HFC-134);  
1,1-trifluoroethane (HFC-143a);  
1,1-difluoroethane (HFC-152a);

parachlorobenzotrifluoride (PCBTf);  
 cyclic, branched, or linear completely methylated siloxanes;  
 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);  
 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);  
 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);  
 difluoromethane (HFC-32);  
 fluoroethane (ethyl fluoride or HFC-161);  
 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);  
 1,1,2,2,3-pentafluoropropane (HFC-245ca);  
 1,1,2,3,3-pentafluoropropane (HFC-245ea);  
 1,1,1,2,3-pentafluoropropane (HFC-245eb);  
 1,1,1,3,3-pentafluoropropane (HFC-245fa);  
 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);  
 1,1,1,3,3-pentafluorobutane (HFC-365mfc);  
 chlorofluoromethane (HCFC-31);  
 1-chloro-1-fluoroethane (HCFC-151a);  
 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);  
 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ( $\text{C}_4\text{F}_9\text{OCH}_3$  or HFE-7100);  
 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ( $(\text{CF}_3)_2\text{CFCF}_2\text{OCH}_3$ );  
 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ( $\text{C}_4\text{F}_9\text{OC}_2\text{H}_5$  or HFE 7200);  
 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ( $(\text{CF}_3)_2\text{CFCF}_2\text{OC}_2\text{H}_5$ );  
 methyl acetate;  
 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane ( $n\text{-C}_3\text{F}_7\text{OCH}_3$  or HFE-7000);  
 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500);  
 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);  
 methyl formate ( $\text{HCOOCH}_3$ )  
 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);  
 propylene carbonate;  
 dimethyl carbonate;  
 (1E)-1,3,3,3-tetrafluoroprop-1-ene (HFO-1234ze);  
 $\text{HCF}_2\text{OCF}_2\text{H}$  (HFE-134);  
 $\text{HCF}_2\text{OCF}_2\text{OCF}_2\text{H}$  (HFE-236cal2);  
 $\text{HCF}_2\text{OCF}_2\text{CF}_2\text{OCF}_2\text{H}$  (HFE-338pcc13);  
 $\text{HCF}_2\text{OCF}_2\text{OCF}_2\text{CF}_2\text{OCF}_2\text{H}$  (H-Galden 1040x or H-Galden ZT 130 [or 150 or 180]);  
 (1E)-1-chloro-3,3,3-trifluoroprop-1-ene;  
 2,3,3,3-tetrafluoropropene;  
 2-amino-2-methyl-1-propanol;  
 t-butyl acetate; and

perfluorocarbon compounds that fall into these classes:

- (1) Cyclic, branched, or linear completely fluorinated alkanes;
- (2) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;



- (3) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and
  - (4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
- (B) For purposes of determining compliance with emissions limitations, volatile organic compounds will be measured by the test methods in the approved state implementation plan or 40 C.F.R. Part 60, Appendix A, as of July 1, 1997, as applicable. Where a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as volatile organic compounds if the amounts of these compounds are accurately quantified, and the exclusion is approved by the Department.
- (C) As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

## **CHAPTER 3: OPEN BURNING**

### **Reg. 35.301 Open Burning Prohibition**

A person shall not cause or allow the open burning of refuse, garbage, trade waste, or other waste material, or conduct a salvage operation by open burning.

### **Reg. 35.302 Exemptions to Open Burning Prohibition**

Reg. 35.301 does not apply to the following activities:

- (A) Fires used for the non-commercial cooking of food or for ceremonial or recreational purposes, including barbeques and outdoor fireplaces used in connection with any residence;
- (B) Open burning related to agricultural activities including, but not limited to, clearing previously uncultivated lands and burning of stubble and other debris on previously harvested fields; provided however, that this exemption shall not be extended to the disposal, by open burning, of waste products generated by cotton gins, or similar equipment used in a manufacturing process or to the disposal by open burning of fowls or animals;
- (C) Controlled fires used for purposes of forest and wildlife management, provided that the fires are used and burned if winds are blowing away from populated areas that might be affected;
- (D) Controlled fires used only for purposes of on-site land clearing operations;
- (E) Smokeless flares or safety flares from the combustion of waste gases, provided that all other applicable provisions of Chapters 1 through 7 of this Regulation and Chapters 12 through 14 of this Regulation are complied with;
- (F) Open burning at the site of origin of waste hydrocarbon products from oil exploration, development, or production, or from natural gas processing plants, or from materials spilled or lost from pipeline breaks, if, because of the isolated location, the waste products cannot be reclaimed, recovered, or disposed lawfully in any other manner;
- (G) Fires set or authorized by any public officer, board, council, or commission if the fire is set or permission to burn is given in the performance of the duty of the officer for the purpose of weed abatement, or the prevention or elimination of a fire hazard; or fires set for the purposes of the instruction in methods of firefighting or for civil defense instructions;
- (H) Open burning incident to on-site clean-up operations resulting from transportation accidents if, because of the isolated location, the material to be burned cannot be reclaimed or recovered, or where there is no other practical, safe, or lawful method of

disposal; provided, however, that the Director shall be notified of the exact location, and the nature and quantities of materials to be burned prior to ignition; and provided, further, that the burning shall be conducted in accordance with the written approval of the Director. At his or her election, the Director's approval may be delivered by telephone, and confirmed, thereafter, in writing, in the case of an emergency; and

- (I) Open burning of any material not elsewhere specifically prohibited or exempted in this Chapter and for which there is no practical, safe, or lawful means of disposal; except that a person shall not cause or allow open burning without first obtaining a letter of authorization for open burning from the Director in accordance with the provision as set forth in Reg. 35.305.
- (J) Opening burning of vegetative storm debris as authorized under Reg. 35.303.

**Reg. 35.303 Open Burning of Storm Debris**

County governments may dispose of vegetative storm debris in counties that have been declared disaster areas by a county, state, or federal authority authorized to make such a declaration if the requirements of Reg. 35.303 (A)–(C) are met.

**(A) Pre-Authorization of Vegetative Storm Debris Open Burning Sites**

- (1) Prior to conducting open burning of vegetative storm debris, the county government may request pre-authorization from the Department of four (4) sites in the county designated by the county judge.
- (2) Requests for pre-authorization shall be made on forms as the Department may require.
- (3) The Department shall assess each site for which pre-authorization is requested to ensure that the site meets all applicable requirements
- (4) For sites that were previously authorized under this section and used for open burning of vegetative storm debris, The Department shall consider a maximum of four (4) sites to be pre-authorized for burning if the department receives a letter from the county judge certifying that the open burning sites have not been materially altered since the initial request-

**(B) Notification Required Prior to Open Burning of Vegetative Storm Debris**

- (1) The county government shall notify the Department in writing three (3) days before the commencement of any open burning, unless the notification is waived by the Director. This notification shall include the date that the open burning is to occur, the location of the pre-authorized sites where the open burning is to occur, and a signed letter from the county judge certifying that the open burning sites preauthorized under Reg. 35.303(A) have not been materially altered since the initial request for preauthorization.

- (2) If the Director determines that the scope of the disaster warrants additional open burning sites, the Director may authorize additional open burning sites.
  - (3) The Director may require that:
    - (a) A designated open burning site be relocated; or
    - (b) Any or all open burning allowed under Reg. 35.303 be stopped in response to actual or potential violations of State or federal air quality standards in the impacted areas.
  - (4) The Department may recommend alternative methods of vegetative storm debris disposal including the use of air curtain incinerators or composting to the extent allowed under federal law.
- (C) Requirements for Open Burning of Vegetative Storm Debris at Designated Sites
- (1) Open burning of storm debris is restricted solely to vegetative storm debris.
  - (2) Open burning of nonvegetative storm debris, including, but not limited to, tires, lumber, construction debris; demolished structures, household wastes, and trade wastes is prohibited.
  - (2) Open burning shall be performed during daylight hours on business days;
  - (3) Open burning shall be completed within one hundred twenty (120) calendar days of the declaration of the county as a disaster area unless:
    - (a) At least ten (10) calendar days before expiration of the period of time under Reg. 35.303(C)(3), the county judge of the affected disaster area makes a written request to the Director for an extension;
    - (b) The Director determines that the scope of the disaster warrants an extension; and
    - (c) The total amount of time, including the extension, does not exceed two hundred forty (240) calendar days from the original declaration of the county as a disaster area;
  - (4) Open burning shall be conducted in a manner so as not to create a nuisance to surrounding communities and citizenry;
  - (5) The county shall ensure that adequate firefighting personnel are available to respond to an emergency at any designated open burning site at the time the open burning occurs;
  - (6) Open burning shall not be conducted if:

- (a) The site is within:
    - (i) Five hundred (500) feet of a residence unless the owner of the residence has given written permission for the open burning site; or
    - (ii) One thousand (1000) feet of a school;
  - (b) The site is located in a county that is designated as a nonattainment area for any national ambient air quality standard; or
  - (c) A burn ban is in effect for the county where the site is located.
- (7) County governments performing open burning of vegetative storm debris under Reg. 35.303 shall comply with all other applicable federal, state, or local statutes, rules, regulations, ordinances, and orders.

#### **Reg. 35.304 Open Burning During Conditions of Air Pollution**

During conditions of air pollution, if declared by the Director to exist in any area of the State, all open burning in the declared area that is otherwise exempted under Reg. 35.302, shall be discontinued as set forth herein, except as specifically provided in the Director's public announcements.

- (A) During conditions of air pollution, open burning as provided in Reg. 35.302(B), (C), (F), and (H) shall be discontinued until the conditions have been declared by the Director to have ceased to exist. The Department may limit the scope of the discontinuance to one or more of the activities as provided in 35.302(B), (C), (F), and (H) if it finds that the conditions of air pollution are primarily caused by the activity.
- (B) The Director may allow open burning during the existence of a condition of air pollution under conditions described in Reg. 35.302(F), (G), and (H) if the Director determines, after consultation with public safety officials in the locality in question, that open burning is absolutely necessary, in the Director's opinion, to prevent danger to life or property.
- (C) The statutory authority of the Department to grant variances and permits is in no way limited by this Chapter.

#### **Reg. 35.305 Open Burning Authorizations**

Upon application, the Department shall issue letters of authorization for open burning, provided that the applicant affirmatively demonstrates to the satisfaction of the Department, that there are no practicable, safe, and lawful alternative methods of disposal and that open burning is absolutely necessary and in the public interest and provided, further, that said applications contain other information as the Department may reasonably require. Only letters of authorization issued by the Department satisfy this Chapter. Open burning permits may also be

required by the local public officers, boards, councils, or commissions for safety or other purposes; however, those permits do not satisfy the requirement to obtain an authorization under this Chapter.

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## **CHAPTER 4: STATE PROHIBITIONS**

### **Reg. 35.401 Prohibition of the Emission of Air Contaminants Such as to Constitute Air Pollution**

A person shall not cause or allow the emission of air contaminants, odors indicative of the release of an air contaminant, or water vapor if the emission constitutes air pollution.

### **Reg. 35.402 Fugitive Emissions Prohibitions**

- (A) A person shall not cause or allow the handling, transporting, or storage of any material in a manner that allows or may allow unnecessary amounts of air contaminants to become airborne.
- (B) A person shall not cause or allow any building or its appurtenances to be constructed, altered, used, repaired, or demolished without applying all reasonable measures as may be required to prevent unnecessary amounts of particulate matter from becoming airborne.

### **Reg. 35.403 Circumvention**

Unless prior written approval is obtained from the Director, a person shall not build, erect, install, or use any article, machine, equipment, or other contrivance if its sole purpose is to dilute or conceal an emission without resulting in a reduction of the total amount of air contaminants emitted to the atmosphere. This rule does not apply to the control of odors or the installation of stacks if a permit has been issued as provided in Chapter 14 of this Regulation.

## CHAPTER 5: MOBILE SOURCES

### **Reg. 35.501 Emissions from Mobile Equipment**

- (A) Any person owning or operating a motor vehicle including, but not limited to automobiles and trucks, incorporating a system for the control of the emissions from the crankcase or exhaust system, or for the control of evaporative emissions, shall maintain the system in good operable condition and shall use it at all times that the vehicle is operated. The operator of the vehicle shall not intentionally make the system inoperable and shall not remove it except to install a proper replacement.
- (B) A person shall not cause or allow the emission of an air contaminant from a motor vehicle including, but not limited to, automobiles and trucks of a density exceeding thirty percent (30%) opacity, except during acceleration and gear shifting for periods not to exceed five (5) seconds. Where the presence of uncombined water is the only reason for failure of a motor vehicle to comply herewith, Reg. 35.501(C) shall not apply.
- (C) Railroad locomotives shall be maintained and operated to minimize visible emissions.
- (D) This Chapter shall not be applicable to the emission of air contaminants from motor exhaust of tractors, graders, earthmovers, or other mobile and portable equipment used exclusively in land clearing, agricultural, or road building operations; provided, however, that prime movers used for the transportation of said portable and mobile equipment shall not be exempt.



## CHAPTER 6: VISIBLE EMISSIONS LIMITATIONS

### **Reg. 35.601 Visible Emissions Limitations**

- (A) A person shall not cause or allow visible emissions (other than uncombined water vapor) from incinerators, fuel burning equipment, or manufacturing process equipment in excess of twenty percent (20%) opacity, except as allowed in Reg. 35.601(B) through (E). Opacity shall be determined as specified in Reg. 35.601(F).
- (B) For incinerators and fuel burning equipment, exclusively, emissions greater than twenty percent (20%) opacity but not exceeding sixty percent (60%) opacity will be allowed for not more than six (6) minutes in the aggregate in any consecutive sixty-minute period, if the emissions will not occur more than three (3) times during any twenty-four-hour period.
- (C) For equipment installed and operated, or permitted by the Department, on or before January 30, 1972, emissions shall not exceed forty (40%) opacity, except that emissions greater than forty (40%) opacity will be allowed for not more than six (6) minutes in the aggregate in any consecutive sixty-minute period, if the emissions will not occur more than three (3) times during any twenty-four-hour period.
- (D) More stringent limitations on individual pieces of equipment may be imposed by the Department in applicable permits issued pursuant to Reg. 35.1401(B) or (C) due to control requirements or control apparatus, corresponding emissions limitations, and/or applicable national standards.
- (E) The emissions limitations of this Chapter shall not apply to the following conditions and activities:
  - (1) The application of fertilizers, pesticides, and defoliants;
  - (2) The use of mobile and portable equipment in the cleaning, grading, or plowing of land;
  - (3) The application of base or surface materials to roads, runways, parking lots, and similar facilities;
  - (4) The use of agricultural equipment in the planting, cultivating, or harvesting of crops, or in the feeding of animals or fowls;
  - (5) The non-commercial preparation of food and to the use of outdoor fireplaces used in connection with any residence;
  - (6) The use of incinerators and heating equipment used in connection with residences used exclusively as dwellings for not more than four families; and

- (F) Opacity of visible emissions shall be determined using EPA Method 9 (40 C.F.R. Part 60, Appendix A).

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## **CHAPTER 7: UPSET AND EMERGENCY CONDITIONS**

### **Reg. 35.701 Upset Conditions**

For purposes of this Chapter, “upset condition” shall be defined as exceedances of applicable emissions limitations lasting thirty (30) or more minutes, in the aggregate, during a twenty-four-hour period, unless otherwise specified in an applicable permit or regulation. All upset conditions, resulting in violation of an applicable permit or regulation, shall be reported to the Department. Any source exceeding an emissions limitation established by Regulation 35 or applicable permit shall be deemed in violation of said requirements or permit and shall be subject to enforcement action. The Department may forego enforcement action given that the person responsible for the source of the excess emissions does the following:

- (A) Demonstrates to the satisfaction of the Department that all reasonable measures have been taken to immediately minimize or eliminate the excess emissions and that the upset conditions resulted from:
  - (1) Equipment malfunction or upset and are not the result of negligence or improper maintenance; and
  - (2) Physical constraints on the ability of a source to comply with the emission standard, limitation, or rate during startup or shutdown;
- (B) All reasonable measures have been taken to immediately minimize or eliminate excess emissions;
- (C) Reports the upset condition to the Department by the end of the next business day after the discovery of the occurrence; and
- (D) Submits to the Department, at its request, a full report of the upset condition including the identification and location of the process and control equipment involved in the upset and a statement of all known causes and the scheduling and nature of the actions to be taken to eliminate future occurrences or to minimize the amount that limitations are exceeded and to reduce the length of time that limitations are exceeded.

### **Reg. 35.702 Emergency Conditions**

- (A) An “emergency” means any situation arising from the sudden and reasonably unforeseeable events beyond the control of the source, including natural disasters, that situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emissions limitation under the permit, due to unavoidable increases in emissions attributable to the upset condition. An emergency shall not include non-compliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

- (B) An emergency constitutes a complete affirmative defense to an action brought for non-compliance with such technology-based limitations if the following conditions are met. The affirmative defense of emergency shall demonstrate through properly signed contemporaneous operating logs, or such other relevant evidence that:
- (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
  - (2) The permitted facility was at the time being properly operated;
  - (3) During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
  - (4) The permittee submitted notice of the upset to the Department by the end of the next business day after the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

## **CHAPTER 8: PROTECTION OF AMBIENT AIR QUALITY STANDARDS**

### **Reg. 35.801 Purpose**

The purpose of this Chapter is to state the responsibilities of the Department and regulated sources in meeting and maintaining the national ambient air quality standards and other State ambient air quality standards. If any area of the State is determined to be in violation of the national ambient air quality standards, all applicable requirements contained in the Clean Air Act, as amended, and all regulations promulgated thereto shall be met by the Department.

### **Reg. 35.802 Department Responsibilities to Prevent National Ambient Air Quality Standards Exceedances**

The Department shall be responsible for taking the following precautions to prevent the national ambient air quality standards from being exceeded:

- (A) Ambient air monitoring in any area that can reasonably be expected to be in excess of the national ambient air quality standards; and
- (B) Computer modeling of federally-regulated air pollutant emissions for any area that can reasonably be expected to be in excess of the national ambient air quality standards, and review of the ambient air impacts of any new or modified source of federally-regulated air pollutants that is the subject of the requirements of Regulation 35. All computer modeling shall be performed using EPA-approved models, and using averaging times commensurate with averaging times stated in the national ambient air quality standards.

### **Reg. 35.803 Regulated Sources Responsibilities to Prevent National Ambient Air Quality Standards Exceedances**

Any stationary source of federally-regulated air pollutants subject to Regulation 35 shall be responsible for taking the following precautions to prevent the national ambient air quality standards from being exceeded:

- (A) If required by law or this Regulation, obtaining a permit from the Department prior to construction of a new source of federally-regulated air pollutant emissions or prior to the modification of an existing source of federally-regulated air pollutants;
- (B) Operating equipment in a manner as to meet any applicable permit requirement or any applicable regulations; and
- (C) Repairing malfunctioning equipment and pollution control equipment as quickly as possible. If the malfunctioning equipment is causing, or contributing to, a violation of the national ambient air quality standards, as determined by computer modeling, the source is responsible for ceasing operations of the affected equipment until it is repaired.

#### **Reg. 35.804 Delegated Federal Programs**

Sources subject to this regulation shall also comply with all federal programs that the Department is responsible for administering including delegated subparts of the New Source Performance Standards (40 C.F.R. Part 60), provisions designed for the Prevention of Significant Deterioration (40 C.F.R. 52.21), and certain delegated subparts of the National Emissions Standards for Hazardous Air Pollutants (40 C.F.R. Parts 61 and 63) that were promulgated as of January 27, 2006.

#### **Reg. 35.805 Conditions of Air Pollution**

- (A) Within areas of high source density or high receptor density and/or within areas affected by levels of air contaminants, which, due to their intensity and/or duration, threaten to constitute a significant departure from the national ambient air quality standards, the Department may prescribe air quality control requirements that are more restrictive and more extensive than those provided in the regulations of general application within said areas. These requirements may be kept in effect for a period that the Department deems necessary to adequately deal with the conditions.
- (B) If the Director finds the existence of a condition of air pollution or the Department imposes extraordinary air quality control requirements pursuant to Reg. 35.805(A), the Director shall summarize the conditions and the actions taken in response thereto, shall make the summary available to the news media and to the public, and shall continue to publish the summaries at regular intervals throughout the duration of said conditions and actions.

#### **Reg. 35.806 Hydrogen Sulfide Ambient Air Quality Standards**

##### **(A) Ambient Concentration Standard**

- (1) Except as provided in Reg. 35.806(D), no person shall cause or allow emissions from any facility that result in predicted ambient hydrogen sulfide concentrations at any place beyond the facility's perimeter property boundary greater than eighty (80) parts per billion for any eight-hour averaging period for residential areas, or greater than one hundred (100) parts per billion for any eight-hour averaging period for nonresidential areas.
- (2) No person shall cause or allow emissions from any facility that result in actual ambient hydrogen sulfide concentrations at any place beyond the facility's perimeter property boundary greater than twenty (20) parts per million for any five-minute averaging period.

##### **(B) Method of Prediction**

All estimates of ambient concentrations required under this section shall be performed by the Arkansas Department of Environmental Quality or performed by the facility and approved by the Department based on the facility's potential to emit hydrogen sulfide, the

applicable air quality models, databases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986), supplement A (1987) and supplement B (1993).

(C) Compliance Plan

- (1) In the event the standard is predicted to be exceeded, the facility or facilities whose emissions are found to contribute to the excess shall be given a reasonable period of time to undertake measures to demonstrate compliance, such as a site-specific risk assessment that demonstrates that the emissions do not pose a risk to human health at the nearest public receptor, ambient monitoring that demonstrates that the standard is not being exceeded, or undertaking emission reduction measures to reduce emissions of hydrogen sulfide such that the standard will not be exceeded.
- (2) The compliance measures and schedule of compliance shall be stated in an enforceable settlement agreement or permit modification or, if the facility does not have an existing permit, in an enforcement order.

(D) Control Technology Requirements

(1) General Requirements

Rather than demonstrate compliance with the ambient limit contained in Reg. 35.806(A), a facility may elect to install and operate or continue to operate appropriate control technology that addresses hydrogen sulfide emissions for that source or source category.

(2) Determination of Appropriate Control Technology.

- (a) For purposes of Reg. 35.806, "appropriate hydrogen sulfide control technology" means control technology, operational practices, or some combination thereof, that will result in the lowest emissions of hydrogen sulfide that a particular facility is reasonably capable of meeting, considering technological and economic feasibility.
- (b) Compliance with all applicable portions of the following technology standards, in accordance with the schedule set forth in the standards, shall be deemed to be in compliance with appropriate hydrogen sulfide control technology:
  - (i) Maximum Achievable Control Technology Standards issued pursuant to section 112 of the Clean Air Act, promulgated at 40 C.F.R. Part 63, if compliance with such standards will reduce hydrogen sulfide emissions;

- (ii) The following Standards of Performance for New Stationary Sources, promulgated at 40 C.F.R. Part 60:
  - (aa) Subpart J, Standards of Performance for Petroleum Refineries;
  - (bb) Subpart BB, Standards of Performance for Kraft Paper Mills;
  - (cc) Subpart VV, Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry;
  - (dd) Subpart GGG, Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries;
  - (ee) Subpart KKK, Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants; or
  - (ff) Subpart LLL, Standards of Performance for Onshore Natural Gas Processing; or
- (iii) National Emission Standards for Hazardous Air Pollutants under Title III of the Clean Air Act and standards of performance promulgated pursuant to section 111(d) of the Clean Air Act if compliance with such standards will reduce hydrogen sulfide emissions.
- (3) A facility that is not subject to one of the technology limits listed in Reg.35.806(D)(2)(b) and that wishes to apply appropriate hydrogen sulfide control technology may apply to the Department for a determination of appropriateness at any time, but no later than ninety (90) days after a determination that the state ambient air quality standard has been exceeded. The application shall be made on such forms and contain such information as the Department may require and shall include a reasonable time schedule for implementation. When making a determination of appropriateness, the Department shall follow the procedures used for making permitting decisions, including public participation requirements.
- (4) The ambient air standard shall not apply to the following facilities:
  - (a) Natural gas pipelines and related facilities that do not transmit gas with a concentration of hydrogen sulfide in excess of four (4) parts per million;



- (b) Natural gas gathering and production pipelines and related facilities that do not transmit gas with a concentration of hydrogen sulfide in excess of thirty (30) parts per million;
- (c) Brine pipelines that carry natural gas as a byproduct of the brine;
- (d) Wastewater treatment facilities; and
- (e) Oil and gas drilling and production operations and facilities from the wellhead to the custodial transfer meter as that term is defined by law.

## **CHAPTER 9: GENERAL EMISSIONS LIMITATIONS APPLICABLE TO EQUIPMENT**

### **Reg. 35. 901 Purpose**

The purpose of this Chapter is to define the general air contaminant emissions limitations applicable to all equipment subject to this Regulation. Stricter specific limitations may be required in applicable permits if stricter limitations are necessary to comply with federal law or regulations that are in effect as of the effective date of this Regulation.

### **Reg. 35.902 General Regulations**

A person shall not cause or allow the construction or modification of equipment emitting federally-regulated air pollutants that would cause or allow the following standards or limitations that are in effect as of the effective date of this Regulation, to be exceeded:

- (A) Any national ambient air quality standard;
- (B) Any ambient air increment (as listed in 40 C.F.R. 52.21);
- (C) Any applicable emissions limitation promulgated by the EPA; or
- (D) Any applicable emissions limitation or air quality standard promulgated by the Department in this Regulation.

### **Reg. 35.903 Stack Height/Dispersion Regulations**

The stack height provisions of 40 C.F.R. 51.118 are incorporated by reference. The definitions of “stack,” “a stack in existence,” “dispersion technique,” “good engineering practice,” “nearby,” and “excessive concentration” contained in 40 C.F.R. 51.100 (ff) through (kk) are incorporated into this Chapter by reference as of September 12, 1986. Stack height provisions do not apply to air contaminant emissions that are not federally-regulated air pollutants.

### **Reg. 35.904 Revised Emissions Limitations**

- (A) The emissions limitations and reporting procedures of this Chapter may be amended as described below:
  - (1) In accordance with the Clean Air Act, as amended, and the federal regulations promulgated under the Clean Air Act, as amended, the emissions limitations and reporting procedures of this Chapter or any applicable permits may be further amended and made more restrictive if the Director finds more restrictive measures are necessary to assure maintenance of the national ambient air quality standards; and

- (2) Any person subject to the emissions limitations contained in this Regulation or in a permit may petition the Director for a less stringent limitation on the grounds that the existing limitation cannot be met when considering physical, economical, or technological constraints. The Director shall not approve a less stringent limitation if it would cause a violation of the national ambient air quality standards. The Director shall not approve a less stringent limitation if it violates a federal emission standard or regulation, unless approved according to applicable federal regulations.
- (B) The Director shall take into account the following factors when revising an emissions limitation:
  - (1) The process, fuels, and raw materials available and to be employed in the facility involved;
  - (2) The engineering aspects of the application of various types of control techniques that have been adequately demonstrated;
  - (3) Process and fuel changes;
  - (4) The respective costs of the application of all control techniques, process changes, alternative fuels, etcetera; and
  - (5) Locational and siting considerations.
- (C) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

## **CHAPTER 10: 111(D) DESIGNATED FACILITIES**

### **Reg. 35.1001 Purpose**

The purpose of this Chapter is to establish regulations for designated federally-regulated air pollutants emitted from designated facilities in accordance with § 111(d) of the Clean Air Act.

### **Reg. 35.1002 Permit Emissions Limitations**

A person shall not cause or permit emissions limitations from equipment located at facilities described in this Chapter to be exceeded. Future permit conditions may place more stringent emissions limitations on the equipment that shall supersede the limitations of this Chapter.

### **Reg. 35.1003 Kraft Pulp Mills (Total Reduced Sulfur)**

- (A) Reg. 35.1003(B) and (C) and Table 35.10.1 are applicable to equipment located at the following kraft pulp mills:
- (1) Evergreen Packaging (AFIN 35-00016);
  - (2) Green Bay Packaging, Arkansas Kraft Division (AFIN 15-00001);
  - (3) Mondi Pine Bluff (AFIN 35-00017);
  - (4) Georgia-Pacific Corporation (AFIN 02-00013);
  - (5) Domtar A.W. (AFIN 41-00002); and
  - (6) Clearwater Paper Corporation (AFIN 21-00036).
- (B) All designated equipment in Table 35.10.1 shall have compliance testing of total reduced sulfur emissions performed using EPA Method 16 at intervals no longer than five (5) years following the previous compliance test. Data reduction shall be performed as set forth in 40 C.F.R. 60.8 as of the effective date of the federal final rule published by EPA in the Federal Register on February 27, 2014 (79 FR 11241). Compliance testing at five-year intervals will not be required for equipment with a continuous total reduced sulfur emissions monitor.
- (C) Any equipment located at the above designated facilities shall conduct total reduced sulfur continuous monitoring in accordance with the requirements of 40 C.F.R. 60.284 (date of installation notwithstanding). The continuous monitoring systems shall be operated according to the provisions of 40 C.F.R. 60.284 by April 1, 1993, except that continuous emissions monitors for affected lime kilns shall be installed and certified by January 1, 1994.

Table 35.10.1 Kraft Pulp Mill Total Reduced Sulfur Emissions Limitations			
AFIN	Facility	Equipment	Total Reduced Sulfur Concentration
35-00016	Evergreen Packaging	recovery furnace	40 ppm
		lime kiln	40 ppm
		smelt dissolving tank	0.0168 g/kg
15-00001	Green Bay Packaging, Arkansas Kraft Division	recovery furnace	40 ppm
		lime kiln	40 ppm
		smelt dissolving tank	0.0168 g/kg
35-00017	Mondi Pine Bluff	recovery furnace	100 ppm
		lime kiln	40 ppm
		smelt dissolving tank	0.0168 g/kg
02-00013	Georgia Pacific Corporation	recovery furnace	5 ppm
		lime kiln	8 ppm
		smelt dissolving tank	0.0168 g/kg
41-00002	Domtar A.W.	recovery furnace	5 ppm
		lime kiln	8 ppm
		smelt dissolving tank	0.0168 g/kg
21-00036	Clearwater Paper Corporation	recovery furnace	5 ppm
		lime kiln	20 ppm
		smelt dissolving tank	0.0168 g/kg

Recovery Furnaces – measured as hydrogen sulfide (H<sub>2</sub>S) on a dry basis and on a twelve (12) hour average, corrected to eight percent (8%) by volume oxygen.

Lime Kilns – measured as H<sub>2</sub>S on a dry basis and on a twelve (12) hour average, corrected to ten percent (10%) volume oxygen.

Smelt Dissolving Tanks – measured as grams H<sub>2</sub>S/kilogram black liquor solids on a twelve (12) hour average.

Digesters and Evaporators – efficient incineration of non-condensable gases (at least one thousand two hundred degrees Fahrenheit [1,200 °F] for at least five-tenths [0.5] seconds).

g/kg – grams per kilogram

ppm – parts per million

## CHAPTER 11: STAGE I VAPOR RECOVERY

### **Reg. 35.1101 Purpose**

The purpose of this Chapter is to limit emissions of volatile organic compounds from gasoline stored in stationary dispensing tanks and from gasoline delivered into these tanks.

### **Reg. 35.1102 Applicability**

This Chapter applies to all gasoline dispensing facilities and to delivery vessels delivering gasoline to a gasoline dispensing facility in a nonattainment area; and this Chapter applies to all persons owning or operating a gasoline dispensing facility in an ozone nonattainment area.

### **Reg. 35.1103 Definitions**

For the purposes of this Chapter:

- (A) “Coaxial system” means the delivery of the product to the stationary storage tank and the recovery of vapors from the stationary storage tanks occurs through a single coaxial fill tube that is a tube within a tube. Product is delivered through the inner tube, and vapor is recovered through the annular space between the walls of the inner tube and outer tube.
- (B) “Control of a corporation” means ownership of more than fifty percent (50%) of its stock.
- (C) “Dual point system” means the delivery of the product to the stationary storage tank and the recovery of vapors from the stationary storage tank occurs through two (2) separate openings in the storage tank and two (2) separate hoses between the tank truck and the stationary storage tank.
- (D) “Gasoline” means any petroleum distillate or blend of petroleum distillates with other combustible liquids that is used as a fuel for internal combustion engines and has a Reid vapor pressure of four (4) psi or greater. This does not include diesel fuel or liquefied petroleum gas.
- (E) “Gasoline delivery vessel” means tank trucks or trailers equipped with a storage tank and used for the transport of gasoline from sources of supply to stationary storage tanks of gasoline dispensing facilities.
- (F) “Gasoline dispensing facility” or “GDF” means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks.
- (G) “Independent small business marketer” means a person engaged in the marketing of gasoline unless the person:
  - (1) Is a refiner;

- (2) Controls, is controlled by, or is under common control with, a refiner;
  - (3) Is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under common control with a refiner, unless the sole affiliation referred to is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by the refiner or any person; or
  - (4) Receives less than fifty percent (50%) of his or her annual income from refining or marketing of gasoline.
- 
- (H) “Leak free” means a condition where there is no liquid gasoline escape or seepage of more than three (3) drops per minute from gasoline storage, handling, and ancillary equipment, including, but not limited to, seepage and escapes from above ground fittings.
  - (I) “Line” means any pipe suitable for transferring gasoline or recapturing vapor.
  - (J) “Nonattainment area” means a county or counties designated by EPA as not meeting the national ambient air quality standard for ozone.
  - (K) “Operator” means any person who leases, operates, controls, or supervises a facility where gasoline is dispensed.
  - (L) “Owner” means any person who has legal or equitable title to the gasoline storage tank at a facility.
  - (M) “Poppeted vapor recovery adaptor” means a vapor recovery adaptor that automatically and immediately closes itself if the vapor return line is disconnected and maintains a tight seal if the vapor return line is not connected.
  - (N) “Refiner” means any person whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, the refiner) exceeds sixty-five thousand (65,000) barrels per day.
  - (O) “Stationary storage tank” means a gasoline storage container that is a permanent fixture.
  - (P) “Submerged fill pipe” means any fill pipe with a discharge opening that is entirely submerged if the pipe normally used to withdraw liquid from the tank can no longer withdraw any liquid, or that is entirely submerged if the level of the liquid is twelve (12) inches above the bottom of the tank if the tank has a vapor recovery adaptor. If the opening of the submerged fill pipe is cut at a slant, the distance is measured from the top of the slanted cut to the bottom of the tank.
  - (Q) “Throughput” means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month.

- (R) “Vapor tight” means a condition where an organic vapor analyzer or a combustible gas detector at a potential volatile organic compounds leak source shows less than ten thousand (10,000) ppm when corrected to gasoline vapor concentration, or less than one hundred percent (100%) of the lower explosive limit when calibrated and operated according to the manufacturer’s specifications.

**Reg. 35.1104 Exemptions**

- (A) This Chapter does not apply to:
- (1) Transfers made to storage tanks at gasoline dispensing facilities equipped with floating roofs or their equivalent;
  - (2) Stationary storage tanks with a capacity of not more than two hundred fifty (250) gallons;
  - (3) Stationary storage tanks used exclusively for the fueling of implements of normal farm operations;
  - (4) Facilities with a throughput of less than ten thousand (10,000) gallons of gasoline;
  - (5) Independent small business marketers of gasoline dispensing less than fifty thousand (50,000) gallons per month;
  - (6) Any other facility or use exempted by State or federal statute.
- (B) If any exemption is claimed for a facility subject to this Chapter:
- (1) The owner or operator of the facility shall maintain appropriate records on site showing the requirements for the exemption have been met;
  - (2) Records shall be updated by the fifteenth (15th) day of the month following the month to which the records pertain. These records shall be provided to Departmental personnel upon request and may be used by the Department for enforcement purposes; and
  - (3) The owner or operator of the facility shall notify the Department in writing of the claim of exemption and provide written record on forms as the Department may require showing the requirements for the exemption have been met.

**Reg. 35.1105 Prohibited Activities**

A person shall not cause, allow, or permit the transfer of gasoline from any gasoline delivery vessel into any stationary storage tank or allow the operation of a gasoline dispensing facility unless the transfer or operation complies with the following requirements:



- (A) The stationary tank is equipped with a submerged fill pipe and the vapors displaced from the tank during filling are controlled by a vapor control system as described herein;
- (B) The vapor control system is in good working order based upon manufacturer's specifications and is connected and operating with vapor tight connections;
- (C) The vapor control system is properly maintained and any damaged or malfunctioning components or elements of design have been repaired, replaced, or modified;
- (D) All gauges, meters, or other specified testing devices on the gasoline delivery vessel and the gasoline storage tank are maintained in proper working order;
- (E) All loading lines and vapor lines of gasoline delivery vessels and vapor collection systems are equipped with fittings that are leak tight and vapor tight;
- (F) All hatches on the gasoline delivery vessel are kept closed and securely fastened; and
- (G) The stationary storage tank and vapor control system has been tested, no less than annually, on a schedule acceptable to the Director according to the test methods required herein.

**Reg. 35.1106 Recordkeeping**

The following records shall be maintained for not less than five (5) years and shall be made available for inspection by the Department:

- (A) Records of the occurrence of any maintenance and testing including the scheduled date and actual date that maintenance or testing was performed;
- (B) Records of the occurrence and duration of each malfunction of operation;
- (C) Records of actions taken during periods of malfunction to minimize emissions including corrective actions to restore malfunction process and air pollution control and monitoring equipment to its normal or usual manner of operation; and
- (D) Records of monthly totals of gasoline throughput for the facility.

**Reg. 35.1107 Inspection**

- (A) The premises of any gasoline dispensing facility shall be available for inspection by representatives of the Department.
- (B) The process of transfer of gasoline from any gasoline delivery vessel into any stationary storage tank shall be subject to observation by representatives of the Department.

**Reg. 35.1108 Vapor Recovery Systems**

- (A) The vapor control system required by Reg. 35.1105 of this Chapter shall include one or more of the following:
  - (1) A vapor-tight line from the stationary storage tank to the gasoline delivery vessel;
  - (2) For a coaxial vapor recovery system, either a poppeted or unpoppeted vapor recovery adaptor;
  - (3) For a dual point vapor recovery system, a poppeted vapor recovery adaptor;
  - (4) A refrigeration-condensation system or equivalent designed to recover or destroy at least ninety percent (90%) by weight of the organic compounds in the displaced vapor.
- (B) All vapor recovery adaptors, poppeted or unpoppeted, shall remain covered with a vapor tight cap or a vapor return line except if the vapor return line is being connected or disconnected.
- (C) If an unpoppeted vapor recovery adaptor is used, the unpoppeted vapor recovery adaptor shall be replaced with a poppeted vapor recovery adaptor if the tank is replaced or upgraded.
- (D) Where vapor lines from the storage tanks are manifold, poppeted vapor recovery adaptors shall be used. No more than one (1) tank is to be loaded at a time if the manifold vapor lines have a nominal pipe size of less than three (3) inches. If the manifold vapor lines have a nominal pipe size of three (3) inches or larger, then two (2) tanks at a time may be loaded.
- (E) Vent lines on stationary storage tanks shall have properly maintained pressure-release valves or restrictors.

**Reg. 35.1109 Gasoline Delivery Vessels**

- (A) Gasoline delivery vessels shall be designed and maintained to be vapor tight during loading and unloading operations and during transport.
- (B) Gasoline delivery vessels shall be tested, no less than annually, on a schedule acceptable to the Director according to test methods required herein.
- (C) Gasoline vessels shall sustain a pressure change of no more than seven hundred fifty (750) pascals (three [3] inches of water) in five (5) minutes when pressuring to a gauge pressure of four thousand five hundred (4,500) pascals (eighteen [18] inches of water) or evacuated to a gauge pressure of one thousand five hundred (1,500) pascals (six [6] inches of water) during testing. This capacity is to be demonstrated using the pressure test

specified in EPA Test Method 27. Documentation of pressure test compliance shall be provided upon request.

**Reg. 35.1110 Owner or Operator Responsibility**

- (A) It shall be the responsibility of owners or operators of gasoline dispensing facilities to assure compliance with this Chapter and to disallow the transfer of gasoline from any gasoline delivery vessel that does not comply with those requirements of this Chapter applicable to gasoline delivery vessels.
- (B) It shall be the responsibility of owners or operators of gasoline dispensing facilities to properly maintain, repair, replace, modify, and test the vapor recovery system components of all stationary storage tanks regulated herein.
- (C) It shall be the responsibility of owners or operators of gasoline dispensing facilities to submit compliance test results of the vapor recovery system volatile organic compounds leak detection test to the Department on such forms as the Department may require.
- (D) It shall be the responsibility of owners or operators of gasoline dispensing facilities to repair and retest vapor recovery system equipment within fifteen (15) days of a failed vapor recovery system volatile organic compound leak detection test as set forth in Reg. 35.1111.
- (E) The owners or operators shall send a retest notification to the Department to be received no later than five (5) days prior to the retest.
- (G) If the ability to perform the retest will require longer than fifteen (15) days, the owners or operators are required to submit a request for an extension (not to exceed fifteen [15] days) to repair and to perform the test, indicating why repairs will not be made within the prescribed time frame. The request for extension will not be considered approved until a notification of acceptance is returned.
- (H) Volatile organic compound leak detection compliance test scheduling, compliance test results, and compliance retest notifications shall be submitted to the Department via electronic submittal, U.S. Postal Service, commercial delivery service, or by hand delivery.

**Reg. 35.1111 Test Methods**

- (A) Owners or operators of facilities affected by this Chapter are required to carry out leak detection testing no less than annually. Testing must be done in accordance with EPA Test Method 21.

- (1) The detection instrument shall meet the performance criteria of EPA Test Method 21, "Determination of Volatile Organic Compound Leaks"; and
- (2) Calibration of gases shall be:
  - (a) Zero air (less than ten [10] parts per million of hydrocarbon in air);
  - (b) For a combustible gas detector, propane at a concentration of approximately, but less than, two and five-tenths percent (2.5%) by volume; and
  - (c) For an organic vapor analyzer, isobutylene at a concentration of approximately, but less than, ten thousand (10,000) ppm.
- (B) Owners or operators of facilities affected by this Chapter shall test any equipment required to be tested by this Chapter within the following time frames:
  - (1) Within sixty days of the effective date of a nonattainment designation;
  - (2) No less than annually;
  - (3) For new equipment or newly modified equipment within sixty (60) days of commencing operation; and
  - (4) The owner or operator shall notify the Department of the scheduled date of compliance testing at least fifteen (15) days in advance of the test. The owner or operator shall submit the compliance test results to the Department within sixty (60) days after completing the testing.

**Reg. 35.1112 Effective Date**

- (A) The requirements of this Chapter shall be effective within nonattainment areas one (1) year after the designation by EPA of an area as a nonattainment area.
- (B) In the case of an independent small business marketer with 3 or more facilities and sales of fifty thousand (50,000) gallons or more per month, this Chapter shall be phased-in as follows:
  - (1) Thirty-three percent (33%) of facilities shall be in compliance at the end of the first year;
  - (2) Sixty-six percent (66%) at the end of the second year; and
  - (3) One hundred percent (100%) at the end of the third year.

## CHAPTER 12: CONFIDENTIALITY

### **Reg. 35.1201 Confidentiality of Trade Secrets**

- (A) Information that constitutes a “Trade Secret” shall be held confidential and segregated from the public files of the Department if requested in writing and the information meets the following requirements:
- (1) The Applicant derives independent economic value (actual or potential) from the information not being generally known to, and not being readily ascertainable through, proper means by other persons who can obtain economic value from its disclosure or use;
  - (2) The information claimed as confidential is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;
  - (3) The applicant submits a sworn affidavit to the Department that is subject to public scrutiny that describes in a manner that does not reveal trade secrets, the processes or market conditions that support the applicant’s confidentiality claim in the terms of Reg. 35.1201(A)(1) and (2); and
  - (4) This affidavit submitted to the Department recites the following:  
  
“The applicant agrees to act as an indispensable party and to exercise extraordinary diligence in any legal action arising from the Department’s denial of public access to the documents or information claimed herein to be a trade secret.”
- (B) If an applicant anticipates numerous permit modifications that may involve regulatory review of trade secrets, the applicant may submit an omnibus affidavit establishing the prerequisites of Reg. 35.1201(A)(3) and (4), and reference this document in future confidentiality claims.
- (C) Confidentiality claims shall be afforded interim protected status until the Department determines whether the requirements of Reg. 35.1201(A) are satisfied. The Department shall make the determination prior to the issuance of any permit or publication of any draft permit. If the Department does not make the determination prior to permit issuance, the information shall be deemed confidential until a request is made. If a third party request to review information claimed as confidential is received before the Department provides its written determination concerning the claim, the Department shall not release the information before notifying the applicant of the request. The Department shall notify the applicant of the request and the Department’s determination on the confidentiality claim at least two (2) business days before releasing the information, if the applicant may choose to supplement its affidavit supporting confidentiality or seek legal recourse.

- (D) For any permit application submitted subject to a claim of trade secret, the applicant shall provide two (2) copies of the application: one prominently marked as confidential and another that is subject to public review with confidential information excised. The Department will not accept applications that are deemed totally confidential except under extraordinary circumstances guaranteeing future disclosure at a meaningful time for public review.

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## **CHAPTER 13: SAMPLING, MONITORING, AND REPORTING REQUIREMENTS**

### **Reg. 35.1301 Purpose**

The purpose of this Chapter is to generally define the powers of the Department in requiring sampling, monitoring, and reporting requirements at stationary sources.

- (A) The Department shall enforce all properly incorporated and delegated federal testing requirements at a minimum. Any credible evidence based on sampling, monitoring, and reporting may be used to determine violations of applicable emissions limitations.
- (B) The Department reserves the right to require additional sampling, monitoring, and reporting requirements not already required in federal regulations.

### **Reg. 35.1302 Air Emissions Sampling**

Any stationary source subject to this Regulation shall be subject to the following requirements:

- (A) To provide any sampling ports, at the request of the Department, required for emissions sampling, including safe and easy access to the ports;
- (B) To conduct emissions sampling, at the request of the Department, to determine the rate, opacity, composition, and/or contaminant concentration of the emissions. All compliance testing shall be done at the expense of the permittee by an independent firm, unless otherwise approved by the Department. Sampling shall not be required for those air contaminants with continuous emissions monitors;
- (C) All compliance testing averaging times shall be consistent with the averaging times of the applicable emissions limitations stated in the applicable permit, but in no case shall be greater than the minimum averaging times of the applicable national ambient air quality standard;
- (D) Unless otherwise approved by the Department, emissions sampling shall be performed with the equipment being tested operating at least at ninety percent (90%) of its permitted capacity. Emissions results shall be extrapolated to correlate with one hundred percent (100%) of permitted capacity to determine compliance;
- (E) Any equipment that is to be tested, at the request of the Department, shall be tested in accordance with the following time frames;
  - (1) Equipment to be constructed or modified shall be tested within sixty (60) days after achieving its maximum permitted production rate, but no later than one hundred eighty (180) days after its initial startup; and

- (2) Equipment already operating shall be tested according to the time frames set forth by the Department.
- (F) The Department shall require that all applicable testing be performed using the methods described in 40 C.F.R. Part 51, Appendix M, as of the effective date of the federal final rule published by EPA in the Federal Register on April 2, 2014 (79 FR 18452); 40 C.F.R. Part 60, Appendix A, as of the effective date of the federal final rule published by EPA in the Federal Register on February 27, 2014 (79 FR 11257); 40 C.F.R. Part 61, Appendix B, as of the effective date of the federal final rule published by EPA in the Federal Register on October 17, 2000 (65 FR 62161); and 40 C.F.R. Part 63, Appendix A, as of the effective date of the federal final rule published by EPA in the Federal Register on December 29, 1992 (57 FR 62002). The Department may approve, at its discretion, alternate sampling methods that are equivalent to the specified methods. The results of the tests shall be submitted to the Department within the time frames and on forms required by the Department and federal regulations. The owner or operator of the equipment shall retain the results of the tests for at least five (5) years, and shall make the results available to any agents of the Department or the EPA during regular business hours.

**Reg. 35.1303 Continuous Emissions Monitoring**

Any stationary source subject to this Regulation shall, upon request by the Department:

- (A) Install, calibrate, operate, and maintain equipment or continuously monitor air contaminant emissions in accordance with applicable performance specifications in 40 C.F.R. Part 60, Appendix B as of the effective date of the federal final rule published by the EPA in the Federal Register on February 27, 2014 (79 FR 11271), and quality assurance procedures in 40 C.F.R. Part 60, Appendix F as of the effective date of the federal final rule published by the EPA in the Federal Register on February 27, 2014 (79 FR 11274), or other methods and conditions that the Department shall approve. Any source listed in a category in 40 C.F.R. Part 51, Appendix P as of the effective date of the federal final rule published by the EPA in the Federal Register on November 7, 1986 (51 FR 40675), or 40 C.F.R. Part 60 shall adhere to all continuous emissions monitoring requirements stated therein, if applicable; and
- (B) Report the data collected by the monitoring equipment to the Department at intervals and on forms as the Department shall prescribe, in accordance with 40 C.F.R. Part 51, Appendix P, § 4.0 (Minimum Data Requirements) as of the effective date of the federal final rule published by the EPA in the Federal Register on November 7, 1986 (51 FR 40675), and any other applicable reporting requirements promulgated by the EPA.

**Reg. 35.1304 Notice of Completion**

Reg. 35.1304 shall not apply to sources permitted solely under Reg. 35.1401(B) or (C). For equipment requiring a new permit or a major permit modification, the Department shall be notified in writing within thirty (30) days of the following events:



- (A) The date of commencement of construction or modification; and
- (B) The date of commencement of operation of a piece of equipment.

**Reg. 35.1305 Recordkeeping and Reporting Requirements**

- (A) Any stationary source subject to this Regulation shall, upon request by the Department:
  - (1) Maintain records on the nature and amounts of air contaminants emitted to the air by the equipment in question. All records, including compliance status reports and excess emissions measurements, shall be retained for at least five (5) years, and shall be made available to the Department or the EPA during regular business hours;
  - (2) Maintain records of any other information as may be deemed necessary by the Department to determine whether the source is in compliance with applicable emissions limitations or other control measures;
  - (3) Supply the following information, correlated in units of the applicable emissions limitations, to the Department:
    - (a) General process information related to the emissions of air contaminants into the air; and
    - (b) Emissions data obtained through sampling or continuous emissions monitoring.
- (B) Information and data shall be submitted to the Department by a responsible official on forms and at time intervals as prescribed by applicable federal regulations or the Department.
- (C) Each emission inventory of a federally-regulated air pollutant is to be accompanied by a certifying statement, signed by the owner or operator and attesting that the information contained in the inventory is true and accurate to the best knowledge of the certifying official. The certification shall include the full name, title, signature, date of signature, and telephone number of the certifying official.

**Reg. 35.1306 Public Availability of Emissions Data**

Emissions data obtained by the Department shall be correlated in units of applicable emissions limitations and be made available to the public at the Department's central offices during normal business hours.

## CHAPTER 14: PERMITS

### Reg. 35.1401 Applicability

#### (A) General applicability

A person shall not cause or allow the operation, construction, or modification of a stationary source, without first obtaining a permit from the Department if the source would emit:

- (1) Seventy-five (75) tons per year or more of carbon monoxide;
- (2) Forty (40) tons per year or more of nitrogen oxides;
- (3) Forty (40) tons per year or more of sulfur dioxide;
- (4) Forty (40) tons per year or more of volatile organic compounds;
- (5) Ten (10) tons per year or more of direct PM<sub>2.5</sub>;
- (6) Fifteen (15) tons per year or more of PM<sub>10</sub>;
- (7) One-half (0.5) ton per year or more of lead;
- (8) Two (2) tons per year or more of any single hazardous air pollutant; or
- (9) Five (5) tons per year or more of any combination of hazardous air pollutants.

#### (B) Special Applicability

Except as provided for by law or regulation, the stationary sources listed in Reg. 35.1401(B)(1) through (B)(3) are required to obtain a permit under this Chapter regardless of emissions:

- (1) Any stationary source that the Director determines should obtain a permit to protect the public health and welfare or to assist in the abatement or control of air pollution;
- (2) Any class of stationary sources where the Director has determined that the intrinsic nature of the source's operation and/or actual emissions indicates that a permit is necessary for the protection of public health and welfare or to assist in the abatement or control of air pollution. The sources include but are not limited to:
  - (a) Medical waste incinerators;
  - (b) Rendering plants;

- (c) Pathological waste incinerators, including crematories;
  - (d) Chemical process plants;
  - (e) Hazardous waste treatment storage or disposal facilities;
  - (f) Sour gas process plants;
  - (g) Lead acid battery recycling facilities; and
  - (h) Charcoal plants; and
- (3) Any stationary source subject to the requirements of a rule promulgated under 40 C.F.R. Part 60, Part 61, or Part 63 as of June 27, 2008, except for:
- (a) 40 C.F.R. Part 60, Subpart AAA (Wood Stoves);
  - (b) 40 C.F.R. Part 60, Subpart JJJ (Petroleum Dry Cleaners);
  - (c) 40 C.F.R. Part 63, Subpart M (Perchloroethylene Dry Cleaners);
  - (d) 40 C.F.R. Part 63, Subpart Q (Industrial Cooling Towers);
  - (e) Sources subject to 40 C.F.R. Part 60, Subpart Dc (Steam Generating Units) that only burn gas;
  - (f) 40 C.F.R. Part 63, Subpart ZZZZ (Stationary Reciprocating Internal Combustion Engines) for non-Part 70 sources (minor sources);
  - (g) 40 C.F.R. Part 63, Subpart WWWW (Hospital Ethylene Oxide Sterilizers);
  - (h) 40 C.F.R. Part 63, Subpart CCCCCC (Gasoline Dispensing Facilities);
  - (i) 40 C.F.R. Part 60, Subpart IIII (Stationary Compression Ignition Internal Combustion Engines) for engines with a displacement of less than 30 liters per cylinder;
  - (j) 40 C.F.R. Part 60, Subpart JJJJ (Stationary Spark Ignition Internal Combustion Engines);
  - (k) 40 C.F.R. Part 63, Subpart HHHHHH (Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources);
  - (l) 40 C.F.R. Part 63, Subpart BBBB (National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities with a throughput less than 20,000 gallons per day of gasoline); and (m) 40 C.F.R. Part 63, Subpart

OOOOOO (National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources).

(C) Additional Applicability

A person shall not cause or allow the operation, construction, or modification of a stationary source that actually emits twenty-five (25) tons per year or more of particulate matter or any air contaminants, other than those listed in Reg. 35.1401(A), without first obtaining a permit from the Department.

**Reg. 35.1402 Registration**

(A) A person shall not cause or allow the operation, construction, or modification of a stationary source, without first having registered the source with the Department, if the actual emissions are:

- (1) Forty (40) tons per year or more but less than seventy-five (75) tons per year of carbon monoxide;
- (2) Twenty-five (25) tons per year or more but less than forty (40) tons per year of nitrogen oxides;
- (3) Twenty-five (25) tons per year or more but less than forty (40) tons per year of sulfur dioxide;
- (4) Twenty-five (25) tons per year or more but less than forty (40) tons per year of volatile organic compounds;
- (5) Fifteen (15) tons per year or more but less than twenty-five (25) tons per year of particulate matter;
- (6) Ten (10) tons per year or more but less than fifteen (15) tons per year of PM<sub>10</sub>;
- (7) One (1) ton per year or more but less than two (2) tons per year of any single hazardous air pollutant; or
- (8) Three (3) tons per year or more but less than five (5) tons per year of a combination of hazardous air pollutants.

(B) For the purpose of Reg. 35.1402(A), “modification” shall mean any physical change in or change in the method of operation of a stationary source that increases the emission rates of any air contaminant, specified above, previously registered with the Department or results in the emission of an air contaminant not previously emitted and registered with the Department. Registration with the Department is not equivalent to a permit.

(C) The registration shall be made on Department forms and contain information as the Department may reasonably require, including but not limited to:

- (1) The name and address of the facility;
  - (2) An estimate of emissions from the facility; and
  - (3) An explanation of how the emissions estimate was determined.
- (D) Registration does not affect the responsibility of the owner or operator to comply with applicable portions of this Regulation.
- (E) A facility may construct, operate, or modify a source subject to registration under Reg. 35.1402 immediately upon submittal of the registration.
- (F) Sources registered under Reg. 35.1402 shall pay an annual fee of two hundred dollars (\$200). The requirements of Chapter 3 (Permit Fee Payment) of the Arkansas Pollution Control and Ecology Commission's Regulation 9, Fee Regulation shall apply to fees collected under this Chapter.
- (G) Sources currently holding permits but whose emissions are below the permitting thresholds in Reg. 35.1401, and above the registration thresholds under Reg. 35.1402(A) may elect to continue to operate under their existing permit or they may submit a registration and request their permit be voided. The permit shall remain in effect until voided. If a source takes no action, the permit will remain in effect.
- (H) A source otherwise required to be registered under Reg. 35.1402 may instead choose to operate under a permit issued in accordance with Reg. 35.1401.

**Reg. 35.1403 Permit Approval Criteria**

- (A) No permit shall be granted or modified under this Chapter unless the owner or operator 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.
- (B) No permit shall be granted or modified under this Chapter unless the owner or operator demonstrates to the reasonable satisfaction of the Department that the stationary source will be constructed or modified to operate without interfering with the attainment or maintenance of a national ambient air quality standard.
- (C) No permit shall be granted or modified under this Chapter unless the owner or operator demonstrates to the reasonable satisfaction of the Department that the stationary source will be constructed or modified to operate without causing air pollution.
- (D) No permit shall be granted or modified for commercial medical waste incinerators unless the owner or operator demonstrates to the reasonable satisfaction of the Department that the stationary sources will be constructed or modified to operate in accordance with Ark. Code Ann. §§ 8-6-1301 *et seq.*

#### **Reg. 35.1404 Owner's or Operator's Responsibilities**

Issuance of a permit by the Department does not affect the responsibility of the owner or operator to comply with applicable portions of this Regulation.

#### **Reg. 35.1405 Required Information**

##### **(A) General**

Application of a permit shall be made on Department forms and contain information as the Department may reasonably require, including but not limited to:

- (1) Information on the nature and amounts of air contaminants to be emitted by the stationary source;
- (2) Information on the location, design, and operation of the stationary source as the Department may reasonably require; and
- (3) Information on the nature and amounts of air contaminants to be emitted by mobile sources associated with the stationary source.

##### **(B) Duty to Supplement Submittal**

If, while processing an application that has been determined to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, the Department may request the information in writing and set a reasonable deadline for a response.

##### **(C) Duty to Correct Submittal**

Any owner or operator who fails to submit any relevant facts or who has submitted incorrect information, shall, upon becoming aware of the failure or incorrect submittal, promptly submit supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any relevant requirements that become applicable to the stationary source before final action is taken on its application.

#### **Reg. 35.1406 Action on Application**

##### **(A) Technical Review**

The Department will review the application submitted under this Chapter to ensure to its reasonable satisfaction that:

- (1) The stationary source will be constructed or modified to operate without interfering with attainment or maintenance of a national ambient air quality standard;

- (2) The stationary source will be constructed or modified to operate without violating any applicable regulation adopted by the EPA pursuant to the Clean Air Act §§ 111, 112, and 114, as amended as of February 15, 1999;
- (3) The stationary source will be constructed or modified to operate without resulting in a violation of any applicable provisions of this Regulation;
- (4) The emission rate calculations are complete and accurate;
- (5) If the facility wishes to measure and/or monitor operating parameters rather than actual emissions, the application describes a process that will be used to ensure calculations are translated into enforceable limits on operational parameters rather than emissions;
- (6) The stationary source will be constructed or modified to operate without causing air pollution; and
- (7) The stationary source will be constructed or modified to incorporate the appropriate control technology, if any, developed for the kind and amount of federally-regulated air pollutant emitted by the facility.

(B) Proposed Action

- (1) If the Department initially determines the requirements of Reg. 35.1406(A) are met, it shall prepare a draft permit that:
  - (a) Contains such conditions as the Department may prescribe, to prevent, control, or abate air pollution;
  - (b) Contains conditions as are necessary to comply with this Regulation;
  - (c) Addresses all air contaminant emissions and all air contaminant-emitting equipment at the stationary source except air contaminants or equipment specifically exempt or as specifically provided for in Reg. 35.1406(B)(1)(d); and
  - (d) Establishes BACT-permitted emission rates, emissions limitations or other enforceable conditions for GHG emissions pursuant to Chapter 15 of this Regulation, if applicable. Draft permits for facilities not subject to a BACT determination in regard to GHG emissions pursuant to the provisions at Chapter 15 of this Regulation shall not contain permitted emission rates, emissions limitations or other enforceable conditions related to GHG emissions. However, the applicant may request that the Department include permitted emission rates, emissions limitations or other enforceable conditions related to GHG emissions in the draft permit to set enforceable limits for the purpose of establishing synthetic minor status.

- (2) If the Department initially determines the requirements of this Chapter are not met, it shall prepare a notice of intent to deny. This notice will state the reasons for the Department's denial of the stationary source's submittal.
- (3) Except as provided in Reg. 35.1408, the public shall have an opportunity to comment on the Department's draft permit decision in accordance with Reg. 35.1407.
- (4) Within ninety (90) days of receipt by the Department of an initial permit application, or an application for a major modification that contains the information as required by the Department (unless the period is extended by mutual agreement between the Department and the applicant), the Department shall notify the applicant in writing of its draft permitting decision. If the Department fails to take action on the application within the prescribed time frames, the aggrieved applicant may petition the Arkansas Pollution Control and Ecology Commission for relief from Department inaction. The Arkansas Pollution Control and Ecology Commission shall either grant or deny the petition within forty-five (45) days of its submittal.

(C) Final Action

Final action on permit applications shall be taken in accordance with Arkansas Pollution Control and Ecology Commission Regulation 8, Chapter 2 Permits.

**Reg. 35.1407 Public Participation**

(A) General

No permit shall be issued, denied, or modified unless the public has first had an opportunity to comment on the information submitted by the owner or operator and the Department's analysis, as demonstrated by the permit record, of the effect of construction or modification on ambient air quality, including the Department's proposed approval or disapproval of the permit.

(B) Public Availability of Information

Information on applications received, draft and final permits shall be made available to the public in accordance with Arkansas Pollution Control and Ecology Commission Regulation 8, Chapter 2 Permits.

**Reg. 35.1408 Permit Amendments**

(A) Administrative Permit Amendments

- (1) An administrative permit amendment is a permit revision that:
  - (a) Corrects a typographical error;



- (b) Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
    - (c) Requires more frequent monitoring or reporting by the permittee;
    - (d) Incorporates a change in the permit involving the retiring of equipment or emission units, or the decrease of permitted emissions from equipment or emission units; or
    - (e) Incorporates a change to the facility's insignificant activities list.
  - (2) The Department shall revise the permit as practicable and may incorporate the revisions without providing notice to the public.
  - (3) The applicant may implement the changes addressed in the request for an administrative amendment immediately upon approval.
- (B) Change in Ownership
- (1) Permits issued under this Chapter shall remain freely transferable, provided the applicant for the transfer:
    - (a) Notifies the Director at least thirty (30) days in advance of the proposed transfer date on the forms the Director may reasonably require; and
    - (b) Submits a disclosure statement in accordance with Arkansas Pollution Control and Ecology Commission Regulation 8, Administrative Procedures, or other documents as required by the Department.
  - (2) The Director may deny the issuance or transfer of any permit, license, certification, or operational authority if he or she finds, based upon the disclosure statement and other investigation that he or she deems appropriate, if:
    - (a) The applicant has a history of non-compliance with the environmental laws or regulations of this State or any other jurisdiction;
    - (b) An applicant that owns or operates other facilities in the state is not in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, the environmental laws or regulations of this State; or
    - (c) A person with a history of noncompliance with environmental laws or regulations of this State or any other jurisdiction is affiliated with the applicant to the extent of being capable of significantly influencing the practices or operations of the applicant that could have an impact upon the environment.

- (3) Public notice requirements shall not apply to changes in ownership or changes in name.

(C) *De Minimis* Changes

- (1) A proposed change to a facility will be considered *De Minimis* if:
- (a) Minimal judgment is required to establish the permit requirements for the modification; and
  - (b) The change will result in a trivial environmental impact.
- (2) The environmental impact of a proposed change generally will be considered trivial if the emissions increase, based on the differences between the sum of the proposed permitted rates for all emission units and the sum of previously permitted emission rates for all units, will either:
- (a) Be less than the following amounts:
    - (i) Seventy-five (75) tons per year of carbon monoxide;
    - (ii) Forty (40) tons per year of nitrogen dioxide, sulfur dioxide, or volatile organic compounds;
    - (iii) One-half (0.5) ton per year of lead;
    - (iv) Twenty-five (25) tons per year of particulate matter;
    - (v) Ten (10) tons per year of direct PM<sub>2.5</sub>; and
    - (vi) Fifteen (15) tons per year of PM<sub>10</sub> emissions;
  - (b) Or, result in an air quality impact less than:

Air Contaminant	<i>De Minimis</i> Concentration	Averaging Time
Carbon monoxide	Five hundred (500) micrograms per cubic meter	Eight-hour
Nitrogen dioxide	Ten (10) micrograms per cubic meter	Annual
PM <sub>2.5</sub>	Two (2) micrograms per cubic meter	Twenty-four-hour

PM <sub>10</sub>	Eight (8) micrograms per cubic meter	Twenty-four-hour
Sulfur dioxide	Eighteen (18) micrograms per cubic meter	Twenty-four-hour
Lead	One-tenth (0.1) microgram per cubic meter	Twenty-four-hour

- (3) A proposed change shall be considered *De Minimis* for CO<sub>2</sub>e emission increases if all emission increases of air contaminants other than CO<sub>2</sub>e otherwise qualify as *De Minimis* under Reg. 35.1408(C) or if the proposed change in CO<sub>2</sub>e emission is less than seventy-five thousand (75,000) tons per year.
- (4) The following changes shall not be considered *De Minimis* changes:
- (a) Any increase in the permitted emission rate at a stationary source without a corresponding physical change or change in the method of operation at the source;
  - (b) Any change that would result in a violation of the Clean Air Act;
  - (c) Any change seeking to change a case-by-case determination of an emissions limitation established pursuant to BACT under the Clean Air Act § 112(g), § 112(i)(5), § 112(j), or § 111(d), as amended as of February 15, 1999;
  - (d) Any change that would result in a violation of any provision of this Regulation;
  - (e) Any change in a permit term, condition, or limitation that a source has assumed to avoid an applicable requirement to which the source would otherwise be subject;
  - (f) Any significant change or relaxation to existing testing, monitoring, reporting, or recordkeeping requirements; or
  - (g) Any proposed change that requires more than minimal judgment to determine eligibility.
- (5) A source shall not submit multiple applications for *De Minimis* changes that are designed to conceal a larger modification that would not be considered a *De Minimis* change. The Department shall require multiple applications be processed

as a permit modification with public notice and reconstruction requirements. Deliberate misrepresentation may be grounds for permit revocation.

- (6) The applicant may implement *De Minimis* changes immediately upon receipt of written notification by the Department.

**Reg. 35.1409 Permit Revocation and Cancellation**

(A) Revocation

Any permit issued under this Chapter is subject to revocation, suspension, or modification in whole or in part, for cause, including without limitation:

- (1) Violation of any condition of the permit;
- (2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
- (3) Change in any applicable regulation or change in any pre-existing condition affecting the nature of the emission that requires either a temporary or permanent reduction or elimination of the permitted emission.

(B) Cancellation

The Director may cancel a permit if the construction or modification is not begun within eighteen (18) months from the date of the permit issuance or if the work involved in the construction or modification is suspended for a total of eighteen (18) months or more.

**Reg. 35.1410 General Permits**

(A) General Authority

The Department may, after notice and opportunity for public participation provided under this Chapter, issue a general permit covering numerous similar sources. The criteria for the review and approval of permits under this Chapter shall be used for general permits as well. Any general permit shall comply with all requirements applicable to other permits and shall identify criteria whereby sources may qualify for the general permit. They shall also include enforceable emissions limitations or other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Regulation. To sources that qualify, the Department shall grant the conditions and terms of the general permit. The source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

(B) Application

Applications for a general permit shall be processed in accordance with Arkansas Pollution Control and Ecology Commission Regulation No. 8.

**Reg. 35.1411 Newly-Subject Sources**

Facilities that become subject to this Regulation and were not previously subject to this Regulation or former Arkansas Pollution Control and Ecology Commission Regulations No. 18, 19, 26, or 31 shall be in full compliance within one hundred eighty (180) days of the effective date of this Regulation. Facilities that become subject to permitting under this Regulation that were not previously subject to permitting under this Regulation or former Arkansas Pollution Control and Ecology Commission Regulations No. 18, 19, 26, or 31 shall submit a complete application within one hundred eighty (180) days of the effective date of this Regulation. The Director may extend this compliance period on a case-by-case basis provided that the total compliance period does not exceed one (1) year.

**Reg. 35.1412 Operational Flexibility Applicant's Duty to Apply for Alternative Scenarios**

Any operating scenario allowed in a permit may be implemented by the facility without the need for any permit revision or any notification to the Department. It is incumbent upon the permit applicant to apply for any reasonably anticipated alternative facility operating scenarios at the time of permit application. The Department shall include approved alternative operating scenarios in the permit.

**Reg. 35.1413 Changes Resulting in No Emissions Increases**

- (A) A permitted source may make changes within the facility that contravene permit terms without a permit revision if the changes:
- (1) Are not modifications under any provision of Title I of the Clean Air Act, as amended as of July 2, 2008;
  - (2) Do not exceed emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions);
  - (3) Do not violate applicable requirements; and
  - (4) Do not contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements; and
- (B) If the facility provides the Department with written notification as required below in advance of the proposed changes, which shall be a minimum of seven (7) days, or a shorter time frame that the Department allows for emergencies. The source and the Department shall attach each notice to their copy of the relevant permit. For each change, the written notification required above shall include a brief description of the change within the permitted facility, the date that the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

**Reg. 35.1414 Permit Flexibility**

- (A) The Department may grant an extension to any testing, compliance or other dates in the permit. No extensions shall be authorized until the permittee of the facility receives written approval from the Department. The Department may grant the request, at its discretion, in the following circumstances:
- (1) The permittee of the facility makes the request in writing at least fifteen (15) days in advance of the deadline specified in the facility's permit;
  - (2) The extension does not violate a federal requirement;
  - (3) The permittee of the facility demonstrates the need for the extension; and
  - (4) The permittee of the facility documents that all reasonable measures have been taken to meet the current deadline and documents reasons the current deadline cannot be met.
- (B) The Department may grant a request to allow temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limitation in a facility's permit. Requested activities shall not be authorized until the permittee of the facility receives written approval from the Department. The Department may grant the request, at its discretion, in the following circumstances:
- (1) The permittee of the facility makes the request in writing at least thirty (30) days in advance of the date that temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement, or other limitation in a facility's permit;
  - (2) The request does not violate a federal requirement;
  - (3) The request is temporary in nature;
  - (4) The request will not result in a condition of air pollution;
  - (5) The request contains the information necessary for the Department to evaluate the request, including but not limited to, quantification of the emissions and the date and time the emissions will occur;
  - (6) The request will result in increased emissions less than five (5) tons of any individual air contaminant for which a national ambient air quality standard has been adopted under Chapter 2 of this Regulation, one (1) ton of any single hazardous air pollutant and two and five-tenths (2.5) tons of total hazardous air pollutants; and
  - (7) The permittee of the facility maintains records of the dates and results of the temporary emissions and/or testing;

- (C) The Department may grant a request to allow an alternative to the monitoring specified in a facility's operating permit. These activities shall not be authorized until the permittee of the facility receives written approval from the Department. The Department may grant the request, at its discretion, in the following circumstances:
- (1) The permittee of the facility makes the request in writing at least thirty (30) days in advance of the first date that the monitoring alternative will be used at the facility;
  - (2) The request does not violate a federal requirement;
  - (3) The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the facility's operating permit; and
  - (4) Any request, if approved by the Department, is incorporated into the next permit modification application by the permittee of the facility.

**Reg. 35.1415 Dispersion Modeling**

The following shall apply if dispersion or other air quality modeling is used to meet the requirements of this Chapter:

(A) General

All applications of air quality modeling involved in this Chapter shall be based on the applicable models, data bases, and other requirements specified in Appendix W of 40 C.F.R. Part 51 (Guideline on Air Quality Models) as of the effective date of the federal final rule published by EPA in the Federal Register on November 9, 2005 (70 FR 68228).

(B) Substitution

Where an air quality model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. A modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific air contaminant or type of stationary source. Written approval of the Administrator shall be obtained for any modification or substitution.

## CHAPTER 15: PREVENTION OF SIGNIFICANT DETERIORATION

### Reg. 35.1501 Purposes

Promulgation and enforcement of this Chapter is intended to further the purposes of the state implementation plan and this Regulation, including, but not limited to, acceptance of delegation by the EPA of authority for enforcement of regulations governing the prevention of significant deterioration of air quality and regulations governing the protection of visibility in mandatory Class I federal areas.

### Reg. 35.1502 Definitions

- (A) **"Advance notification"** (of a permit application) means any written communication that establishes the applicant's intention to construct, and that provides the Department with sufficient information to determine that the proposed source may constitute a new prevention of significant deterioration major source or major modification, and that the source may affect any mandatory Class I federal area, including, but not limited to, submittal of a draft or partial permit application, a Prevention of Significant Deterioration monitoring plan, or a sufficiently detailed letter. "Advance notification" does not include general inquiries about the Department's regulations.
- (B) **"Prevention of significant deterioration new source review pollutant"** means:
- (1) Any federally-regulated air pollutant for which a national ambient air quality standard has been adopted under Chapter 2 of this Regulation and any air contaminant identified under Reg. 35.1502(B)(1)(a) through (d) as a constituent or precursor. Precursors identified by the Department for purposes of new source review are the following:
    - (a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.
    - (b) Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas.
    - (c) Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless Arkansas demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.
    - (d) Volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment and unclassifiable area, unless Arkansas demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.



- (2) Any federally-regulated air pollutant that is subject to a standard promulgated under § 111 of the Clean Air Act as of July 27, 2012;
  - (3) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, as amended as of July 1, 1997.;
  - (4) Any federally-regulated air pollutant that otherwise is subject to regulation under the Clean Air Act;
  - (5) Notwithstanding Reg. 35.1502(B)(1) through (4), the term prevention of significant deterioration new source review pollutant shall not include any or all hazardous air pollutants either listed in § 112 of the Clean Air Act, or added to the list pursuant to § 112(b)(3) of the Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a federally-regulated air pollutant for which a national ambient air quality standard has been promulgated; and
  - (6) PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source of activity, which condense to form particulate matter at ambient temperatures. As of the effective date of the federal final rule published by EPA in the Federal Register on Thursday, October 25, 2012 (77 FR 65017) the condensable matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub>. Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable state implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this Chapter.
- (C) For the purpose of this Chapter, “subject to regulation” means, for any air federally-regulated air pollutant, that the federally-regulated air pollutant is subject to either a provision of the federal Clean Air Act, or a nationally-applicable regulation codified by the Administrator pursuant to 40 C.F.R. Chapter 1 Subchapter C and adopted herein, that requires control of the quantity of emissions of that federally-regulated air pollutant and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that federally-regulated air pollutant released from the regulated activity.
- (D) All other terms used herein shall have the same meaning as set forth in Chapter 2 of Regulation 35 or in 40 C.F.R. 52.21(b) [Prevention of Significant Deterioration] and 40 C.F.R. 51.301 [Protection of Visibility] as of October 20, 2010, and adopted in Reg. 35.1504, unless manifestly inconsistent with the context where they are used. Wherever there is a difference between the definitions in Chapter 2 of Regulation 35 and those listed in 40 C.F.R. 52.21(b) and C.F.R. 51.301, the federal definitions as listed in 40

C.F.R. 52.21(b), as adopted in Reg. 35.1504 and Reg. 35.1503(A), (B) and (C), and 40 C.F.R. 51.301 as of October 20, 2010, shall apply.

- (E) The definition for “routine maintenance, repair and replacement” in 40 C.F.R. 52.21(b)(2)(iii)(a) is not incorporated.

**Reg. 35.1503 Adoption of Regulations**

- (A) Except where manifestly inconsistent with the provisions of the Clean Air Act, as amended, or with federal regulations adopted pursuant thereto, and as amended specifically herein by Reg. 35.1503(B) through (G), the Department shall have those responsibilities and that authority, with reference to the State of Arkansas, granted by the Administrator under 40 C.F.R. 52.21(a)(2) through (bb), as in effect on November 29, 2005, that are incorporated by reference, with the exception of:
- (1) 40 C.F.R. 52.21(aa), which is incorporated by reference as in effect on August 13, 2012, except for instances in the sections of 40 C.F.R. 52.21(aa) where 40 C.F.R. 52.21(b)(49) is referenced. In those instances, paragraph (G) of Reg. 35.1503 shall apply;
  - (2) 40 C.F.R. 52.21(r)(6), which is incorporated by reference as of the effective date of the federal final rule published by EPA in the Federal Register on December 21, 2007 (72 FR 72607);
  - (3) 40 C.F.R. §§ 52.21(b)(23), 52.21(i)(5)(ii), and 52.21(i)(5)(iii), which are incorporated by reference as of May 16, 2008;
  - (4) 40 C.F.R. §§ 52.21(b)(14)(i) [Major Source Baseline Date], 52.21(b)(14)(ii) [Minor Source Baseline Date], 52.21(b)(14)(iii), 52.21(b)(15) [Baseline Area], 52.21(c) [Ambient Air Increments], 52.21(k)(1) [Source Impact Analysis Requirements], and 52.21(p) [Requirements for Sources Impacting Federal Class I Areas], which are incorporated herein by reference as of October 20, 2010; and
  - (5) 40 C.F.R. §§ 52.21(b)(49), 52.21(b)(50), 52.21(b)(55-58), 52.21(i)(9), and 52.21(cc), which are not incorporated herein.
  - (6) In the absence of a specific imposition of responsibility or grant of authority, the Department has that responsibility and authority necessary to attain the purposes of the state implementation plan, this Chapter, and the applicable federal regulations, as incorporated by reference.
- (B) Exclusions from the consumption of increments, as provided in 40 C.F.R. 51.166(f)(1)(iii) as of November 29, 2005, shall be effective immediately. Submission of this Regulation under the Governor's signature constitutes a request by the Governor for this exclusion.

(C) In addition to the requirements of 40 C.F.R. 52.21(o) as of November 29, 2005, the following requirements shall also apply:

- (1) Where air quality impact analyses required under this part indicate that the issuance of a permit for any prevention of significant deterioration major source or for any major modification would result in the consumption of more than fifty percent (50%) of any available annual increment or eighty percent (80%) of any short-term increment, the person applying for a permit shall submit to the Department an assessment of the following factors:
  - (a) Effects that the proposed consumption would have upon the industrial and economic development within the area of the proposed source; and
  - (b) Alternatives to the consumption, including alternative siting of the proposed source or portions thereof.
- (2) The assessment required under Reg. 35.1503(C)(1) shall be made part of the application for permit and shall be made available for public inspection as provided in 40 C.F.R. 52.21(q) as of November 29, 2005.
- (3) The assessment required under Reg. 35.1503(C)(1) shall be in detail commensurate with the degree of proposed increment consumption, both in terms of the percentage of increment consumed and the area affected.
- (4) The assessment required under Reg. 35.1503(C)(1) may be made effective if a proposed source would cause an increment consumption less than that specified in Reg. 35.1603(C)(1) if the Director finds that unusual circumstances exist in the area of the proposed source that warrant this assessment. The Director shall notify the applicant in writing of those circumstances that warrant this assessment. The Arkansas Pollution Control and Ecology Commission may rescind or modify the Director's action, upon a showing by the applicant that the circumstances alleged by the Director either do not exist or do not warrant this assessment.

(D) In addition to the requirements of 40 C.F.R. 52.21(p)(1) as of November 29, 2005, the following requirements shall also apply:

Impacts on mandatory Class I federal areas include impacts on visibility. The preliminary determination that a source may affect air quality or visibility in a mandatory Class I federal area shall be made by the Department, based on screening criteria agreed upon by the Department and the Federal Land Manager.

(E) In all instances wherein 40 C.F.R. 51.301 and 40 C.F.R. 52.21 refer to the Administrator or the EPA, the reference, for the purposes of Reg. 35.1603(A), shall be deemed to mean the Department, unless the context plainly dictates otherwise, except in the following sections:

- (1) Exclusion from increment consumption: 40 C.F.R. 52.21(f)(1)(v), (f)(3), and (f)(4)(I);
  - (2) Redesignation: 40 C.F.R. 52.21(g)(1), (g)(2), (g)(4), (g)(5), and (g)(6); and
  - (3) Air quality models: 40 C.F.R. 52.21(l)(2).
- (F) Redesignation of air quality areas in Arkansas shall comply with Ark. Code Ann. §§ 8-3-101, *et seq.*
- (G) For the purpose of the regulation of GHG, only the standards and requirements promulgated by EPA as of June 3, 2010, related to the permitting of GHG emissions shall apply to the requirements of 40 C.F.R. 52.21, as of November 29, 2005, incorporated by reference at Reg. 35.1503(A). The following requirements shall also apply:
- (1) GHG shall not be subject to regulation except as provided in Reg. 35.1503(G)(3), and shall not be subject to regulation if the stationary source:
    - (a) Maintains its total source-wide emissions below the GHG plant-wide applicability limitation level;
    - (b) Meets the requirements in 40 C.F.R. 52.21(aa)(1) through (15) as outlined in Reg. 35.1503(A)(1); and
    - (c) Complies with the plantwide applicability limitation permit containing the GHG plantwide applicability limitation.
  - (2) The term “emissions increase” as used in Reg. 35.1503(G)(3) shall mean that both a significant emissions increase (as calculated using the procedures in 40 C.F.R. 52.21(a)(2)(iv), as of November 29, 2005), and a significant net emissions increase (as defined in 40 C.F.R. 52.21(b)(3), as of November 29, 2005, and 40 C.F.R. 52.21(b)(23), as of November 29, 2005), occur. For GHG, an emissions increase shall be based on tons per year CO<sub>2</sub>e, and “significant” is defined as seventy-five thousand (75,000) tons per year CO<sub>2</sub>e instead of applying the value in 40 C.F.R. 52.21(b)(23)(ii), as of November 29, 2005.
  - (3) Beginning January 2, 2011, GHG is subject to regulation if:
    - (a) The stationary source is a new prevention of significant deterioration major source for a prevention of significant deterioration new source review pollutant that is not GHG, and also will emit or will have the potential to emit GHG at seventy-five thousand (75,000) tons per year CO<sub>2</sub>e or more; or
    - (b) The stationary source is an existing prevention of significant deterioration major source for a prevention of significant deterioration new source review pollutant that is not GHG, and also will have a significant

emissions increase of a prevention of significant deterioration new source review pollutant, and an emissions increase of GHG of seventy-five thousand (75,000) tons per year CO<sub>2</sub>e or more.

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## **CHAPTER 16: REQUIREMENT FOR A PART 70 PERMIT, APPLICABILITY**

### **Reg. 35.1601 Requirement for a Part 70 Permit**

- (A) No Part 70 source shall operate unless it is operating in compliance with a Part 70 permit, or unless it has filed a timely and complete application for an initial or renewal Part 70 permit as required under Chapters 16 through 25 of this Regulation. Existing Part 70 sources shall submit initial applications in accordance with Chapter 17 of this Regulation. If a Part 70 source submits a timely and complete application for an initial or renewal Part 70 permit, the source's failure to have a Part 70 permit is not a violation of Chapters 16 through 25 of this Regulation until the Department takes final action on the Part 70 permit application, except as noted in this Chapter. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit by the deadline specified in writing by the Department any additional information identified as being needed to process the application. If the Department fails to act in a timely way on a Part 70 permit renewal, EPA may invoke its authority under the Clean Air Act § 505(e) to terminate or revoke and reissue the Part 70 permit.
- (B) No proposed new Part 70 source shall begin construction prior to obtaining a Part 70 permit, unless the applicable Part 70 permit application was submitted prior to the effective date of this Regulation or former Arkansas Pollution Control and Ecology Commission Regulation 26 and the Department's draft permitting decision for the source has already proceeded to public notice in accordance with Reg. 35.1407.
- (C) No Part 70 source shall begin construction of a new emissions unit or begin modifications to an existing emissions unit prior to obtaining a modified Part 70 permit. This applies only to significant modifications and does not apply to modifications that qualify as minor modifications or changes allowed under the operational flexibility provisions of a Part 70 permit. An existing Part 70 source shall be subject to the permit modification procedures of Chapter 14 of this Regulation until the time that an initial Part 70 permit application is due from the source.

### **Reg. 35.1602 Sources Subject to Permitting**

The following sources shall be subject to permitting under Chapters 16 through 25 of this Regulation, unless exempted by Reg. 35.1603 below:

- (A) Any Part 70 major source;
- (B) Any source, including an area source, subject to a standard, limitation, or other requirement under the Clean Air Act § 111. However, non-major sources subject to the Clean Air Act § 111 are exempt from the obligation to obtain a Part 70 permit until the time that the Administrator completes a rulemaking to determine how the program should be structured for non-major sources;

- (C) Any source, including an area source, subject to a standard or other requirement under the Clean Air Act § 112, except that a source is not required to obtain a Part 70 permit solely because it is subject to regulations or requirements under the Clean Air Act § 112(r);
- (D) Any source subject to Chapter 14 of this Regulation.
- (E) Any acid rain source (which shall be permitted in accordance with the provisions of the federal Acid Rain Program); and
- (F) Any source in a source category designated by the Administrator pursuant to this Chapter.

**Reg. 35.1603 Source Category Exemptions**

The following source categories are exempted from the obligation to obtain a Part 70 permit:

- (A) All sources listed in Reg. 35.1602 that are not Part 70 major sources, acid rain sources, or solid waste incineration units required to obtain a permit pursuant to the Clean Air Act § 129(e), are exempted from the obligation to obtain a Part 70 permit until the Administrator completes a rulemaking to determine how the program should be structured for non-major sources;
- (B) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. Part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters as of July 23, 1993;
- (C) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 C.F.R. Part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, § 61.145, Standard for Demolition and Renovation as of July 23, 1993; and
- (D) Any other non-major sources subject to a standard or other requirement under the Clean Air Act § 111 or § 112 exempted by the Administrator.

**Reg. 35.1604 Emissions Units Subject to Permitting**

The Department shall include in the Part 70 permit all applicable requirements for all relevant emissions units in the Part 70 source. Some equipment with very small emission rates is exempt from permitting requirements as per Chapter 14 and Appendix A of this Regulation.

**Reg. 35.1605 Emissions Subject to Permitting**

All federally-regulated air pollutant emissions from a Part 70 source shall be included in a Part 70 permit, except that GHG shall not be included in a Part 70 permit unless the Part 70 source undertakes a physical change or change in the method of operation that will result in an emissions increase subject to regulation under Reg. 35.1503(G)(3). Only federally-regulated air pollutants may trigger the need for a Part 70 permit or a Part 70 permit modification process. A

Part 70 permit modification involving only air contaminants other than federally-regulated air pollutants shall be permitted according to the procedure of Chapter 14 of this Regulation. These permits shall be incorporated into the Part 70 permit by administrative permit amendment.

**Reg. 35.1606 Fugitive Emissions Subject to Permitting**

Fugitive emissions from a Part 70 source shall be included in the Part 70 permit application and the Part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of Part 70 major source.

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## **CHAPTER 17: APPLICATIONS FOR PART 70 PERMITS**

### **Reg. 35.1701 Duty to Apply**

For each source subject to 40 C.F.R. Part 70, as promulgated June 3, 2010, the owner or operator shall submit a timely and complete Part 70 permit application (on forms supplied by the Department) in accordance with this Chapter.

### **Reg. 35.1702 Standard Application Form and Required Information**

The Department shall provide an application form or forms upon request. Information as described below for each emissions unit at a Part 70 source shall be required by the application form and included by the applicant in the application.

- (A) A list of insignificant activities that are exempted because of size or production rate shall be included in the application.
- (B) An application shall not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required by the Arkansas Pollution Control and Ecology Commission's Regulation No. 9, Fee Regulation. The Department may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments chosen shall include the elements specified below:
  - (1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact;
  - (2) A description of the source's processes and products (by Standard Industrial Classification Code or the North American Industry Classification System) including any associated with alternate scenario identified by the source;
  - (3) The following emission-related information:
    - (a) A Part 70 permit application shall describe all emissions of federally-regulated air pollutants emitted from any emissions unit, except for units exempted under Reg. 35.1702(A). The Department shall require additional information related to the emissions of federally-regulated air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule in Arkansas Pollution Control and Ecology Commission's Regulation No. 9;
    - (b) Identification and description of all points of emissions described above in sufficient detail to establish the basis for fees and applicability of requirements of the Clean Air Act;

- (c) Emissions rates in tons per year and in terms as are necessary to establish compliance consistent with the applicable standard reference test method;
  - (d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules;
  - (e) Identification and description of air pollution control equipment and compliance monitoring devices or activities;
  - (f) Limitations on source operations affecting emissions or any work practice standards, as applicable, for all federally-regulated air pollutants at the Part 70 source;
  - (g) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to the Clean Air Act § 123); and
  - (h) Calculations used to determine the information provided under Reg. 35.1702(3)(a) through (g);
- (4) The following air pollution control requirements:
- (a) Citation and description of all applicable requirements; and
  - (b) Description of or reference to any applicable test method for determining compliance with each applicable requirement;
- (5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Clean Air Act or of this Chapter or to determine the applicability of the requirements;
- (6) An explanation of any proposed exemptions from otherwise applicable requirements;
- (7) Additional information as determined to be necessary by the Department to define alternative operating scenarios identified by the source pursuant to Reg. 35.2001(I) or to define Part 70 permit terms and conditions implementing Reg. 35.2102 or Reg. 35.2001(J);
- (8) A compliance plan for all Part 70 sources that contains the following:
- (a) A description of the compliance status of the source with respect to all applicable requirements;
  - (b) A description as follows:

- (i) For applicable requirements where the source is in compliance, a statement that the source will continue to comply with the requirements;
  - (ii) For applicable requirements that will become effective during the Part 70 permit term, a statement that the source will meet the requirements on a timely basis; and
  - (iii) For requirements with which the source is not in compliance at the time of Part 70 permit issuance, a narrative description of how the source will achieve compliance with the requirements;
- (c) A compliance schedule as follows:
  - (i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
  - (ii) For applicable requirements that will become effective during the Part 70 permit term, a statement that the source will meet the requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the Part 70 permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement; and
  - (iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of Part 70 permit issuance. This schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements where the source will be in noncompliance at the time of Part 70 permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;
- (d) A schedule for submission of certified progress reports no less frequently than every six (6) months for sources required to have a schedule of compliance to remedy a violation; and
- (e) The compliance plan content requirements specified in Reg. 35.1702(B)(8)(a) through (d) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically

superseded by regulations promulgated under Title IV of the Clean Air Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations;

- (9) Requirements for compliance certification, including the following:
  - (a) A certification of compliance with all applicable requirements by a responsible official consistent with Reg. 35.1710 and the Clean Air Act § 114(a)(3);
  - (b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
  - (c) A schedule for submission of compliance certifications during the Part 70 permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department; and
  - (d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Clean Air Act; and
- (10) The use of nationally-standardized forms for acid rain portions of Part 70 permit applications and compliance plans, as required by regulations promulgated under Title IV of the Clean Air Act.

**Reg. 35.1703 Initial Applications from Existing Part 70 Sources**

A timely application for an initial Part 70 permit for an existing Part 70 source is one that is submitted within twelve (12) months after the source becomes subject to the Part 70 permit program or on or before an earlier date as the Department may establish. The earliest that the Department may require an initial application from an existing Part 70 source is six (6) months after the Department notifies the source in writing of its duty to apply for an initial Part 70 permit.

**Reg. 35.1704 Applications for Proposed New Part 70 Sources**

The owner or operator proposing to construct a new Part 70 source shall apply for and obtain a Part 70 permit prior to the construction of the source, unless the applicable Part 70 permit application was submitted prior to the effective date of this Regulation and the Department's draft permitting decision for the source has already proceeded to public comment in accordance with Reg. 35.1407 of this Regulation.

**Reg. 35.1705 Applications for Proposed Significant Modifications at Part 70 Sources**

Part 70 sources proposing to construct a new emissions unit or modify an existing emissions unit shall apply for and obtain a modified Part 70 permit prior to the construction or modification of the emissions unit. This applies only to significant modifications and does not apply to modifications that qualify as minor modifications or changes allowed under the operational flexibility provisions of a Part 70 permit.

**Reg. 35.1706 Part 70 Permit Renewal Applications**

For purposes of Part 70 permit renewal, a timely application is one that is received by the Department at least six (6) months prior to the date of Part 70 permit expiration or other longer time as may be approved by the Administrator that ensures that the term of the Part 70 permit will not expire before the Part 70 permit is renewed. This time shall not be greater than eighteen (18) months. Renewal permits are subject to the same procedural requirements that apply to initial Part 70 permit issuance. Expiration of a Part 70 permit terminates a Part 70 source's right to operate unless a timely and complete renewal application has been received by the Department, in which case the existing Part 70 permit shall remain in effect until the Department takes final action on the renewal application. If the Department fails to act in a timely way on a Part 70 permit renewal, EPA may invoke its authority under the Clean Air Act § 505(e) to terminate or revoke and reissue the Part 70 permit.

**Reg. 35.1707 Complete Application**

To be deemed complete, an application shall provide all information required by Reg. 35.1702, except that applications for Part 70 permit revision are only required to supply that information related to the proposed change. Unless the Department determines that an application is not complete within sixty (60) days of receipt of the application, the application shall be deemed complete. If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, it may request the information in writing and set a reasonable deadline for a response.

**Reg. 35.1708 Confidential Information**

If a source has submitted information to the State under a claim of confidentiality, the Department may also require the source to submit a copy of the information directly to the Administrator.

**Reg. 35.1709 Applicant's Duty to Supplement or Correct Application**

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a Part 70 permit application shall, upon becoming aware of the failure or incorrect submittal, promptly submit supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application, but prior to release of a draft permit.

**Reg. 35.1710 Certification by Responsible Official**

Any application form, report, or compliance certification submitted pursuant to Chapters 16 through 25 of this Regulation shall contain certification of truth, accuracy, and completeness by a responsible official. This certification and any other certification required under Chapters 16 through 25 of this Regulation shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

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## **CHAPTER 18: ACTION ON PART 70 PERMIT APPLICATIONS**

### **Reg. 35.1801 Action on Part 70 Permit Applications**

A Part 70 permit, Part 70 permit modification, or Part 70 permit renewal may be issued only if all of the following conditions have been met:

- (A) The Department has received a complete application for a Part 70 permit, Part 70 permit modification, or Part 70 permit renewal, except that a complete application need not be received before issuance of a general permit;
- (B) Except for modifications qualifying for minor permit modification procedures under Chapter 23 of this Regulation, the Department has complied with the requirements under Chapter 19 of this Regulation for public participation and for notifying and responding to affected states;
- (C) The processing of the Part 70 permit application and the conditions of the Part 70 permit provide for compliance with all applicable requirements and the requirements of this Regulation; and
- (D) The Administrator has received a copy of the draft Part 70 permit and any notices required under Chapter 19 of this Regulation and has not objected to issuance of the Part 70 permit within the time period specified therein.

### **Reg. 35.1802 Final Action on Part 70 Permit Application**

The Department shall take final action on each Part 70 permit application (including a request for Part 70 permit modification or renewal) as expeditiously as practicable, but no later than 18 months after receiving a complete application, unless a different time period is provided for in this Regulation (i.e., initial permitting of existing Part 70 sources and minor permit modifications). Failure of the Department to act upon an application shall not constitute approval of the Part 70 permit application. An aggrieved applicant may seek relief from Department inaction on a Part 70 permit application in accordance with the procedures of Ark. Code Ann. § 8-4-311(b)(10)(F).

### **Reg. 35.1803 Priority for Application Review**

Priority shall be given by the Department to taking action on applications for construction and modification over applications for Part 70 permit renewal to the extent practicable.

### **Reg. 35.1804 Notification of Application Completeness**

The Department shall promptly provide notice to the applicant of whether the application is complete. Unless the Department requests additional information or otherwise notifies the applicant of incompleteness within sixty (60) days of receipt of an application, the application shall be deemed complete. To be processed through minor permit modification procedures, a

modification shall be subject to an eligibility determination, but the program shall not require a completeness demonstration.

**Reg. 35.1805 Source's Ability to Operate Prior to Final Part 70 Permit Action**

A Part 70 source's ability to operate without a Part 70 permit prior to initial Part 70 permit issuance (to existing Part 70 sources) or Part 70 permit renewal shall be in effect from the date the timely and complete application for initial Part 70 permit or Part 70 permit renewal is determined or deemed to be complete until the final Part 70 permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Department. However, the installation of new emissions units and the modification of existing emissions units may not commence construction until a final Part 70 permit for the activity is issued, unless the activity involves equipment exempt from permitting requirements or modifications eligible to be processed through minor permit modification procedures.

**Reg. 35.1806 Basis for Draft Part 70 Permit Conditions**

The Department shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The Department shall send this statement to EPA and to any other person who requests it.



## **CHAPTER 19: PART 70 PERMIT REVIEW BY THE PUBLIC, AFFECTED STATES, AND EPA**

### **Reg. 35.1901 Applicability**

All initial permits, renewal permits, and significant Part 70 permit modifications shall meet the permit review requirements of this Chapter.

### **Reg. 35.1902 Public Participation**

All initial Part 70 permit issuances, significant modifications, and renewals shall afford the public the opportunity to comment.

- (A) Public notice on applications received, draft and final permits shall be provided in accordance with Arkansas Pollution Control and Ecology Commission Regulation 8 Chapter 2. In addition, notice shall be given to persons on a mailing list developed by the Department, including those who request in writing to be on the list.
- (B) The draft permit notice of Reg. 35.1902(A) shall identify the affected facility; the name and address of the permittee; the name and address of the Department; the activity or activities involved in the Part 70 permit action; the emissions change involved in any Part 70 permit modification; the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the Part 70 permit draft, the application, all relevant supporting materials and all other materials available to the Department that are relevant to the Part 70 permit decision; a brief description of the comment procedures required by this Regulation; and a statement of procedures to request a hearing.
- (C) The Department shall provide the notice and opportunity for participation by affected states as is provided for in this Chapter.
- (D) The Department shall provide at least thirty (30) days for public comment on its draft permitting decision and shall give notice of any public hearing at least thirty (30) days in advance of the hearing.
- (E) The Department shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his obligation under the Clean Air Act § 505(b)(2) to determine whether a citizen petition may be granted, and the records shall be available to the public.

### **Reg. 35.1903 Transmission of Part 70 Permit Information to the Administrator**

- (A) The Department shall provide to the Administrator a copy of each Part 70 permit application (including any application for Part 70 permit modification), each draft Part 70 permit, and each final Part 70 permit. The applicant may be required by the Department to provide a copy of the Part 70 permit application (including the compliance plan)

directly to the Administrator. Upon agreement with the Administrator, the Department may submit to the Administrator a Part 70 permit application summary form and any relevant portion of the Part 70 permit application and compliance plan, in place of the complete Part 70 permit application and compliance plan.

- (B) The Department shall keep for five (5) years the records and submit to the Administrator the information that the Administrator may reasonably require to ascertain whether the Part 70 program complies with the requirements of the Clean Air Act or of 40 C.F.R. Part 70.

**Reg. 35.1904 Review of Draft Part 70 Permit by Affected States**

- (A) The Department shall give notice of each draft Part 70 permit to any affected state on or before the time that the Department provides this notice to the public, except to the extent that minor permit modification procedures require the timing of the notice to be different.
- (B) The Department, as part of the submittal of the draft Part 70 permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures), shall notify the Administrator and any affected state in writing of any refusal by the Department to accept all recommendations for the draft Part 70 permit that the affected state submitted during the public or affected state review period. The notice shall include the Department's reasons for not accepting the recommendation.

**Reg. 35.1905 EPA Objection to Draft Part 70 Permit**

- (A) The Administrator will object to the issuance of any draft Part 70 permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this Regulation. No Part 70 permit where an application is required to be transmitted to the Administrator may be issued if the Administrator objects to its issuance in writing within forty-five (45) days of receipt of the draft Part 70 permit and all necessary supporting information.
- (B) Any EPA objection shall include a statement of the Administrator's reasons for objection and a description of the terms and conditions that the Part 70 permit shall include to respond to the objections. The Administrator will provide the Part 70 permit applicant a copy of the objection.
- (C) Failure of the Department to follow proper Part 70 permit issuance procedural requirements or to submit required information necessary to review the draft Part 70 permit also shall constitute grounds for an objection.
- (D) If the Department fails, within ninety (90) days after the date of an objection under Reg. 35.1905(A) to revise and submit a draft Part 70 permit in response to the objection, the Administrator will issue or deny the Part 70 permit in accordance with the requirements of the federal program promulgated under Title V of the Clean Air Act.

### **Reg. 35.1906 Public Petitions to the Administrator**

If the Administrator does not object in writing to a draft Part 70 permit, any person may petition the Administrator within sixty (60) days after the expiration of the Administrator's 45-day review period to make an objection. The petition shall be based only on objections to the Part 70 permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise the objections within this period, or unless the grounds for the objection arose after this period. If the Administrator objects to the Part 70 permit as a result of a petition filed under Reg. 35.1906, the Department shall not issue the Part 70 permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a Part 70 permit or its requirements if the Part 70 permit was issued after the end of the 45-day review period and prior to an EPA objection. If the Department has issued a Part 70 permit prior to receipt of an EPA objection under Reg. 35.1905, the Administrator will modify, terminate, or revoke the Part 70 permit, and shall do so consistent with the procedures in Chapter 23 of this Regulation except in unusual circumstances, and the Department may thereafter issue only a revised Part 70 permit that satisfies EPA's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

### **Reg. 35.1907 Prohibition on Default Issuance**

No Part 70 permit (including a Part 70 permit renewal or modification) shall be issued until affected states and EPA have had an opportunity to review the draft Part 70 permit as required under this Chapter.

## CHAPTER 20: PART 70 PERMIT CONTENT

### **Reg. 35.2001 Standard Part 70 Permit Requirements**

Each Part 70 permit issued under the Part 70 program shall include the following elements:

- (A) Emissions limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of Part 70 permit issuance.
  - (1) The Part 70 permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
  - (2) The Part 70 permit shall state that, if an applicable requirement of the Clean Air Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Clean Air Act, both provisions shall be incorporated into the Part 70 permit and shall be enforceable by the Administrator.
  - (3) If an applicable state implementation plan allows a determination of an alternative emissions limitation at a Part 70 source, equivalent to that contained in the state implementation plan, to be made in the Part 70 permit issuance, renewal, or significant modification process, and the Department elects to use this process, any Part 70 permit containing this equivalency determination shall contain provisions to ensure that the resulting emissions limitation has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures;
- (B) The Department shall issue permits for a fixed term of five (5) years in the case of acid rain sources, and for a term not to exceed five (5) years in the case of all other Part 70 sources. Notwithstanding this requirement, the Department shall issue permits for solid waste incineration units combusting municipal waste subject to standards under the Clean Air Act § 129(e) for a period not to exceed twelve (12) years and shall review the permits at least every five (5) years;
- (C) Monitoring and related recordkeeping and reporting requirements.
  - (1) Each Part 70 permit shall contain the following requirements with respect to monitoring:
    - (a) All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including 40 C.F.R. Part 64 and any other procedures and methods that may be promulgated pursuant to the Clean Air Act §§ 114(a)(3) or 504(b). If more than one monitoring or testing requirement applies, the Part 70 permit may specify a streamlined set of monitoring or testing provisions provided the specified monitoring or testing is adequate to assure compliance at least to

the same extent as the monitoring or testing applicable requirements that are not included in the Part 70 permit as a result of streamlining;

- (b) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the Part 70 permit, as reported pursuant to Reg. 35. 2001(C)(3). The monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of Reg. 35.2001(C)(1)(b); and
  - (c) As necessary, requirements concerning the use, maintenance, and, if appropriate, installation of monitoring equipment or methods;
- (2) With respect to recordkeeping, the Part 70 permit shall incorporate all applicable recordkeeping requirements and require, if applicable, the following:
  - (a) Records of required monitoring information to include the following:
    - (i) The date, place as defined in the Part 70 permit, and time of sampling or measurements;
    - (ii) The date(s) analyses were performed;
    - (iii) The company or entity that performed the analyses;
    - (iv) The analytical techniques or methods used;
    - (v) The results of the analyses; and
    - (vi) The operating conditions as existing at the time of sampling or measurement;
  - (b) Retention of all required monitoring data records and support information for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the Part 70 permit.
- (3) With respect to reporting, the Part 70 permit shall incorporate all applicable reporting requirements and require the following:

- (a) Submittal of any required monitoring reports at least every six (6) months. All instances of deviations from Part 70 permit requirements shall be clearly identified in the reports. All required reports shall be certified by a responsible official consistent with Reg. 35.1710 and the Clean Air Act § 114(a)(3); and
  - (b) Prompt reporting of deviations from Part 70 permit requirements, including those attributable to upset conditions as defined in the Part 70 permit, the probable cause of the deviations, and any corrective actions or preventive measures taken. The Department shall define in each Part 70 permit “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements;
- (D) A Part 70 permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under Title IV of the Clean Air Act or the regulations promulgated thereunder.
  - (1) No Part 70 permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the Acid Rain Program, provided that the increases do not require a Part 70 permit revision under any other applicable requirement.
  - (2) No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.
  - (3) Any allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Clean Air Act;
- (E) A severability clause to ensure the continued validity of the various Part 70 permit requirements if there is a challenge to any portion of the Part 70 permit;
- (F) Provisions stating the following:
  - (1) The permittee shall comply with all conditions of the Part 70 permit. Any Part 70 permit noncompliance constitutes a violation of the Clean Air Act and is grounds for enforcement action; for Part 70 permit termination, revocation and reissuance, or modification; or for denial of a Part 70 permit renewal application;
  - (2) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the conditions of this Part 70 permit;
  - (3) The Part 70 permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a Part 70 permit modification, revocation and reissuance, or termination, or of a notification of

planned changes or anticipated noncompliance does not stay any Part 70 permit condition;

- (4) The Part 70 permit does not convey any property rights of any sort, or any exclusive privilege; and
  - (5) The permittee shall furnish to the Department, within a reasonable time, any information that the Department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the Part 70 permit or to determine compliance with the Part 70 permit. Upon request, the permittee shall also furnish to the Department copies of records required to be kept by the Part 70 permit or, for information claimed to be confidential, the permittee may furnish the records directly to the Administrator along with a claim of confidentiality;
- (G) A provision to ensure that the permittee of a Part 70 source pays fees to the Department consistent with the fee schedule approved pursuant to Arkansas Pollution Control and Ecology Commission's Regulation 9;
- (H) A provision stating that no Part 70 permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the Part 70 permit;
- (I) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Department. The terms and conditions:
- (1) Shall require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
  - (2) May extend the Part 70 permit shield described in Reg. 35.2004 to all terms and conditions under each operating scenario; and
  - (3) Shall ensure that the terms and conditions of each alternative scenario meet all applicable requirements and the requirements of this Chapter; and
- (J) Terms and conditions, if the Part 70 permit applicant requests them, for the trading of emissions increases and decreases at the permitted facility, to the extent that the applicable requirements provide for trading increases and decreases without a case-by-case approval of each emissions trade. The terms and conditions:
- (1) Shall include all terms required under Reg. 35.2001 and Reg. 35.2003 to determine compliance;
  - (2) May extend the permit shield described in Reg. 35.2004 to all terms and conditions that allow increases and decreases in emissions; and

- (3) Shall meet all applicable requirements of this Chapter and all other applicable requirements.

**Reg. 35.2002 Federally-Enforceable Requirements**

- (A) All terms and conditions in a Part 70 permit, including any provisions designed to limit a source's potential to emit federally-regulated air pollutants, are enforceable by the Administrator and citizens under the Clean Air Act.
- (B) Notwithstanding Reg. 35.2002(A), the Department shall specifically designate as not being federally enforceable under the Clean Air Act any terms and conditions included in the Part 70 permit that are not required under the Clean Air Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of Chapters 19 and 23 of this Regulation, other than those contained in this Chapter.

**Reg. 35.2003 Compliance Requirements**

All Part 70 permits shall contain the following elements with respect to compliance:

- (A) Consistent with Reg. 35.2001(C), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the Part 70 permit. Any document (including reports) required by a Part 70 permit shall contain a certification by a responsible official consistent with Reg. 35.1710 and the Clean Air Act § 114(a)(3);
- (B) The permittee shall allow the Department or an authorized representative, upon presentation of credentials and other documents as may be required by law, to perform the following:
- (1) Enter upon the permittee's premises where a Part 70 source is located or emissions-related activity is conducted, or where records shall be kept under the conditions of the Part 70 permit;
  - (2) Have access to and copy, at reasonable times, any records that shall be kept under the conditions of the Part 70 permit;
  - (3) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the Part 70 permit; and
  - (4) As authorized by the Act, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.
- (C) A schedule of compliance consistent with Reg. 35.1702(B)(8).



- (D) Progress reports consistent with an applicable schedule of compliance and Reg. 35.1702(B)(8) to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the Department. The progress reports shall contain the following:
- (1) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates if the activities, milestones or compliance were achieved; and
  - (2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted;
- (E) Requirements for compliance certification with terms and conditions contained in the Part 70 permit, including emissions limitations, standards, or work practices. Permits shall include each of the following:
- (1) The frequency (not less than annually or more frequent periods as specified in the applicable requirement or by the Department) of submissions of compliance certifications;
  - (2) In accordance with Reg. 35.2001(C), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;
  - (3) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the Part 70 permit or previous reports, as applicable):
    - (a) The identification of each term or condition of the Part 70 permit that is the basis of the certification;
    - (b) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, and whether the methods or other means provide continuous or intermittent data. The methods and other means shall include, at a minimum, the methods and means required under Reg. 35.2001(C). If necessary, the owner or operator also shall identify any other material information that shall be included in the certification to comply with the Clean Air Act § 113(c)(2), which prohibits knowingly making a false certification or omitting material information;
    - (c) The status of compliance with the terms and conditions of the Part 70 permit for the period covered by the certification, based on the method or means designated in Reg. 35.2003(E)(3)(b). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify, as possible exceptions to compliance, any periods during which an excursion or exceedance occurred; and

- (d) Other facts as the Department may require to determine the compliance status of the source; and
- (F) A requirement that all compliance certifications be submitted to the Administrator and to the Department; and
- (G) Other provisions that the Department may require.

**Reg. 35.2004 Part 70 Permit Shield**

- (A) Except as provided in this Regulation, the Department shall, if requested by the applicant, expressly include in a Part 70 permit a provision stating that compliance with the conditions of the Part 70 permit shall be deemed compliance with any applicable requirements as of the date of Part 70 permit issuance, if:
  - (1) The applicable requirements are included and are specifically identified in the Part 70 permit; or
  - (2) The Department, in acting on the Part 70 permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the Part 70 permit includes the determination or a concise summary thereof.
- (B) A Part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide a shield.
- (C) Nothing in Reg. 35.2004 or in any Part 70 permit shall alter or affect the following:
  - (1) The provisions of the Clean Air Act § 303 (emergency orders), including the authority of the Administrator under that section;
  - (2) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of Part 70 permit issuance;
  - (3) The applicable requirements of the Acid Rain Program, consistent with the Clean Air Act § 408(a); or
  - (4) The ability of EPA to obtain information from a source pursuant to the Clean Air Act § 114.
- (D) Permit shield provisions shall not extend to minor permit modifications.

**Reg. 35.2005 General Permits**

- (A) The Department may, after notice and opportunity for public participation provided under Reg. 35.1902, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to other Part 70 permits and shall

identify criteria whereby sources may qualify for the general permit. To sources that qualify, the Department shall grant the conditions and terms of the general permit. Notwithstanding the permit shield provisions of this Chapter, the source shall be subject to enforcement action for operation without a Part 70 permit if the source is later determined not to qualify for the conditions and terms of the general permit. General permits shall not be authorized for acid rain sources under the Acid Rain Program unless otherwise provided in regulations promulgated under Title IV of the Clean Air Act.

- (B) For Part 70 sources that would qualify for a general permit, the owner or operator shall apply to the Department for coverage under the terms of the general permit or shall apply for a Part 70 permit consistent with Chapter 17 of this Regulation. The Department may, in the general permit, provide for applications that deviate from the requirements of Chapter 17 of this Regulation, provided that the applications meet the requirements of Title V of the Clean Air Act, and include all information necessary to determine qualification for, and to assure compliance with, the general permit. Without repeating the public participation procedures, the Department may grant a Part 70 source owner or operator's request for authorization to operate under a general permit, but the grant shall not be a final Part 70 permit action for purposes of judicial review.

#### **Reg. 35.2006 Temporary Sources**

The Department may issue a single Part 70 permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation shall be temporary and involve at least one change of location during the term of the Part 70 permit. No acid rain source shall be permitted as a temporary source. Permits for temporary sources shall include the following:

- (A) Conditions that will assure compliance with all applicable requirements at all authorized locations;
- (B) Requirements that the owner or operator notify the Department at least ten (10) days in advance of each change in location; and
- (C) Conditions that assure compliance with all other provisions of this Chapter.

#### **Reg. 35.2007 Emergency Provision**

- (A) An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source that causes the source to exceed a technology-based emissions limitation under the Part 70 permit due to unavoidable increases in emissions attributable to the emergency and that requires immediate corrective action to restore normal operation. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
- (B) An emergency constitutes an affirmative defense to an action brought for noncompliance with technology-based emissions limitations if the conditions of Reg. 35.2007(B)(1)

through (4) are met. The affirmative defense of an emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
  - (2) The permitted facility was at the time being properly operated;
  - (3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the Part 70 permit; and
  - (4) The permittee submitted notice of the emergency to the Department by the next business day after the emergency. This notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.
- (C) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
- (D) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

## **CHAPTER 21: OPERATIONAL FLEXIBILITY PROVISIONS FOR PART 70 PERMITS**

### **Reg. 35.2101 Applicant's Duty to Apply for Alternative Scenarios**

Any operating scenario allowed in a Part 70 permit may be implemented by the facility without the need for Part 70 permit revision or notification to the Department. The Part 70 permit applicant shall apply for any reasonably anticipated alternative facility operating scenarios at the time of Part 70 permit application. The Department shall include approved alternative operating scenarios in the Part 70 permit.

### **Reg. 35.2102 Changes Resulting in No Emissions Increases**

- (A) A permitted source may make changes within the facility that contravene Part 70 permit terms without a Part 70 permit revision if the changes:
  - (1) Are not modifications under any provision of Title I of the Clean Air Act;
  - (2) Do not exceed emissions allowable under the Part 70 permit (whether expressed therein as a rate of emissions or in the terms of total emissions);
  - (3) Do not violate applicable requirements; and
  - (4) Do not contravene federally enforceable Part 70 permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements;
- (B) If the facility provides the Administrator and the Department with written notification in advance of the proposed changes, which shall be a minimum of seven (7) days, or a shorter time frame that the Department allows for emergencies. The permittee, Department, and EPA shall attach each notice to their copy of the relevant Part 70 permit. For each change, the written notification required above shall include a brief description of the change within the permitted facility, the date if the change will occur, any change in emissions, and any Part 70 permit term or condition that is no longer applicable as a result of the change. The Part 70 permit shield described in Chapter 20 of this Regulation does not apply to any change made pursuant to this paragraph.

### **Reg. 35.2103 Emissions Trading in Part 70 Permits**

The Department shall, if a Part 70 permit applicant requests it, issue permits that contain terms and conditions, including all terms required under 40 C.F.R. 70.6(a) and (c)., , to determine compliance, allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally-enforceable emissions cap that is established in the Part 70 permit independent of otherwise applicable requirements. The Part 70 permit applicant shall include in its application proposed replicable procedures and Part 70 permit terms that ensure the emissions trades are quantifiable and enforceable. The Department

shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The Part 70 permit shall also require compliance with all applicable requirements. The permittee shall provide written notice within seven (7) days to the Department that states if the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the Part 70 permit. The Part 70 permit shield described in Chapter 20 of this Regulation shall extend to terms and conditions that allow the increases and decreases in emissions.

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## **CHAPTER 22: ADMINISTRATIVE PART 70 PERMIT AMENDMENTS**

### **Reg. 35.2201 Administrative Part 70 Permit Amendment Applicability**

An administrative Part 70 permit amendment is a permit revision, requested by the permittee, that:

- (A) Corrects typographical errors;
- (B) Identifies a change in the name, address, or phone number of any person identified in the Part 70 permit, or provides a similar minor administrative change at the source;
- (C) Requires more frequent monitoring or reporting by the permittee;
- (D) Allows for a change in ownership or operational control of a source that has been permitted under Chapters 14 or 15 of this Regulation if the Department determines that no other change in the Part 70 permit is necessary and a written agreement containing a specific date for transfer of Part 70 permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Department;
- (E) Incorporates a change in the Part 70 permit involving air contaminants other than federally-regulated air pollutants that has been processed under Chapter 14 of this Regulation;
- (F) Incorporates a change in the Part 70 permit solely involving the retiring of an emissions unit; or
- (G) Incorporates a change to the facilities' insignificant activities list.

### **Reg. 35.2202 Acid Rain Administrative Part 70 Permit Amendments**

Administrative Part 70 permit amendments for purposes of the acid rain portion of the Part 70 permit shall be governed by regulations promulgated under Title IV of the Clean Air Act.

### **Reg. 35.2203 Administrative Part 70 Permit Amendment Procedures**

An administrative Part 70 permit amendment shall be made by the Department consistent with the following:

- (A) The Department shall take no more than sixty (60) days from receipt of a request for an administrative Part 70 permit amendment to take final action on the request, and may incorporate changes without providing notice to the public or affected states if it designates any Part 70 permit revisions as having been made pursuant to this Chapter;
- (B) The Department shall submit a copy of the revised Part 70 permit to the Administrator; and

- (C) The owner or operator of a Part 70 source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

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## CHAPTER 23: PART 70 PERMIT MODIFICATIONS, REOPENINGS

### **Reg. 35.2301 Part 70 Permit Modification**

A Part 70 permit modification is any revision to a Part 70 permit that cannot be accomplished under the program's provisions for administrative Part 70 permit amendments. A Part 70 permit modification for purposes of the acid rain portion of the Part 70 permit shall be governed by regulations promulgated under Title IV of the Clean Air Act.

### **Reg. 35.2302 Minor Permit Modification Applicability**

The minor permit modification process is an expedited procedure that allows a source to make trivial changes involving limited emissions increases, based on the differences between the sum of the proposed permitted rates for all emissions units and the sum of previously permitted emission rates for all units, without a public notice process or a preconstruction permit. Minor permit modification procedures may be used only for those Part 70 permit modifications that:

- (A) Involve emissions increases of less than:
  - (1) Seventy-five (75) tons per year of carbon monoxide;
  - (2) Forty (40) tons per year of nitrogen oxides;
  - (3) Forty (40) tons per year of sulfur dioxide;
  - (4) Twenty-five (25) tons per year of particulate matter;
  - (5) Ten (10) tons per year of direct PM<sub>2.5</sub>;
  - (6) Fifteen (15) tons per year of PM<sub>10</sub>;
  - (7) Forty (40) tons per year of volatile organic compounds;
  - (8) Six-tenths (0.6) tons per year of lead; and
  - (9) Seventy-five thousand (75,000) tons per year of CO<sub>2e</sub>.
- (B) Involve an emission increase of CO<sub>2e</sub> greater than 75,000 tons per year and all emission increases of federally-regulated air pollutants other than CO<sub>2e</sub> otherwise fall below the threshold set forth in Reg. 35.2302(A);
- (C) Involve the installation or modification of emissions units that do not require a Title I emissions netting procedure to determine eligibility;
- (D) Do not violate any applicable requirement;

- (E) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the Part 70 permit;
- (F) Do not require or change a case-by-case determination of an emissions limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (G) Do not seek to establish or change a Part 70 permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions include:
  - (1) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and
  - (2) An alternative emissions limitation approved pursuant to regulations promulgated under the Clean Air Act § 112(i)(5); and
- (H) Are not modifications under any provision of Title I of the Clean Air Act.

**Reg. 35.2303 Prohibition on Multiple Related Minor Permit Modification Application Submittals**

An owner or operator of a Part 70 source shall not submit multiple minor permit modification applications that are designed to conceal a larger modification that would not be eligible for minor permit modification procedures. The Department may, in its discretion, require that multiple related minor permit modification applications be processed as a significant permit modification.

**Reg. 35.2304 Minor Permit Modification Application**

An application requesting the use of minor permit modification procedures shall meet the standard Part 70 permit application requirements and shall additionally include the following:

- (A) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- (B) The applicant's suggested draft Part 70 permit conditions;
- (C) Certification by a responsible official that the proposed modification meets the criteria for use of minor permit modification procedures and a request that the procedures be used; and
- (D) Completed forms for the Department to use to notify the Administrator and affected states as required under Chapter 20 of this Regulation.

**Reg. 35.2305 EPA and Affected State Notification of Minor Permit Modification Application**

Within five (5) business days of receipt of a complete minor permit modification application, the Department shall meet its obligation to notify the Administrator and affected states of the requested Part 70 permit modification. The Department promptly shall send any notice required under Chapter 20 of this Regulation to the Administrator.

**Reg. 35.2306 Permittee's Ability to Make Minor Modification**

The permittee may make the change proposed in the minor permit modification application upon receipt of written notification from the Department. The Department shall have fifteen (15) days after its receipt of the application to determine if the minor permit modification application is complete and is eligible for minor permit modification procedures. If the Department does not respond within this period of fifteen (15) days, the permittee may proceed with the proposed modification at his or her own risk. After the permittee makes the change allowed by the preceding sentence, and until the Department takes action on the application, the permittee shall comply with both the applicable requirements governing the change and the draft Part 70 permit terms and conditions. During this time period, the permittee may comply with the existing Part 70 permit terms and conditions he or she seeks to modify. However, if the permittee fails to comply with the draft Part 70 permit terms and conditions during this time period, the existing Part 70 permit terms and conditions he or she seeks to modify may be enforced against the permittee.

**Reg. 35.2307 Group Processing of Minor Permit Modifications**

Multiple applications for different minor permit modifications may be processed as a single minor permit modification by the Department if the group of multiple Part 70 permit applications as a whole meets the eligibility requirements of Reg. 35.2302.

**Reg. 35.2308 Permit Shield not Applicable to Minor Permit Modifications**

The permit shield under Reg. 35.2004 does not extend to minor permit modifications.

**Reg. 35.2309 Significant Modification Procedures**

Significant modifications involving the procedures of Chapter 19 of this Regulation shall be used for applications that:

- (A) Involve new applicable requirements;
- (B) Are modifications under any provision of Title I of the Clean Air Act;
- (C) Involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the Part 70 permit;

- (D) Require or change a case-by-case determination of an emissions limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;
- (E) Involve an increase in federally-regulated air pollutant emissions that cannot be processed under minor permit modification procedures; or
- (F) Seek to establish or change a Part 70 permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions include:
  - (1) A federally enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and
  - (2) An alternative emissions limitation approved pursuant to regulations promulgated under the Clean Air Act § 112(i)(5).

**Reg. 35.2310 Reopening for Cause by the Department**

- (A) Each issued Part 70 permit shall include provisions specifying the conditions that will cause the Part 70 permit to be reopened prior to the expiration of the Part 70 permit. A Part 70 permit shall be reopened and revised under any of the following circumstances:
  - (1) Additional applicable requirements under the Clean Air Act become applicable to a major Part 70 source with a remaining Part 70 permit term of three (3) or more years. The reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. No reopening is required if the effective date of the requirement is later than the date if the Part 70 permit is due to expire, unless the original Part 70 permit or any of its terms and conditions have been extended due to failure of the Department to take action on a renewal Part 70 permit;
  - (2) Additional requirements (including excess emissions requirements) become applicable to an acid rain source under the Acid Rain Program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the Part 70 permit;
  - (3) The Department or EPA determines that the Part 70 permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the Part 70 permit; or
  - (4) The Administrator or the Department determines that the Part 70 permit shall be revised or revoked to assure compliance with the applicable requirements.
- (B) Proceedings to reopen and issue a Part 70 permit shall follow the same procedures that apply to initial Part 70 permit issuance and shall affect only those parts of the Part 70

permit where cause to reopen exists. Reopening shall be made as expeditiously as practicable.

- (C) Reopenings shall not be initiated before a notice of intent is provided to the Part 70 source by the Department at least thirty (30) days in advance of the date that the Part 70 permit is to be reopened, except that the Department may provide a shorter time period in the case of an emergency.

**Reg. 35.2311 Reopenings for Cause by EPA**

- (A) If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a Part 70 permit, the Administrator shall notify the Department and the permittee of the finding in writing.
- (B) The Department shall, within ninety (90) days after receipt of the notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend this ninety-day period for an additional ninety (90) days if he or she finds that a new or revised Part 70 permit application is necessary or that the Department shall require the permittee to submit additional information.
- (C) The Administrator will review the proposed determination from the Department within ninety (90) days of receipt.
- (D) The Department has ninety (90) days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the Part 70 permit in accordance with the Administrator's objection.
- (E) If the Department fails to submit a proposed determination pursuant to Reg. 35.2312(B), or fails to resolve any objection pursuant to Reg. 35.2312(D), the Administrator will terminate, modify, or revoke and reissue the Part 70 permit after the following actions:
  - (1) Providing at least a thirty-day notice to the permittee in writing of the reasons for any action; and
  - (2) Providing the permittee an opportunity for comment on the Administrator's proposed action and an opportunity for a hearing.

**Reg. 35.2312 Part 70 Permit Flexibility**

- (A) The Department may grant an extension to any testing, compliance or other dates in the Part 70 permit. No extensions shall be authorized until the permittee receives written approval from the Department. The Department may grant a request, at its discretion, in the following circumstances:
  - (1) The permittee makes a request in writing at least fifteen (15) days in advance of the deadline specified in the facility's Part 70 permit;

- (2) The extension does not violate a federal requirement;
  - (3) The permittee demonstrates the need for the extension; and
  - (4) The permittee documents that all reasonable measures have been taken to meet the current deadline and documents reasons the current deadline cannot be met.
- (B) The Department may grant a request to allow temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limitation in a facility's Part 70 permit. None of these activities shall be authorized until the permittee receives written approval from the Department. The Department may grant the request, at its discretion, in the following circumstances:
- (1) The permittee makes the request in writing at least thirty (30) days in advance of the date that temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limitation in a facility's Part 70 permit;
  - (2) The request does not violate a federal requirement;
  - (3) The request is temporary in nature;
  - (4) The request will not result in a condition of air pollution;
  - (5) The request contains information necessary for the Department to evaluate the request, including but not limited to, quantification of the emissions and the date and time the emission will occur;
  - (6) The request will result in increased emissions less than five (5) tons of any individual federally-regulated air pollutant for which a national ambient air quality standard has been adopted under Chapter 2 of this Regulation, one (1) ton of any single hazardous air pollutant and two and five-tenths (2.5) tons of total hazardous air pollutants; and
  - (7) The permittee maintains records of the dates and results of temporary emissions and/or testing.
- (C) The Department may grant a request to allow an alternative to the monitoring specified in a facility's operating Part 70 permit. Activities shall not be authorized until the permittee receives written approval from the Department. The Department may grant the request, at its discretion, in the following circumstances:
- (1) The permittee makes the request in writing at least thirty (30) days in advance of the first date that the monitoring alternative will be used at the facility;
  - (2) The request does not violate a federal requirement;

- (3) The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the facility's operating Part 70 permit; and
- (4) Any request, if approved by the Department, is incorporated into the next Part 70 permit modification application by the permittee.

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## **CHAPTER 24: PART 70 PERMIT FEES**

### **Reg. 35.2401 Fee Requirement**

In accordance with 40 C.F.R. 70.9, , the owners or operators of Part 70 sources shall pay initial and annual fees that are sufficient to cover the Part 70 permit program costs. The Department shall ensure that any fee required by these regulations will be used solely for Part 70 permit program costs.

### **Reg. 35.2402 Fee Schedule**

The fee schedule for Part 70 permits is contained in Arkansas Pollution Control and Ecology Commission Regulation 9.



## **CHAPTER 25: ACID RAIN SOURCES PROVISIONS**

### **Reg. 35.2501 Purpose**

The purpose of this Chapter is to ensure that acid rain sources located within the State will be permitted in accordance with the regulations promulgated pursuant to Title IV of the Clean Air Act.

### **Reg. 35.2502 Adoption by Reference**

The Arkansas Pollution Control and Ecology Commission hereby adopts and incorporates by reference those provisions of 40 C.F.R. Parts 72 and 76 (including all provisions of Parts 73, 74, 75, 77, and 78 referenced therein) as in effect on October 15, 1999, for purposes of implementing an Acid Rain Program that meets the requirements of Title IV of the Clean Air Act. The term “permitting authority” shall mean the Department, and the term “Administrator” shall mean the Administrator of the United States Environmental Protection Agency. If the provisions or requirements of 40 C.F.R. Parts 72 or 76 conflict with or are not included in this Regulation, the Part 72 or 76 provisions and requirements shall apply and take precedence.

## **CHAPTER 26: NONATTAINMENT AREA PRE-CONSTRUCTION REVIEW**

### **Reg. 35.2601 Requirement for a Permit**

- (A) No nonattainment new source review major source shall be constructed or modified in any nonattainment area, without first obtaining a permit that requires the proposed source to be constructed or modified in accordance with the requirements of Chapters 26 through 28 of this Regulation.
- (B) The requirements in Reg. 35.2601(A) apply only to nonattainment new source review major sources of emissions that cause or contribute to concentrations of the federally-regulated air pollutant in an area designated as nonattainment. A nonattainment new source review major source or major modification that is major for volatile organic compounds is also major for ozone.

### **Reg. 35.2602 Required Information**

- (A) General

Application for a permit shall be made on forms and contain information as the Department may reasonably require, including but not limited to:

- (1) Information on the nature and amounts of federally-regulated air pollutants to be emitted by the stationary source; and
- (2) Information on the location, design, construction, and operation of the stationary source as the Department may reasonably require.

- (B) Duty of Supplement Submittal

If, while processing an application that has been determined to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, the Department may request the information in writing and set a reasonable deadline for a response.

- (C) Duty to Correct Submittal

Any owner or operator who fails to submit any relevant facts or who has submitted incorrect information, shall, upon becoming aware of the failure or incorrect submittal, promptly submit supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any relevant requirements that become applicable to the stationary source before final action is taken on its application.

### **Reg. 35.2603 Approval Criteria**

No permit shall be granted or modified under this Chapter unless:

- (A) The owner or operator 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 Chapters 26 through 28 of this Regulation or without interfering with the attainment or maintenance of a national ambient air quality standard in the state where the proposed source (or modification) is located or in a neighboring state;
- (B) The Director determines that, by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, that total allowable emissions from existing sources in the nonattainment area, from new or modified sources that are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources prior to the application for the permit to construct or modify so as to represent reasonable further progress toward achievement of the national primary ambient air quality standards;
- (C) The proposed source is required to comply with the lowest achievable emission rate;
- (D) The owner or operator of the proposed source has demonstrated that all nonattainment new source review major sources, prevention of significant deterioration major sources, and Part 70 major sources owned or operated by him or her (or by any entity controlling, controlled by, or under common control with him or her) in the State are subject to emissions limitations and are in compliance, or on a schedule for compliance, with all applicable emissions limitations and standards; and
- (E) An analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source demonstrates that benefits of the proposed source significantly outweighs the environmental and social costs imposed as a result of its location, construction, or modification.

### **Reg. 35.2604 Offsets**

- (A) The owner or operator of a new or modified nonattainment new source review major source may comply with any offset requirement for increased emissions of any federally-regulated air pollutant only by obtaining emission reductions of the federally-regulated air pollutant or precursor of the federally-regulated air pollutant from the same source or other sources in the same nonattainment area.
- (B) An owner or operator of a new or modified nonattainment new source review major source may obtain emission reductions in another nonattainment area if the other area has an equal or higher nonattainment classification than the area where the source is located and emissions from the other area contribute to a violation of the national primary ambient air quality standard in the nonattainment area where the source is located.

- (C) Emissions reductions shall be, by the time a new or modified nonattainment new source review major source commences operation, in effect and enforceable and shall assure that the total tonnage of increased emissions of the relevant federally-regulated air pollutant from the new or modified source shall be offset by an equal or greater reduction in the actual emissions of the federally-regulated air pollutant from the same or other sources in the nonattainment area.
- (D) Emissions reductions required by the Clean Air Act shall not be creditable as emissions reductions for purposes of any offset requirement. Incidental emission reductions that are not otherwise federally required shall be creditable as emissions reductions.
- (E) For areas outside zones targeted for economic development the ratio of total emission reductions of volatile organic compounds and oxides of nitrogen to total increased emissions of these federally-regulated air pollutants shall be at least 1.1 to 1.

**Reg. 35.2605 Zones Targeted for Economic Development**

- (A) These regulations provide for management of any zone in Arkansas identified as a zone targeted for economic development pursuant to the Clean Air Act § 173(a)(1)(B).
- (B) In lieu of obtaining offsets as required in Reg. 35.2603(B) and Reg. 35.2604, a source locating in a zone targeted for economic development described in Reg. 35.2605(A) a source may petition the Director to allocate emissions in a zone targeted for economic development as the Director may establish for offsets. A source shall either obtain offsets as required in Reg. 35.2603(B) and Reg. 35.2604 or obtain growth allowance for the applicable zone targeted for economic development pursuant to Reg. 35.2605.
- (C) Any petition for an allocation of emissions in a zone targeted for economic development shall:
  - (1) Be made on forms and contain information as the Director may reasonably require;
  - (2) Contain detailed information about the projected socio-economic impact of the proposed project including, but not limited to:
    - (a) Impact of the project on low to moderate income individuals;
    - (b) Number of jobs to be created; and
    - (c) Median salary of employees;
  - (3) Contain a project schedule;
  - (4) Be separate and distinct from the permit application required under Reg. 35.2602; and

- (5) Be submitted concurrently with the application required under Reg. 35.2602.
- (D) Before taking final action on a petition for an allocation of emissions in a zone targeted for economic development, the Director shall solicit input from the appropriate local governing body.
- (E) The Director shall not allocate any emissions in a zone targeted for economic development unless he or she is reasonably satisfied that:
  - (1) The project will achieve the economic impact described in the petition;
  - (2) The projected economic impact justifies the allocation of emissions in a zone targeted for economic development; and
  - (3) No other projects that do more to further the region's economic development goals will be pre-empted.
- (F) If, while processing a petition, the Director determines that additional information is necessary to evaluate or take final action on that petition, the Director may request the information in writing and set a reasonable deadline for a response.
- (G) Any petitioner who fails to submit any relevant facts or who has submitted incorrect information in a petition shall, upon becoming aware of the failure or incorrect submittal, promptly submit supplementary facts or corrected information.
- (H) If the Director determines the requirements of Reg. 35.2605(E) are met he or she shall prepare a document announcing his or her intent to grant the allocation of emissions in a zone targeted for economic development. This document may contain conditions as are necessary to ensure compliance with this Regulation and that the project is completed as described in the petition.
- (I) No petition may be granted unless the public has first had an opportunity to comment. The opportunity to comment shall include:
  - (1) The publication of a notice of the Director's decision in a newspaper of general circulation in the county where the proposed facility will be located. If the local newspaper is unable or unwilling to publish notice, notice may be published in a newspaper of statewide circulation; and
  - (2) A thirty-day period for submittal of public comment, beginning on the date of the newspaper notice, ending on the date thirty (30) days later.
- (J) The notice required under Reg. 35.2605(I) may be issued concurrently with the notice required under Reg. 35.2609(C).
- (K) The Director shall take final action on a petition after the close of the public comment period. The Director shall notify in writing the owner or operator and any person that

submitted a written comment, of the Director's final action and the Director's reasons for his final action.

- (L) A final decision on a petition by the Director constitutes a final permitting decision under Arkansas Pollution Control and Ecology Commission Regulation 8, Administrative Procedures for appeal purposes.
- (M) The air permit application submitted concurrently with the petition for an allocation of emissions in a zone targeted for economic development shall not be considered complete until final action is taken on the petition.
- (N) Any petition issued under this Chapter is subject to revocation, suspension, or modification in whole or in part, for cause, including without limitation:
  - (1) Violation of any condition established by the Director;
  - (2) Obtaining the allocations by misrepresentation or failure to disclose fully all relevant facts;
  - (3) Failure to complete the project within the time periods specified by the project schedule; or
  - (4) Failure to achieve the projected socio-economic impacts.
- (O) Petitions for allocations may be granted in whole or in part, or they may be denied. If a petition for allocation is granted in part or denied, the applicant shall obtain offsets in the required ratios under the Clean Air Act pursuant to Reg. 35.2603(B) and Reg. 35.2604. If a petition is granted, either in part or in whole, the applicant will be notified of the decision, and the allocations granted will be subtracted from the overall economic development zone allocation pool. A ten percent (10%) reserve of allocations will be maintained in the pool, unless the Director approves the disbursement of these "safety factor" allocations.
- (P) The issuance of allocations does not convey any property rights to the owner or operator.
- (Q) If future changes in source operation and/or regulation renders all or some of the allocations unneeded, the surplus allocations shall be returned.
- (R) Except as provided in this Chapter, emissions allocations in a zone targeted for economic development shall be good for the life of the project.

**Reg. 35.2606 Control Technology Information**

Control technology information from permits issued under this Chapter shall be promptly submitted to the RACT/BACT/LAER clearinghouse for the benefit of other states and the general public.

**Reg. 35.2607 Approval to Construct**

Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the state implementation plan and any other requirements under local, State or federal law.

**Reg. 35.2608 Applicability to Attainment or Unclassifiable Areas**

- (A) Chapters 26 through 28 of this Regulation shall apply to any new nonattainment new source review major source or major modification that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to the Clean Air Act § 107, if it would cause or contribute to a violation of any national ambient air quality standard.
- (B) A nonattainment new source review major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard if the source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Federally - Regulated Air Pollutant	Averaging Time (hours)				
	Annual	24	8	3	1
Sulfur dioxide	One (1) microgram per cubic meter	Five (5) micrograms per cubic meter		Twenty-Five (25) micrograms per cubic meter	
PM <sub>10</sub>	One (1) microgram per cubic meter	Five (5) micrograms per cubic meter			
Nitrogen dioxide	One (1) microgram per cubic meter				
Carbon monoxide			One-half (0.5) micrograms per cubic meter		Two (2) micrograms per cubic meter

- (C) A proposed nonattainment new source review major source or major modification subject to Reg. 35.2608 may reduce the impact of its emissions upon air quality by obtaining

sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the nonattainment new source review major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. In the absence of emission reductions, the Director shall deny the proposed construction.

- (D) The requirements of Reg. 35.2608 shall not apply to a nonattainment new source review major source or major modification with respect to a particular federally-regulated air pollutant if the owner or operator demonstrates that, as to that federally-regulated air pollutant, the source or modification is located in an area designated as nonattainment pursuant to the Clean Air Act § 107.

**Reg. 35.2609 Applicability of Other Regulations**

- (A) The administrative requirements contained in Chapters 16 through 25 of this Regulation, shall apply to permits issued under Chapters 26 through 28.
- (B) The permit modification and administrative permit amendments procedures contained in Chapters 16 through 25 of this Regulation, shall apply to permits issued under Chapters 26 through 28.
- (C) The public notice requirements contained in Reg. 35.1902 shall apply to permits issued under this Regulation.
- (D) All facilities subject to permitting under this Regulation shall pay fees in accordance with Arkansas Pollution Control and Ecology Commission Regulation 9.
- (E) All nonattainment new source review major sources subject to Chapters 26 through 28 of this Regulation shall comply with all other applicable provisions of this Regulation. This includes, but is not limited to, the stack height requirements contained in Reg. 35.903, and the upset and emergency conditions contained in Chapter 7 of this Regulation. The requirements of Chapter 15 of this Regulation do not apply to sources subject to Chapters 26 through 28.



## CHAPTER 27: NONATTAINMENT AREA APPLICABILITY TESTS

### **Reg. 35.2701 Actual to Projected-Actual Applicability Test**

For projects that only involve existing emissions units, a significant emissions increase of a nonattainment new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that nonattainment new source review pollutant.

### **Reg. 35.2702 Actual to Potential Test**

For projects that only involve construction of a new emissions unit(s), a significant emissions increase of a nonattainment new source review pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that nonattainment new source review pollutant.

### **Reg. 35.2703 Emission Baseline Credits**

- (A) For sources and modifications subject to Chapters 26 through 28 of this Regulation, the baseline for determining credit for emissions reductions is the emissions limitation under the applicable state implementation plan in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:
  - (1) The demonstration of reasonable further progress and attainment of national ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area where the preconstruction review program was adopted; or
  - (2) The applicable state implementation plan does not contain an emissions limitation for that source or source category.
- (B) If the emissions limitation under the applicable state implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.
- (C) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable state implementation plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure that would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later

date. The Department should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

- (D) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours may be credited for offsets if the reductions are surplus, permanent, quantifiable, and federally enforceable and one of the following requirements is met:
  - (1) The shutdown or curtailment occurred after the last day of the base year for the state implementation plan planning process. For purposes of Reg. 35.2703(D)(1), the Department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from the previously shutdown or curtailed emission units;
  - (2) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or
  - (3) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit.
- (E) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977.)
- (F) All emission reductions claimed as offset credit shall be federally enforceable.
- (G) Procedures relating to the permissible location of offsetting emissions are found in Reg. 35.2604.
- (H) Credit for an emissions reduction can be claimed if the Department has not relied on it in issuing any permit under regulations approved pursuant to 40 C.F.R. Part 51 Subpart I and the State has not relied on it in demonstrating attainment or reasonable further progress.
- (I) The total tonnage of increased emissions, in tons per year, resulting from a major modification that shall be offset in accordance with the Clean Air Act § 173 shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

#### **Reg. 35.2704 Relaxation of Limitations**

At the time that a particular source or modification becomes a nonattainment new source review major source or major modification solely by virtue of a relaxation in any enforcement limitation that was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a nonattainment new source review pollutant, such as a restriction on hours of

operation, then the requirements of Chapters 26 through 28 of this Regulation shall apply to the source or modification as though construction had not yet commenced on the source or modification.

**Reg. 35.2705 Modifications to Existing Units**

The following specific provisions apply to projects at existing emissions units at a nonattainment new source review major source in circumstances where the owner or operator elects to use the method specified in Paragraphs (B)(1) through (3) of the definition of “projected actual emissions” in Chapter 2 of this Regulation for calculating projected actual emissions.

- (A) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
  - (1) A description of the project;
  - (2) Identification of the emissions unit(s) whose emissions of a nonattainment new source review pollutant could be affected by the project; and
  - (3) A description of the applicability test used to determine that the project is not a major modification for any nonattainment new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (B)(3) of the definition of “projected actual emissions” in Chapter 2 of this Regulation and an explanation for why the amount was excluded, and any netting calculations, if applicable.
- (B) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Reg. 35.2705(A) to the Department. Nothing in Reg. 35.2705(B) shall be construed to require the owner or operator of the unit to obtain any determination from the Department before beginning actual construction.
- (C) The owner or operator shall monitor the emissions of any nonattainment new source review pollutant that could increase as a result of the project and that is emitted by any emissions units identified in Reg. 35.2705(A)(2); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five (5) years following resumption of regular operations after the change, or for a period of ten (10) years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that nonattainment new source review pollutant at the emissions unit.
- (D) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the Department within sixty (60) days after the end of each year if records shall be generated under Reg. 35.2705(C) setting out the unit's annual emissions during the year that preceded submission of the report.

- (E) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the Department if the annual emissions, in tons per year, from the project identified in Reg. 35.2705(A), exceed the baseline actual emissions as documented and maintained pursuant to Reg. 35.2705(A)(3), by a significant amount for that nonattainment new source review pollutant, and if the emissions differ from the preconstruction projection as documented and maintained pursuant to Reg. 35.2705(A)(3). The report shall be submitted to the Department within sixty (60) days after the end of the year. The report shall contain the following:
- (1) The name, address and telephone number of the nonattainment new source review major source;
  - (2) The annual emissions as calculated pursuant to Reg. 35.2705(C); and
  - (3) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

**Reg. 35.2706 Public Availability of Information**

The owner or operator of the source shall make the information required to be documented and maintained pursuant to Reg. 35.2705 available for review upon a request for inspection by the Department or the general public, except for information entitled to confidential treatment. The contents of a permit shall not be entitled to confidential treatment.

**Reg. 35.2707 Applicability to Nitrogen Oxides**

The requirements of this Chapter applicable to nonattainment new source review major sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from nonattainment new source review major sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the Administrator has granted a nitrogen oxides waiver applying the standards set forth under Clean Air Act § 182(f) and the waiver continues to apply.

**Reg. 35.2708 Offset Requirements**

- (A) In meeting the emissions offset requirements of Reg. 35.2703 for ozone nonattainment areas that are subject to Clean Air Act Title I, Part D, Subpart 2, the ratio of total actual emissions reductions of volatile organic compounds to the emissions increase of volatile organic compounds shall be as follows:
- (1) In any marginal nonattainment area for ozone—at least 1.1 to 1;
  - (2) In any moderate nonattainment area for ozone—at least 1.15 to 1;
  - (3) In any serious nonattainment area for ozone—at least 1.2 to 1;

- (4) In any severe nonattainment area for ozone—at least 1.3 to 1 (except that the ratio may be at least 1.2 to 1 if the approved state implementation plan also requires all existing nonattainment new source review major sources in the nonattainment area to use BACT for the control of volatile organic compounds); and
  - (5) In any extreme nonattainment area for ozone—at least 1.5 to 1 (except that the ratio may be at least 1.2 to 1 if the approved state implementation plan also requires all existing nonattainment new source review major sources in the nonattainment area to use BACT for the control of volatile organic compounds); and
- (B) Notwithstanding the requirements of Reg. 35.2708(A) for meeting the requirements of Reg. 35.2703, the ratio of total actual emissions reductions of volatile organic compounds to the emissions increase of volatile organic compounds shall be at least 1.15 to 1 for all areas within an ozone transport region that is subject to Clean Air Act Title I, Part D, Subpart 2, except for serious, severe, and extreme ozone nonattainment areas that are subject to Clean Air Act Title I, Part D, Subpart 2.
- (C) In meeting the emissions offset requirements of Reg. 35.2703 for ozone nonattainment areas that are subject to Clean Air Act Title I, Part D, Subpart 1 (but are not subject to Clean Air Act Title I, Part D, Subpart 2, including eight-hour ozone nonattainment areas subject to 40 C.F.R. 51.902(b)), the ratio of total actual emissions reductions of volatile organic compounds to the emissions increase of volatile organic compounds shall be at least 1 to 1.

**Reg. 35.2709 PM<sub>10</sub> Precursors**

The requirements of Chapters 26 through 28 of this Regulation applicable to nonattainment new source review major sources and major modifications of PM<sub>10</sub> shall also apply to nonattainment new source review major sources and major modifications of PM<sub>10</sub> precursors, except where the Administrator determines that the sources do not contribute significantly to PM<sub>10</sub> levels that exceed the PM<sub>10</sub> ambient standards in the area.

## CHAPTER 28: NONATTAINMENT ACTUALS PLANTWIDE APPLICABILITY LIMITATIONS

### Reg. 35.2801 Applicability

- (A) The Department may approve the use of an actuals plantwide applicability limitation for any existing nonattainment new source review major source (except as provided in Reg. 35.2801(B)) if the actuals plantwide applicability limitation meets the requirements in this Chapter.
- (B) The Department shall not allow an actuals plantwide applicability limitation for volatile organic compounds or nitrogen oxides for any nonattainment new source review major source located in an extreme ozone nonattainment area.
- (C) Any physical change in or change in the method of operation of a nonattainment new source review major source that maintains its total source-wide emissions below the actuals plantwide applicability limitation level, meets the requirements in this Chapter, and complies with the plantwide applicability limitation permit:
  - (1) Is not a major modification for the plantwide applicability limitation pollutant;
  - (2) Does not have to be approved through the state implementation plan's nonattainment new source review program; and
  - (3) Is not subject to the provisions in Reg. 35.2704 (restrictions on relaxing enforceable emissions limitations that the nonattainment new source review major source used to avoid applicability of the nonattainment new source review program).
- (D) Except as provided under Reg. 35.2801(C)(3), a nonattainment new source review major source shall continue to comply with all applicable federal or State requirements, emissions limitations, and work practice requirements that were established prior to the effective date of the actuals plantwide applicability limitation.

### Reg. 35.2802 Definitions

For purposes of this Chapter the following definitions apply. If a term is not defined in this Chapter, it shall have the meaning given in Chapter 2 of this Regulation or in the Clean Air Act.

- (A) **“Actuals plantwide applicability limitation”** means a plantwide applicability limitation for a nonattainment new source review major source based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the plantwide applicability limitation pollutant.
- (B) **“Major emissions unit”** means:

- (1) Any emissions unit that emits or has the potential to emit one hundred (100) tons per year or more of the plantwide applicability limitation pollutant in an attainment area; or
  - (2) Any emissions unit that emits or has the potential to emit the plantwide applicability limitation pollutant in an amount that is equal to or greater than the nonattainment new source review major source threshold for the plantwide applicability limitation pollutant as defined by the Clean Air Act for nonattainment areas. For example, in accordance with the definition of major source in Clean Air Act § 182(c), an emissions unit would be a major emissions unit for volatile organic compounds if the emissions unit is located in a serious ozone nonattainment area and it emits, or has the potential to emit, fifty (50) or more tons of volatile organic compounds per year.
- (C) **“Plantwide applicability limitation effective date”** means the date of issuance of the plantwide applicability limitation permit. However, the plantwide applicability limitation effective date for an increased actuals plantwide applicability limitation is the date any emissions unit that is part of the plantwide applicability limitation major modification becomes operational and begins to emit the plantwide applicability limitation pollutant.
- (D) **“Plantwide applicability limitation effective period”** means the period beginning with the plantwide applicability limitation effective date and ending ten (10) years later.
- (E) **“Plantwide applicability limitation major modification”** means, notwithstanding the definitions for major modification and net emissions increase contained in Chapter 2 of this Regulation, any physical change in or change in the method of operation of the actuals plantwide applicability limitation source that causes it to emit the plantwide applicability limitation pollutant at a level equal to or greater than the actuals plantwide applicability limitation.
- (F) **“Plantwide applicability limitation permit”** means the major new source review permit, the minor new source review permit, or the State operating permit under a program that is approved into the state implementation plan, or the Title V permit issued by the Department that establishes an actuals plantwide applicability limitation for a nonattainment new source review major source.
- (G) **“Plantwide applicability limitation pollutant”** means the nonattainment new source review pollutant for which an actuals plantwide applicability limitation is established at a nonattainment new source review major source.
- (H) **“Significant emissions unit”** means an emissions unit that emits or has the potential to emit a plantwide applicability limitation pollutant in an amount that is equal to or greater than the significant level (as defined in Chapter 2 of this Regulation or in the Clean Air Act, whichever is lower) for that plantwide applicability limitation pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Chapter 2 of this Regulation.

- (I) **“Small emissions unit”** means an emissions unit that emits or has the potential to emit the plantwide applicability limitation pollutant in an amount less than the significant level for that plantwide applicability limitation pollutant, as defined in Chapter 2 of this Regulation or in the Clean Air Act, whichever is lower.

**Reg. 35.2803 Permit Application Requirements**

As part of a permit application requesting an actuals plantwide applicability limitation, the owner or operator of a nonattainment new source review major source shall submit the following information to the Department for approval:

- (A) A list of all emissions units at the source designated as small, significant, or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or State applicable requirements, emissions limitations or work practices apply to each unit;
- (B) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown and malfunction; and
- (C) The calculation procedures that the nonattainment new source review major source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve-month rolling total for each month as required by Reg. 35.2814(A).

**Reg. 35.2804 General Requirements for Establishing Actuals Plantwide Applicability Limitations**

- (A) The plan allows the Department to establish an actuals plantwide applicability limitation at a nonattainment new source review major source, provided that at a minimum, the requirements in Reg. 35.2804(A)(1) through (7) are met.
- (1) The actuals plantwide applicability limitation shall impose an annual emissions limitation in tons per year that is enforceable as a practical matter for the entire nonattainment new source review major source. After the first twelve (12) months of establishing an actuals plantwide applicability limitation, the nonattainment new source review major source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the actuals plantwide applicability limitation for the previous twelve (12) consecutive months is less than the actuals plantwide applicability limitation (a twelve-month average, rolled monthly). For each month during the first eleven (11) months from the plantwide applicability limitation effective date, the nonattainment new source review major source owner or operator shall show that the sum of the preceding monthly emissions from the plantwide applicability limitation effective date for each emissions unit under the actuals plantwide applicability limitation is less than the actuals plantwide applicability limitation.



- (2) The actuals plantwide applicability limitation shall be established in a plantwide applicability limitation permit that meets the public participation requirements in Reg. 35.2805.
  - (3) The plantwide applicability limitation permit shall contain all the requirements of Reg. 35.2807.
  - (4) The actuals plantwide applicability limitation shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the plantwide applicability limitation pollutant at the nonattainment new source review major source.
  - (5) Each actuals plantwide applicability limitation shall regulate emissions of only one nonattainment new source review pollutant.
  - (6) Each actuals plantwide applicability limitation shall have a plantwide applicability limitation effective period of ten (10) years.
  - (7) The owner or operator of the nonattainment new source review major source with an actuals plantwide applicability limitation shall comply with the monitoring, recordkeeping, and reporting requirements provided in Reg. 35.2813 through Reg. 35.2815 for each emissions unit under the plantwide applicability limitation through the plantwide applicability limitation effective period.
- (B) At no time (during or after the plantwide applicability limitation effective period) are emissions reductions of a plantwide applicability limitation pollutant, which occur during the plantwide applicability limitation effective period, creditable as decreases for purposes of offsets under Reg. 35.2703(B) through (I) unless the level of the actuals plantwide applicability limitation is reduced by the amount of the emissions reductions and the reductions would be creditable in the absence of the actuals plantwide applicability limitation.

**Reg. 35.2805 Public Participation Requirement for Actuals Plantwide Applicability Limitations**

Actuals plantwide applicability limitations for existing nonattainment new source review major sources shall be established, renewed, or increased through a procedure that is consistent with Chapter 26 of this Regulation. This includes the requirement that the Department provide the public with notice of the proposed approval of a plantwide applicability limitation permit and at least a thirty-day period for submittal of public comment. The Department shall address all material comments before taking final action on the permit.

**Reg. 35.2806 Setting the Ten (10) Year Actuals Plantwide Applicability Limitation Level**

- (A) Except as provided in Reg. 35.2806(B), the state implementation plan shall provide that the actuals plantwide applicability limitation level for a nonattainment new source review major source shall be established as the sum of the baseline actual emissions of the

plantwide applicability limitation pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the plantwide applicability limitation pollutant under Chapter 2 of this Regulation or under the Clean Air Act, whichever is lower. When establishing the actuals plantwide applicability limitation level, for a plantwide applicability limitation pollutant, only one (1) consecutive twenty-four-month period shall be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive twenty-four-month period may be used for each different plantwide applicability limitation pollutant. Emissions associated with units that were permanently shut down after this twenty-four-month period shall be subtracted from the actuals plantwide applicability limitation level. The Department shall specify a reduced actuals plantwide applicability limitation level(s) (in tons per year) in the plantwide applicability limitation permit to become effective on the future compliance date(s) of any applicable federal or State regulatory requirement(s) that the Department is aware of prior to issuance of the plantwide applicability limitation permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of sixty (60) parts per million nitrogen oxides to a new rule limitation of thirty (30) parts per million, then the permit shall contain a future effective actuals plantwide applicability limitation level that is equal to the current actuals plantwide applicability limitation level reduced by one-half ( $\frac{1}{2}$ ) of the original baseline emissions of the unit(s).

- (B) For newly constructed units that do not include modifications to existing units and for which actual construction began after the twenty-four-month period, instead of adding the baseline actual emissions as specified in Reg. 35.2806(A), the emissions shall be added to the actuals plantwide applicability limitation level in an amount equal to the potential to emit of the units.

**Reg. 35.2807 Contents of the Plantwide Applicability Limitation Permit**

Any plantwide applicability limitation permit issued under this Chapter shall contain the following information:

- (A) The plantwide applicability limitation pollutant and the applicable source-wide emissions limitation in tons per year;
- (B) The plantwide applicability limitation permit effective date and the expiration date of the actuals plantwide applicability limitation (plantwide applicability limitation effective period);
- (C) Specification in the plantwide applicability limitation permit that, if a nonattainment new source review major source owner or operator applies to renew an actuals plantwide applicability limitation in accordance with Reg. 35.2811 before the end of the plantwide applicability limitation effective period, the actuals plantwide applicability limitation shall not expire at the end of the plantwide applicability limitation effective period. It shall remain in effect until a revised plantwide applicability limitation permit is issued by the Department;

- (D) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns, and malfunctions;
- (E) A requirement that, once the actuals plantwide applicability limitation expires, the nonattainment new source review major source is subject to the requirements of Reg. 35.2810;
- (F) The calculation procedures that the nonattainment new source review major source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a twelve-month rolling total for each month as required by Reg. 35.2814(A);
- (G) A requirement that the nonattainment new source review major source owner or operator monitor all emissions units in accordance with the provisions under Reg. 35.2813;
- (H) A requirement to retain the records required under Reg. 35.2814 on site. The records may be retained in an electronic format;
- (I) A requirement to submit the reports required under Reg. 35.2815 by the required deadlines; and
- (J) Any other requirements that the Department deems necessary to implement and enforce the actuals plantwide applicability limitation.

**Reg. 35.2808 Reopening of the Plantwide Applicability Limitation Permit**

- (A) During the plantwide applicability limitation effective period, the plantwide applicability limitation permit shall be reopened to:
  - (1) Correct typographical/calculation errors made in setting the actuals plantwide applicability limitation or reflect a more accurate determination of emissions used to establish the actuals plantwide applicability limitation;
  - (2) Reduce the actuals plantwide applicability limitation if the owner or operator of the nonattainment new source review major source creates creditable emissions reductions for use as offsets under Reg. 35.2703(B) through (I); and
  - (3) Revise the actuals plantwide applicability limitation to reflect an increase in the actuals plantwide applicability limitation as provided under Reg. 35.2812.
- (B) During the plantwide applicability limitation effective period, the plantwide applicability limitation permit may be reopened to:
  - (1) Reduce the actuals plantwide applicability limitation to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the plantwide applicability limitation effective date;

- (2) Reduce the actuals plantwide applicability limitation consistent with any other requirement, that is enforceable as a practical matter, and that the State may impose on the nonattainment new source review major source under the state implementation plan; or
  - (3) Reduce the actuals plantwide applicability limitation if the Department determines that a reduction is necessary to avoid causing or contributing to a national ambient air quality standard or prevention of significant deterioration increment violation, or to an adverse impact on an air quality related value that has been identified for a mandatory Class I federal area by a Federal Land Manager and where information is available to the general public.
- (C) Except for the permit reopening in Reg. 35.2808(A)(1) for the correction of typographical/calculation errors that do not increase the actuals plantwide applicability limitation level, all other reopenings shall be carried out in accordance with the public participation requirements of Reg. 35.2805.

**Reg. 35.2809 Plantwide Applicability Limitation Effective Period**

An actuals plantwide applicability limitation shall have an effective period of ten (10) years.

**Reg. 35.2810 Expiration of an Actuals Plantwide Applicability Limitation**

Any actuals plantwide applicability limitation that is not renewed in accordance with the procedures in Reg. 35.2811 shall expire at the end of the plantwide applicability limitation effective period, and the requirements in Reg. 35.2810(A) through (E) of this Chapter shall apply.

- (A) Each emissions unit (or each group of emissions units) that existed under the actuals plantwide applicability limitation shall comply with an allowable emissions limitation under a revised permit established according to the procedures in Reg. 35.2810(A)(1) through (2).
  - (1) Within the time frame specified for actuals plantwide applicability limitation renewals in Reg. 35.2811(B), the nonattainment new source review major source shall submit a proposed allowable emissions limitation for each emissions unit (or each group of emissions units, whichever is deemed appropriate by the Department) by distributing the actuals plantwide applicability limitation allowable emissions for the nonattainment new source review major source among each of the emissions units that existed under the actuals plantwide applicability limitation. If the actuals plantwide applicability limitation had not yet been adjusted for an applicable requirement that became effective during the plantwide applicability limitation effective period, as required under Reg. 35.2811(E), the distribution shall be made as if the actuals plantwide applicability limitation had been adjusted.

- (2) The Department shall decide whether and how the actuals plantwide applicability limitation allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Department determines is appropriate.
- (B) Each emissions unit(s) shall comply with the allowable emissions limitation on a twelve-month rolling basis. The Department may approve the use of monitoring systems (source testing, emission factors, etcetera) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emissions limitation.
- (C) Until the Department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Reg. 35.2810(A)(1), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the actuals plantwide applicability limitation.
- (D) Any physical change or change in the method of operation at the nonattainment new source review major source will be subject to the nonattainment new source review requirements if the change meets the definition of major modification in Chapter 2 of this Regulation.
- (E) The nonattainment new source review major source owner or operator shall continue to comply with any State or federal applicable requirements (BACT, RACT, NSPS, etcetera) that may have applied either during the plantwide applicability limitation effective period or prior to the plantwide applicability limitation effective period except for those emissions limitations that had been established pursuant to Reg. 35.2704, but were eliminated by the actuals plantwide applicability limitation in accordance with the provisions in Reg. 35.2801(C)(3).

**Reg. 35.2811 Renewal of an Actuals Plantwide Applicability Limitation**

- (A) The Department shall follow the procedures specified in Reg. 35.2805 in approving any request to renew an actuals plantwide applicability limitation for a nonattainment new source review major source, and shall provide both the proposed actuals plantwide applicability limitation level and a written rationale for the proposed actuals plantwide applicability limitation level to the public for review and comment. During public review, any person may propose an actuals plantwide applicability limitation level for the source for consideration by the Department.
- (B) A nonattainment new source review major source owner or operator shall submit a timely application to the Department to request renewal of an actuals plantwide applicability limitation. A timely application is one that is submitted at least six (6) months prior to, but not earlier than eighteen (18) months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a nonattainment new source review major source submits a complete application to renew the actuals plantwide applicability limitation within this time period, then the actuals plantwide applicability limitation shall

continue to be effective until the revised permit with the renewed actuals plantwide applicability limitation is issued.

- (C) The application to renew a plantwide applicability limitation permit shall contain the information provided under Reg. 35.2811(C)(1) through (4):
  - (1) The information required in Reg. 35.2803(A) through (C);
  - (2) A proposed actuals plantwide applicability limitation level;
  - (3) The sum of the potential to emit of all emissions units under the actuals plantwide applicability limitation (with supporting documentation); and
  - (4) Any other information the owner or operator wishes the Department to consider in determining the appropriate level for renewing the actuals plantwide applicability limitation.
- (D) In determining whether and how to adjust the actuals plantwide applicability limitation:
  - (1) The Department may renew the actuals plantwide applicability limitation at the same level without considering the factors set forth in Reg. 35.2811(D)(2) if the emissions level calculated in accordance with Reg. 35.2806 is equal to or greater than eighty percent (80%) of the actuals plantwide applicability limitation level, else;
  - (2) The Department may set the actuals plantwide applicability limitation at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Department in its written rationale; and
  - (3) In no case shall any adjustment to the actuals plantwide applicability limitation fail to comply with the following:
    - (a) If the potential to emit of the nonattainment new source review major source is less than the actuals plantwide applicability limitation, the Department shall adjust the actuals plantwide applicability limitation to a level no greater than the potential to emit of the source; and
    - (b) The Department shall not approve a renewed actuals plantwide applicability limitation level higher than the current actuals plantwide applicability limitation, unless the nonattainment new source review major source has complied with Reg. 35.2812 (increasing an actuals plantwide applicability limitation).

- (E) If the compliance date for a State or federal requirement that applies to the plantwide applicability limitation source occurs during the plantwide applicability limitation effective period, and if the Department has not already adjusted for the requirement, the plantwide applicability limitation shall be adjusted at the time of plantwide applicability limitation permit renewal or Title V permit renewal, whichever occurs first.

**Reg. 35.2812 Increasing an Actuals Plantwide Applicability Limitation during the Plantwide Applicability Limitation Effective Period**

- (A) The Department may increase an actuals plantwide applicability limitation emissions limitation only if the nonattainment new source review major source complies with the provisions in Reg. 35.2812(A)(1) through (4).
- (1) The owner or operator of the nonattainment new source review major source shall submit a complete application to request an increase in the actuals plantwide applicability limitation for a plantwide applicability limitation major modification. The application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the nonattainment new source review major source's emissions to equal or exceed its actuals plantwide applicability limitation.
  - (2) As part of this application, the nonattainment new source review major source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s) exceeds the actuals plantwide applicability limitation. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding ten (10) years. In this case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit shall currently comply.
  - (3) The owner or operator obtains a major new source review permit for all emissions unit(s) identified in Reg. 35.2812(A)(1), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the nonattainment major new source review program process (for example, LAER), even though they have also become subject to the actuals plantwide applicability limitation or continue to be subject to the actuals plantwide applicability limitation.
  - (4) The plantwide applicability limitation permit shall require that the increased actuals plantwide applicability limitation level shall be effective on the day any

emissions unit that is part of the plantwide applicability limitation major modification becomes operational and begins to emit the plantwide applicability limitation pollutant.

- (B) The Department shall calculate the new actuals plantwide applicability limitation as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Reg. 35.2812(A)(2)), plus the sum of the baseline actual emissions of the small emissions units.
- (C) The plantwide applicability limitation permit shall be revised to reflect the increased actuals plantwide applicability limitation level pursuant to the public notice requirements of Reg. 35.2805.

**Reg. 35.2813 Monitoring Requirements for Actuals Plantwide Applicability Limitations**

**(A) General Requirements**

- (1) Each plantwide applicability limitation permit shall contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the plantwide applicability limitation pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the plantwide applicability limitation permit shall be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by the system shall meet minimum legal requirements for admissibility in a judicial proceeding to enforce the plantwide applicability limitation permit.
  - (2) The actuals plantwide applicability limitation monitoring system shall employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Reg. 35.2813(B)(1) through (4) and shall be approved by the Department.
  - (3) Notwithstanding Reg. 35.2813(A)(1), an owner or operator may also employ an alternative monitoring approach that meets Reg. 35.2813(A) if approved by the Department.
  - (4) Failure to use a monitoring system that meets the requirements of this Chapter renders the actuals plantwide applicability limitation invalid.
- (B) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Reg. 35.2813(C) through (I):
- (1) Mass balance calculations for activities using coatings or solvents;
  - (2) CEMS;



- (3) CPMS or PEMS; and
  - (4) Emission Factors.
- (C) An owner or operator using mass balance calculations to monitor plantwide applicability limitation pollutant emissions from activities using coating or solvents shall meet the following requirements:
- (1) Provide a demonstrated means of validating the published content of the plantwide applicability limitation pollutant that is contained in or created by all materials used in or at the emissions unit;
  - (2) Assume that the emissions unit emits all of the plantwide applicability limitation pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
  - (3) If the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of plantwide applicability limitation pollutant content from the material, the owner or operator shall use the highest value of the range to calculate the plantwide applicability limitation pollutant emissions unless the Department determines there is site-specific data or a site-specific monitoring program to support another content within the range.
- (D) An owner or operator using CEMS to monitor plantwide applicability limitation pollutant emissions shall meet the following requirements:
- (1) CEMS shall comply with applicable Performance Specifications found in 40 C.F.R. Part 60, Appendix B; and
  - (2) CEMS shall sample, analyze and record data at least every fifteen (15) minutes while the emissions unit is operating.
- (E) An owner or operator using CPMS or PEMS to monitor plantwide applicability limitation pollutant emissions shall meet the following requirements:
- (1) The CPMS or the PEMS shall be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the plantwide applicability limitation pollutant emissions across the range of operation of the emissions unit; and
  - (2) Each CPMS or PEMS shall sample, analyze, and record data at least every fifteen (15) minutes, or at another less frequent interval approved by the Department, while the emissions unit is operating.
- (F) An owner or operator using emission factors to monitor plantwide applicability limitation pollutant emissions shall meet the following requirements:

- (1) All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
  - (2) The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
  - (3) If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate plantwide applicability limitation pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six (6) months of plantwide applicability limitation permit issuance, unless the Department determines that testing is not required.
- (G) A source owner or operator shall record and report maximum potential emissions without considering enforceable emissions limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during these periods is specified in the plantwide applicability limitation permit.
- (H) Notwithstanding the requirements in Reg. 35.2813(C) through (G), if an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the plantwide applicability limitation pollutant emissions rate at all operating points of the emissions unit, the Department shall, at the time of permit issuance:
- (1) Establish default value(s) for determining compliance with the actuals plantwide applicability limitation based on the highest potential emissions reasonably estimated at the operating point(s); or
  - (2) Determine that operation of the emissions unit during operating conditions if there is no correlation between monitored parameter(s) and the plantwide applicability limitation pollutant emissions is a violation of the actuals plantwide applicability limitation.
- (I) All data used to establish the plantwide applicability limitation pollutant shall be re-validated through performance testing or other scientifically valid means approved by the Department. The testing shall occur at least once every five (5) years after issuance of the actuals plantwide applicability limitation.

**Reg. 35.2814 Recordkeeping Requirements**

- (A) An owner or operator shall retain a copy of all records necessary to determine compliance with any requirement of this Chapter and of the actuals plantwide applicability limitation, including a determination of each emissions unit's twelve-month rolling total emissions, for five (5) years from the date of the record.
- (B) An owner or operator shall retain a copy of the following records for the duration of the plantwide applicability limitation effective period plus five (5) years:

- (1) A copy of the plantwide applicability limitation permit application and any applications for revisions to the actuals plantwide applicability limitation; and
- (2) Each annual certification of compliance pursuant to Title V and the data relied on in certifying the compliance.

**Reg. 35.2815 Reporting and Notification Requirements**

The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Department in accordance with the applicable Title V operating permit program. The reports shall meet the requirements in Reg. 35.2815(A) through (C).

- (A) The semi-annual report shall be submitted to the Department within thirty (30) days of the end of each reporting period. This report shall contain the following information:
  - (1) The identification of owner and operator and the permit number;
  - (2) Total annual emissions (tons per year) based on a twelve-month rolling total for each month in the reporting period recorded pursuant to Reg. 35.2814(A);
  - (3) All data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual plantwide applicability limitation pollutant emissions;
  - (4) A list of any emissions units modified or added to the nonattainment new source review major source during the preceding six-month period;
  - (5) The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken;
  - (6) A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the plantwide applicability limitation pollutant or the number determined by method included in the permit, as provided by Reg. 35.2813(G); and
  - (7) A signed statement by the responsible official (as defined by the applicable Title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.
- (B) The nonattainment new source review major source owner or operator shall promptly submit reports of any deviations or exceedance of the actuals plantwide applicability limitation requirements, including periods when no monitoring is available. A report submitted pursuant to 35.2001(C)(3)(b) shall satisfy this reporting requirement. The

deviation reports shall be submitted within the time limits prescribed by 35.2001(C)(3)(a). The reports shall contain the following information:

- (1) The identification of owner, operator, and the permit number;
  - (2) The actuals plantwide applicability limitation requirement that experienced the deviation or that was exceeded;
  - (3) Emissions resulting from the deviation or the exceedance; and
  - (4) A signed statement by the responsible official (as defined by the applicable Title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.
- (C) The owner or operator shall submit to the Department the results of any re-validation test or method within three (3) months after completion of the test or method.

## CHAPTER 29: OTHER PROVISIONS

### **Reg. 35.2901 Best Available Retrofit Technology Requirements**

- (A) SWEPCO Flint Creek Power Plant, SN-01 shall comply with best available retrofit technology requirements for particulate matter by meeting the existing permitted particulate matter emission limit as of October 15, 2007.
- (B) Entergy Arkansas, Inc. – White Bluff, Unit 1 Boiler, SN-01 shall comply with best available retrofit technology requirements for particulate matter by meeting existing permitted particulate matter emission limits as of October 15, 2007.
- (C) Entergy Arkansas, Inc. – White Bluff, Unit 2 Boiler, SN-02 shall comply with best available retrofit technology requirements for particulate matter by meeting the existing permitted particulate matter emission limit as of October 15, 2007.
- (D) Entergy Arkansas, Inc.–Lake Catherine, Unit 4 Boiler, SN-03 shall comply with best available retrofit technology requirements for particulate matter when burning natural gas by meeting the existing permitted particulate matter emission as of October 15, 2007.

## **CHAPTER 30: EFFECTIVE DATE AND TRANSITION**

### **Reg. 35.3001 Effective Date**

This regulation is effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.

### **Reg. 35.3002 Repealer**

APC&EC Regulations 18, 19, 26, and 31 are repealed as of the effective date of Regulation 35.

### **Reg. 35.3003 Continuation of the Effectiveness of Permitting Provisions**

Notwithstanding any references to regulations that are no longer in effect, a person holding any permit issued prior to the effective date of this regulation shall continue to operate in accordance with the conditions of that permit.

### **Reg. 35.3004 Transition**

- (A) Amendments to permits to correct citations to regulations that are no longer in effect shall be considered an administrative permit amendment under 35.1408(A).
- (B) ADEQ may initiate an administrative permit amendment under 35.1408(A) of its own accord for the purpose of correcting citations in permits to regulations that are no longer in effect.
- (C) A crosswalk for the location in Regulation 35 of provisions previously contained in Regulations 18, 19, 26, and 31 is provided in Appendix C of this Regulation.

# **ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**



## **REGULATION NO. 35**

### **APPENDIX A**

**Insignificant Activities List**

## **APPENDIX A: INSIGNIFICANT ACTIVITIES LIST**

The following types of activities or emissions are deemed insignificant on the basis of size, emission rate, production rate, or activity. Certain of these listed activities include qualifying statements intended to exclude many similar activities. By listing these activities, the Department exempts certain sources or types of sources from the requirements to obtain a permit or plan under this Regulation. Listing in this Appendix has no effect on any other law to which the activity may be subject. Any activity where a state or federal applicable requirement applies (such as NSPS, NESHAP, or MACT) is not insignificant, even if this activity meets the criteria below.

### **Group A**

The following emission units, operations, or activities shall either be listed as insignificant or included in the permit application as sources to be permitted. The ton-per-year applicability levels are for all sources listed in the categories (i.e., cumulative total).

- (A) Fuel burning equipment with a design rate less than ten million (10,000,000) British thermal units per hour, provided that the aggregate emissions from all the units listed as insignificant do not exceed:
  - (1) Five (5) tons per year of any combination of hazardous air pollutants;
  - (2) Seventy-five thousand (75,000) tons per year carbon dioxide; or
  - (3) Ten (10) tons per year of any other air contaminant.
- (B) Storage tanks less than or equal to two hundred fifty (250) gallons storing organic liquids having a true vapor pressure less than or equal to three and five-tenths (3.5) pounds-force per square inch absolute, provided that the aggregate emissions from all liquid storage tanks listed as insignificant do not exceed:
  - (1) Five (5) tons per year of any combination of hazardous air pollutants; or
  - (2) Ten (10) tons per year of any other air contaminant.
- (C) Storage tanks less than or equal to ten thousand (10,000) gallons storing organic liquids having a true vapor pressure less than or equal to five-tenths (0.5) pounds per square inch absolute, provided that the aggregate emissions from all liquid storage tanks listed as insignificant do not exceed:
  - (1) Five (5) tons per year of any combination of hazardous air pollutants; or
  - (2) Ten (10) tons per year of any other air contaminants.
- (D) Caustic storage tanks that contain no volatile organic compounds.



- (E) Emissions from laboratory equipment/vents used exclusively for routine chemical or physical analysis for quality control or environmental monitoring purposes provided that the aggregate emissions from all equipment/vents considered insignificant do not exceed
  - (1) Five (5) tons per year of any combination of hazardous air pollutants; or
  - (2) Ten (10) tons per year of any other air contaminant.
- (F) Non-commercial water washing operations of empty drums less than or equal to fifty-five (55) gallons with less than three percent (3%) of the maximum container volume of material.
- (G) Welding or cutting equipment related to manufacturing activities that do not result in aggregate emissions of hazardous air pollutants in excess of one-tenth (0.1) tons per year.
- (H) Containers of less than or equal to five (5) gallons in capacity that do not emit any detectable volatile organic compounds or hazardous air pollutants if closed. This includes filling, blending, or mixing of the contents of containers by a retailer.
- (I) Equipment used for surface coating, painting, dipping, or spraying operations that contains less than four-tenths (0.4) pounds per gallon volatile organic compounds, that contains no hexavalent chromium and that emits no more than one-tenth (0.1) tons per year of all other hazardous air pollutants.
- (J) Non-production equipment approved by the Department, used for waste treatability studies or other pollution prevention programs provided that the emissions are less than:
  - (1) Ten (10) tons per year of any air contaminant;
  - (2) Two (2) tons per year of a single hazardous air pollutant;<sup>1</sup> and
  - (3) Five (5) tons per year of any combination of hazardous air pollutants.
- (K) Operation of groundwater remediation wells, including emissions from the pumps and collection activities but not from air-stripping or storage, provided that the emissions are less than:
  - (1) Ten (10) tons per year of any air contaminant;
  - (2) Two (2) tons per year of a single hazardous air pollutant; and
  - (3) Five (5) tons per year of any combination of hazardous air pollutants.
- (L) Emergency-use generators, boilers, or other fuel burning equipment, with the exception

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<sup>1</sup> The treatability study or pollution prevention program shall be approved separately. The activity creating the emissions shall also be determined to be insignificant as discussed in the introduction to this group.

of generators that provide electricity to the distribution grid, that:

- (1) Are of equal or smaller capacity than the primary operating unit;
  - (2) Cannot be used in conjunction with the primary operating unit;
  - (3) Do not emit or have the potential to emit federally-regulated air pollutants in excess of the primary operating unit; and
  - (4) Are not operated more than ninety (90) days a year.
- (M) Other activities where the facility demonstrates that no enforceable permit conditions are necessary to ensure compliance with any applicable law or regulation provided that the aggregate emissions of all activities listed under this group are less than:
- (1) Seventy-five thousand (75,000) tons per year carbon dioxide;
  - (2) Five (5) tons per year of any air contaminant;
  - (3) One (1) tons per year of a single hazardous air pollutant; and
  - (4) Two and five-tenths (2.5) tons per year of any combination of hazardous air pollutants.

## **Group B**

The following emission units, operations, or activities do not need to be included in a permit application:

- (A) Combustion emissions from propulsion of mobile sources and emissions from refueling these sources unless regulated by Clean Air Act Title II and required to obtain a permit under Clean Air Act Title V, as amended. This does not include emissions from any transportable units, such as temporary compressors or boilers. This does not include emissions from loading racks or fueling operations covered under any applicable federal requirements;
- (B) Air conditioning and heating units used for comfort that do not have applicable requirements under Clean Air Act Title VI;
- (C) Ventilating units used for human comfort that do not exhaust air contaminants into the ambient air from any manufacturing/industrial or commercial process;
- (D) Non-commercial food preparation or food preparation at restaurants, cafeterias, caterers, etcetera;
- (E) Consumer use of office equipment and products, not including commercial printers or business primarily involved in photographic reproduction;
- (F) Janitorial services and consumer use of janitorial products;
- (G) Internal combustion engines used for landscaping purposes;
- (H) Laundry activities, except for dry-cleaning and steam boilers;
- (I) Bathroom/toilet emissions;
- (J) Emergency (backup) electrical generators at residential locations;
- (K) Tobacco smoking rooms and areas;
- (L) Blacksmith forges;
- (M) Maintenance of grounds or buildings, including lawn care, weed control, pest control, and water washing activities;
- (N) Repair, upkeep, maintenance, or construction activities not related to the source's primary business activity, and not otherwise triggering a permit modification. This may include, but is not limited to, activities such as general repairs, cleaning, painting, welding, woodworking, plumbing, re-tarring roofs, installing insulation,

- paved/paving parking lots, miscellaneous solvent use, application of refractory, or insulation, brazing, soldering, the use of adhesives, grinding, and cutting<sup>2</sup>;
- (O) Surface-coating equipment during miscellaneous maintenance and construction activities. This activity specifically does not include any facility whose primary business activity is surface-coating or includes surface-coating or products;
  - (P) Portable electrical generators that can be “moved by hand” from one location to another<sup>3</sup>;
  - (Q) Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal, or plastic;
  - (R) Brazing or soldering equipment related to manufacturing activities that do not result in emission of hazardous air pollutants<sup>4</sup>;
  - (S) Air compressors and pneumatically-operated equipment, including hand tools;
  - (T) Batteries and battery charging stations, except at battery manufacturing plants;
  - (U) (Storage tanks, vessels, and containers holding or storing liquid substances that do not contain any volatile organic compounds or hazardous air pollutants<sup>5</sup>;
  - (V) Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and non-volatile aqueous salt solutions, provided appropriate lids and covers are used and appropriate odor control is achieved;
  - (W) Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and non-volatile aqueous salt solutions, provided appropriate lids and covers are used and appropriate odor control is achieved;
  - (X) Drop hammers or presses for forging or metalworking;

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<sup>2</sup> Cleaning and painting activities qualify if they are not subject to volatile organic compounds or hazardous air pollutants control requirements. Asphalt batch plant owners or operators shall get a permit

<sup>3</sup> “Moved by hand” means that it can be moved by one person without assistance of any motorized or non-motorized vehicle, conveyance, or device.

<sup>4</sup> Exemptions for storage tanks containing petroleum liquids or other volatile organic liquids are based on size and limits including storage tank capacity and vapor pressure of liquids stored and are not appropriate for this list.

<sup>5</sup> Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that emit hazardous air pollutant metals are more appropriate for treatment as insignificant activities based on size or production thresholds. Brazing, soldering, and welding equipment, and cutting torches related directly to plant maintenance and upkeep and repair or maintenance shop activities that emit hazardous air pollutant metals are treated as trivial and listed separately in this Appendix.

- (Y) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment;
- (Z) Vents from continuous emissions monitors and other analyzers;
- (AA) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities;
- (BB) Hand-held applicator equipment for hot melt adhesives with no volatile organic compounds in the adhesive;
- (CC) Lasers used only on metals and other materials that do not emit hazardous air pollutants in the process;
- (DD) Consumer use of paper trimmers/binders;
- (EE) Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam;
- (FF) Salt baths using non-volatile salts that do not result in emissions of any air contaminant;
- (GG) Laser trimmers using dust collection to prevent fugitive emissions;
- (HH) Bench-scale laboratory equipment used for physical or chemical analysis not including lab fume hoods or vents;
- (II) Routine calibration and maintenance of laboratory equipment or other analytical instruments;
- (JJ) Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis;
- (KK) Hydraulic and hydrostatic testing equipment;
- (LL) Environmental chambers not using hazardous air pollutant gases;
- (MM) Shock chambers, humidity chambers, and solar simulators;
- (NN) Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted;
- (OO) Process water filtration systems and demineralizers;
- (PP) Demineralized water tanks and demineralizer vents;

- (QQ) Boiler water treatment operations, not including cooling towers;
- (RR) Emissions from storage or use of water treatment chemicals, except for hazardous air pollutants or federally-regulated pollutants listed under regulations promulgated pursuant to Clean Air Act § 112(r) as of July 1, 1997, for use in cooling towers, drinking water systems, and boiler water/feed systems;
- (SS) Oxygen scavenging (de-aeration) of water;
- (TT) Ozone generators;
- (UU) Fire suppression systems;
- (VV) Emergency road flares;
- (WW) Steam vents and safety relief valves;
- (XX) Steam leaks;
- (YY) Steam cleaning operations;
- (ZZ) Steam and microwave sterilizers;
- (AAA) Site assessment work to characterize waste disposal or remediation sites;
- (BBB) Miscellaneous additions or upgrades of instrumentation;
- (CCC) Emissions from combustion controllers or combustion shutoff devices but not combustion units itself;
- (DDD) Use of products for the purpose of maintaining motor vehicles operated by the facility, not including air cleaning units of the vehicles (e.g., antifreeze, fuel additives);
- (EEE) Stacks or vents to prevent escape of sanitary sewer gases through the plumbing traps;
- (FFF) Emissions from equipment lubricating systems (i.e., oil mist), not including storage tanks, unless otherwise exempt;
- (GGG) Residential wood heaters, cook stoves, or fireplaces;
- (HHH) Barbecue equipment or outdoor fireplaces used in connection with any residence or recreation;
- (III) Log wetting areas and log flumes;
- (JJJ) Periodic use of pressurized air for cleanup;

- (KKK) Solid waste dumpsters;
- (LLL) Emissions of wet lime from lime mud tanks, lime mud washers, lime mud piles, lime mud filter and filtrate tanks, and lime mud slurry tanks;
- (MMM) Natural gas odoring activities unless the Department determines that emissions constitute air pollution;
- (NNN) Emissions from engine crankcase vents;
- (OOO) Storage tanks used for the temporary containment of materials resulting from an emergency reporting to an unanticipated release;
- (PPP) Equipment used exclusively to mill or grind coatings in roll grinding rebuilding, and molding compounds if all materials charged are in paste form;
- (QQQ) Mixers, blenders, roll mills, or calendars for rubber or plastic where no materials in powder form are added and where no hazardous air pollutants, organic solvents, diluents, or thinners are used or emitted;
- (RRR) The storage, handling, and handling equipment for bark and wood residues not subject to fugitive dispersion off-site (this applies to the equipment only);
- (SSS) Maintenance dredging of pulp and paper mill surface impoundments and ditches containing cellulosic and cellulosic-derived bio-solids and inorganic materials such as lime, ash, or sand;
- (TTT) Tall oil soap storage, skimming, and loading;
- (UUU) Water heaters used strictly for domestic (non-process) purposes;
- (VVV) Facility roads and parking areas, unless necessary to control off-site fugitive emissions;
- (WWW) Agricultural operations, including on-site grain storage, not including internal combustion engines or grain elevators; and
- (XXX) Natural gas and oil exploration and production site equipment not subject to a rule under 40 C.F.R. Parts 60, 61, or 63.

# **ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**



## **REGULATION NO. 35**

### **APPENDIX B**

**National Ambient Air Quality Standards List**



## APPENDIX B: NATIONAL AMBIENT AIR QUALITY STANDARDS LIST

The National Ambient Air Quality Standards as adopted as of the effective date of this Regulation are listed below.

Air Contaminant	Final Rule Cite	Final Rule Date	Primary/ Secondary	Averaging Time	Level	Form	Applicable Chapters
Carbon Monoxide	76 FR 54294	August 31, 2011	Primary	Eight-hour	Nine (9) parts per million	Not to be exceeded more than once per year	All Chapters
				One-hour	Thirty-five (35) parts per million		All Chapters
Lead	73 FR 66964	November 12, 2008	Primary and secondary	Rolling three-month average	Fifteen hundredths (0.15) micrograms per cubic meter	Not to be exceeded	All Chapters
Nitrogen Dioxide	75 FR 6474	February 9, 2010	Primary	One-hour	One hundred (100) parts per billion	98th percentile, averaged over 3 years	All Chapters
	61 FR 52852	October 8, 1996	Primary and secondary	Annual	Fifty-three (53) parts per billion	Annual Mean	All Chapters

<b>Air Contaminant</b>	<b>Final Rule Cite</b>	<b>Final Rule Date</b>	<b>Primary/ Secondary</b>	<b>Averaging Time</b>	<b>Level</b>	<b>Form</b>	<b>Applicable Chapters</b>
Ozone	80 FR 65292	October 26, 2015	Primary and secondary	Eight-hour	Seventy (70) parts per billion	Annual fourth-highest daily maximum eight-hour concentration, averaged over three (3) years	All Chapters
Particle Pollution, PM <sub>2.5</sub>	78 FR 3085	January 15, 2013	Primary	Annual	Twelve (12) micrograms per cubic meter	Annual mean, averaged over three years	All Chapters
	71 FR 61144	October 17, 2006	Secondary	Annual	Fifteen (15) micrograms per cubic meter		
			Primary and secondary	Twenty-four-hour	Thirty-five (35) micrograms per cubic meter	Ninety-eighth (98th) percentile, averaged over three (3) years	All Chapters
Particle Pollution, PM <sub>10</sub>	71 FR 61144	October 17, 2006	Primary and secondary	Twenty-four-hour	One hundred fifty (150) micrograms per cubic meter	Not to be exceeded more than once per year on average over three (3) years	All Chapters

<b>Air Contaminant</b>	<b>Final Rule Cite</b>	<b>Final Rule Date</b>	<b>Primary/ Secondary</b>	<b>Averaging Time</b>	<b>Level</b>	<b>Form</b>	<b>Applicable Chapters</b>
Sulfur Dioxide	75 FR 35520	June 22, 2010	Primary	One-hour	Seventy-five (75) parts per billion	Ninety-ninth (99th) percentile of one-hour daily maximum concentrations, averaged over three (3) years	All Chapters
	38 FR 25678	September 14, 1973	Secondary	Three-hour	One-half (0.5) parts per million	Not to be exceeded more than once per year	All Chapters

# **ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**



## **REGULATION NO. 35**

### **APPENDIX C**

**Regulatory Crosswalk**

## APPENDIX C: REGULATORY CROSSWALK

The following tables provide a crosswalk for the location in Regulation 35 of provisions previously contained in Regulations 18, 19, 26, and 31. These tables do not identify substantive, stylistic, typographical, or clarifying changes that have been made during the consolidation of those Regulations into Regulation 35. An index of changes can be found in APC&E Commission Docket #18-00X-R.

<b>Regulation 18</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 18.101	Reg. 35.101	Title
Reg. 18.102	Reg. 35.103	Intent and Construction
Reg. 18.103	Reg. 35.102	Applicability
Reg. 18.104	Reg. 35.104	Severability
Regulation No. 18, Chapter 2	Regulation No. 35 Chapter 2	Definitions
Reg. 18.301	Reg. 35.1401	Applicability
Reg. 18.302	Reg. 35.1403(A)) & (C)	Approval Criteria
Reg. 18.303	Reg. 35.1404	Owner/Operator's Responsibilities
Reg. 18.304	Reg. 35.1405	Required Information
Reg. 18.305	Reg. 35.1406	Action on Application
Reg. 18.306	Reg. 35.1407	Public Participation
Reg. 18.307	Reg. 35.1408	Permit Amendments
Reg. 18.308	None	Exemption from Permitting
Reg. 18.309	Reg. 35.1409	Permit Revocation and Cancellation
Reg. 18.310	Reg. 35.1410	General Permits
Reg. 18.311	Reg. 35.1411	Transition
Reg. 18.312	Reg. 35.1412	Operational Flexibility Applicant's Duty to Apply for Alternative Scenarios
Reg. 18.313	Reg. 35.1413	Changes Resulting in No Emissions Increases
Reg. 18.314	Reg. 35.1414	Permit Flexibility
Reg. 18.315	Reg. 35.1402	Registration
Regulation No. 18, Chapter 4	None	Reserved
Reg. 18.501	Reg. 35.601	Visible Emissions
Reg. 18.601	Reg. 35.105	Intent

<b>Regulation 18</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 18.602	Reg. 35.301	General Prohibition
Reg. 18.603	Reg. 35.302	Exemptions
Reg. 18.604	Reg. 35.805	Conditions of Air Pollution
Reg. 18.605	Reg. 35.305	Open Burning Authorizations
Reg. 18.701	Reg. 35.501	Emissions of Air Contaminants from Mobile Equipment
Reg. 18.801	Reg. 35.401	Prohibition of the Emission of Air Contaminants Such as to Constitute Air Pollution
Reg. 18.901	Reg. 35.402	Prohibitions
Reg. 18.1001	Reg. 1301	Purpose
Reg. 18.1002	Reg. 35.1302	Air Emissions Sampling
Reg. 18.1003	Reg. 35.1303	Continuous Emissions Monitoring
Reg. 18.1004	Reg. 35.1305	Recordkeeping and Reporting Requirements
Reg. 18.1005	Reg. 35.1306	Public Availability of Emissions Data
Reg. 18.1101,	Reg. 35.701	Upsets
Reg. 18.1102	None	Fuel Curtailment
Reg. 18.1103	None	Conditions of Air Pollution
Reg. 18.1104	None	Department's Authority
Reg. 18.1105	Reg. 35.702	Emergency Conditions
Reg. 18.1201	Reg. 35.403	Circumvention
Reg. 18.1301	Reg. 35.805	Authority
Reg. 18.1302	None	Notification and Reporting Requirements
Reg. 18.1401	Reg. 35.805(B)	Public Notification

<b>Regulation 18</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 18.1402	Reg. 35.1201	Confidentiality
Reg. 18.1501	Reg. 35.3001	Effective Date

<b>Regulation 19</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 19.101	Reg. 35.101	Title
Reg. 19.102	Reg. 35.102	Applicability
Reg. 19.103	Reg. 35.103	Intent and Construction
Reg. 19.104	Reg. 35.104	Severability
Regulation No. 19, Chapter 2	Regulation No. 35, Chapter 2	Definitions
Reg. 19.301	Reg. 35.801	Purpose
Reg. 19.302	Reg. 35.802	Department Responsibilities
Reg. 19.303	Reg. 35.803	Regulated Sources Responsibilities
Reg. 19.304	Reg. 35.804	Delegated Federal Programs
Reg. 19.401	Reg. 35.1401(A)	General Applicability
Reg. 19.402	Reg. 35.1403	Approval Criteria
Reg. 19.403	Reg. 35.1404	Owner/Operator's Responsibilities
Reg. 19.404	Reg. 35.1405	Required Information
Reg. 19.405	Reg. 35.1406	Action on Application
Reg. 19.406	Reg. 35.1407	Public Participation
Reg. 19.407	Reg. 35.1408	Permit Amendments
Reg. 19.408	None	Exemption from Permitting
Reg. 19.409	Reg. 35.1411	Transition
Reg. 19.410	Reg. 35.1409	Permit Revocation and Cancellation
Reg. 19.411	Reg. 35.1410	General Permits
Reg. 19.412	Reg. 35.1415	Dispersion Modeling
Reg. 19.413	Reg. 35.1201	Confidentiality
Reg. 19.414	Reg. 35.1412	Operational Flexibility-Applicant's Duty to Apply for Alternative Scenarios
Reg. 19.415	Reg. 35.1413	Changes Resulting in No Emissions Increases
Reg. 19.416	Reg. 35.1414	Permit Flexibility
Reg. 19.417	Reg. 35.1402	Registration
Reg. 19.501	Reg. 35.901	Purpose



<b>Regulation 19</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 19.502	Reg. 35.902	General Regulations
Reg. 19.503	Reg. 35.601	Visible Emission Regulations
Reg. 19.504	Reg. 35.903	Stack Height/Dispersion Regulations
Reg. 19.505	Reg. 35.904	Revised Emissions Limitations
Reg. 19.601	Reg. 35.701	Upset Conditions
Reg. 19.602	Reg. 35.702	Emergency Conditions
Reg. 19.701	Reg. 35.1301	Purpose
Reg. 19.702	Reg. 35.1302	Air Emissions Sampling
Reg. 19.703	Reg. 35.1303	Continuous Emissions Monitoring
Reg. 19.704	Reg. 35.1304	Notice of Completion
Reg. 19.705	Reg. 35.1305	Record Keeping and Reporting Requirements
Reg. 19.706	Reg. 35.1306	Public Availability of Emissions Data
Reg. 19.801	Reg. 35.1001	Purpose
Reg. 19.802	Reg. 35.1002	Permit Emissions Limitations
Reg. 19.803	None	Sulfuric Acid Plants (H <sub>2</sub> SO <sub>4</sub> Mist)
Reg. 19.804	Reg. 35.1003	Kraft Pulp Mills (TRS)
Reg. 19.901	None	Title
Reg. 19.902	Reg. 35.1501	Purposes
Reg. 19.903	Reg. 35.1502	Definitions
Reg. 19.904	Reg. 35.1503	Adoption of Regulations
Regulation No. 19, Chapter 10	None	Regulations for the Control of Volatile Organic Compounds in Pulaski County
Regulation No. 19, Chapter 11	None	Major Source Permitting Procedures
Regulation No. 19, Chapter 12	None	Reserved
Reg. 19.1301	Reg. 35.1101	Purpose
Reg. 19.1302	Reg. 35.1102	Applicability
Reg. 19.1303	Reg. 35.1103	Definitions

<b>Regulation 19</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 19.1304	Reg. 35.1104	Exemptions
Reg. 19.1305	Reg. 35.1105	Prohibited Activities
Reg. 19.1306	Reg. 35.1106	Record Keeping
Reg. 19.1307	Reg. 35.1107	Inspections
Reg. 19.1308	Reg. 35.1108	Vapor Recovery Systems
Reg. 19.1309	Reg. 35.1109	Gasoline Delivery Vessels
Reg. 19.1310	Reg. 35.1110	Owner or Operator Responsibility
Reg. 19.1311	Reg. 35.1111	Test Methods
Reg. 19.1312	Reg. 35.1112	Effective Date
Regulation No. 19, Chapter 14	None	CAIR NO <sub>x</sub> Ozone Season Trading Program General Provisions
Reg. 19.1501	None	Regional Haze: Purpose
Reg. 19.1502	None	Regional Haze: Definitions
Reg. 19.1503	None	Regional Haze: BART Eligible Sources
Reg. 19.1504	None	Regional Haze: Facilities Subject to BART
Reg. 19.1505	Reg. 35.2901	BART Requirements
Reg. 19.601	Reg. 30.3001	Effective Date

<b>Regulation 26</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 26.101	Reg. 35.101	Title
Reg. 26.102	Reg. 35.103	Purpose
Reg. 26.103	Reg. 35.104	Severability
Regulation No. 26, Chapter 2	Regulation No. 35, Chapter 2	Definitions
Reg. 26.301	Reg. 35.1601	Requirement for a permit
Reg. 26.302	Reg. 35.1602	Sources subject to permitting
Reg. 26.303	Reg. 35.1603	Source category exemptions
Reg. 26.304	Reg. 35.1604	Emissions units subject to permitting
Reg. 26.305	Reg. 35.1605	Emissions subject to permitting
Reg. 26.306	Reg. 35.1606	Fugitive emissions subject to permitting
Reg. 26.401	Reg. 36.1701	Duty to Apply
Reg. 26.402	Reg. 35.1702	Standard application form and required information
Reg. 26.403	Reg. 35.1703	Initial applications from existing part 70 sources
Reg. 26.404	Reg. 35.1704	Applications for proposed new part 70 permits
Reg. 26.405	Reg. 35.1705	Applications for proposed significant modifications at part 70 sources
Reg. 26.406	Reg. 35.1706	Permit renewal applications
Reg. 26.407	Reg. 35.1707	Complete application
Reg. 26.408	Reg. 35.1708	Confidential information
Reg. 26.409	Reg. 35.1709	Applicant's duty to supplement or correct application

<b>Regulation 26</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 26.410	Reg. 35.1710	Certification by responsible official
Reg. 26.501	Reg. 35.1801	Action on part 70 permit applications
Reg. 26.502	Reg. 35.1802	Final action on permit application
Reg. 26.503	Reg. 35.1803	Priority for application review
Reg. 26.504	Reg. 35.1804	Notification of application completeness
Reg. 26.505	Reg. 35.1805	Source's ability to operate prior to final permit action
Reg. 26.506	Reg. 35.1806	Basis for draft permit conditions
Reg. 26.601	Reg. 35.1901	Applicability
Reg. 26.602	Reg. 35.1902	Public participation
Reg. 26.603	Reg. 35.1903	Transmission of permit information to the Administrator
Reg. 26.604	Reg. 35.1904	Review of draft permit by affected States
Reg. 26.605	Reg. 35.1905	EPA objection to proposed permit
Reg. 26.606	Reg. 35.1906	Public petitions to the Administrator
Reg. 26.607	Reg. 35.1907	Prohibition of default issuance
Reg. 26.701	Reg. 35.2001	Standard permit requirements
Reg. 26.702	Reg. 35.2002	Federally-enforceable requirements
Reg. 26.703	Reg. 35. 2003	Compliance requirements

<b>Regulation 26</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 26.704	Reg. 35.2004	Permit shield
Reg. 26.705	Reg. 35.2005	General permits
Reg. 26.706	Reg. 35.2006	Temporary sources
Reg. 26.707	Reg. 35.2007	Emergency provision
Reg. 26.801	Reg. 35.1201	Applicant's duty to apply for alternative scenarios
Reg. 26.802	Reg. 35.2102	Changes resulting in no emissions increases
Reg. 26.803	Reg. 35.2103	Emissions trading in permit
Reg. 26.804	None	Emission trading allowed under Regulation No. 19
Reg. 26.901	Reg. 35.2201	Administrative permit amendment applicability
Reg. 26.902	Reg. 35.2202	Acid Rain administrative permit amendments
Reg. 26.903	Reg. 35.2203	Administrative permit amendment procedures
Reg. 26.1001	Reg. 35.2301	Permit modification
Reg. 26.1002	Reg. 35.2302	Minor permit modification applicability
Reg. 26.1003	Reg. 35.2303	Prohibition on multiple related minor permit modification application submittals
Reg. 26.1004	Reg. 35.2304	Minor permit modification application
Reg. 26.1005	Reg. 35.2305	EPA and affected State notification of minor permit modification application
Reg. 26.1006	None	Timetable for issuance of minor permit modification

<b>Regulation 26</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 26.1007	Reg. 35.2306	Source's ability to make minor modification
Reg. 26.1008	Reg. 35.2307	Group processing of minor permit modification
Reg. 26.1009	Reg. 35.2308	Permit shield not applicable to minor permit modifications
Reg. 26.1010	Reg. 35.2309	Significant modification procedures
Reg. 26.1011	Reg. 35.2310	Reopening for cause by the Department
Reg. 26.1012	Reg. 35.2311	Reopenings for cause by EPA
Reg. 26.1013	Reg. 35.2312	Permit flexibility
Reg. 26.1101	Reg. 35.2401	Fee requirement
Reg. 26.1102	Reg. 35.2402	Fee schedule
Reg. 26.102	Reg. 35.2501	Purpose
Reg. 26.1202	Reg. 35.2502	Adoption by reference
Reg. 26.1301	Reg. 35.3001	Effective Date

<b>Regulation 31</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 31.101	Reg. 35.101	Title
Reg. 31.102	Reg. 35.102	Applicability
Reg. 31.103	Reg. 35.104	Severability
Regulation No. 31, Chapter 2	Regulation No. 35, Chapter 2	Definitions
Reg. 31.301	Reg. 35.2601	Requirement for a Permit
Reg. 31.302	Reg. 35.2602	Required Information
Reg. 31.303	Approval Criteria	Approval Criteria
Reg. 31.304	Reg. 35.2604	Offsets
Reg. 31.305	Reg. 35.2605	Zones Targeted for Economic Development
Reg. 31.306	Reg. 35.2606	Control Technology Information
Reg. 31.307	Reg. 35.2607	Approval to Construct
Reg. 31.308	Reg. 35.2608	Applicability to Attainment or Unclassifiable Areas
Reg. 31.309	Reg. 35.2609	Applicability of Other Regulations
Reg. 31.401	Reg. 35.2701	Actual-to-Projected-Actual Applicability Test
Reg. 31.402	Reg. 35.2702	Actual to Potential Test
Reg. 31.403	None	Reserved
Reg. 31.404	None	Reserved
Reg. 31.405	Reg. 35.2703	Emission Baseline Credits
Reg. 31.406	Reg. 35.2704	Relaxation of Limitations

<b>Regulation 31</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 31.407	Reg. 35.2705	Modifications to Existing Units
Reg. 31.408	Reg. 35.2706	Public Availability of Information
Reg. 31.409	Reg. 35.2707	Applicability to Nitrogen Oxides
Reg. 31.410	Reg. 35.2708	Offset Requirements
Reg. 31.411	Reg. 35.2709	PM <sub>10</sub> Precursors
Regulation No. 31, Chapter 5	None	Reserved
Regulation No. 31, Chapter 6	None	Reserved
Regulation No. 31, Chapter 7	None	Reserved
Reg. 31.801	Reg. 35.2801	Applicability
Reg. 31.802	Reg. 35.2802 & Regulation No. 35, Chapter 2	Definitions
Reg. 31.804	Reg. 35.2804	General Requirements for Establishing PALs
Reg. 31.805	Reg. 35.2805	Public Participation Requirements for PALs
Reg. 31.806	Reg. 35.2806	Setting the 10-year Actual PAL Level
Reg. 31.807	Reg. 35.2807	Contents of PAL Permit
Reg. 31.808	Reg. 35.2808	Reopening of the PAL Permit
Reg. 31.809	Reg. 35.2809	PAL Effective Period
Reg. 31.810	Reg. 35.2810	Expiration of a PAL



<b>Regulation 31</b>		
<b>Previous Citation</b>	<b>New Citation</b>	<b>Title/Subject</b>
Reg. 31.811	Reg. 35.2811	Renewal of a PAL
Reg. 31.812	Reg. 35.2812	Increasing a PAL During the PAL Effective Period
Reg. 31.813	Reg. 35.2813	Monitoring Requirements for PALs
Reg. 31.814	Reg. 35.2814	Recordkeeping Requirements
Reg. 31.815	Reg. 35.2815	Reporting and Notification Requirements
Reg. 31.816	None	Transition Requirements
Reg. 31.901	Reg. 35.3001	Effective Date