

I. Introduction

Ground Rules:

1. Non-attribution of ideas to facilitate open brainstorming
2. Consensus-based
3. Recommendations will be shared with Permitting Workgroup (and vice versa)

II. Workgroup Purpose:

Main Objective: Through a regulatory audit, develop a more readable and streamlined regulatory framework for air pollution control in Arkansas.

- Readability scores for Regulations 18, 19, 26, and 31 are very poor, requiring an average education level of 18 years (high school + 6 years); suggested readability for publicly consumable documents is Grade 7. One objective for the EASE Regulatory Workgroup is to improve digestibility of the Regulations for the general public and the regulated community.
- The group discussed possible topics for further analysis of content and structure of Regulation Nos. 18, 19, 26, and 31, and determined the order of priorities for future discussion. ADEQ will provide discussion aids for the Workgroup in advance of each meeting. ADEQ is in the process of producing some of these discussion aids.

III. Ordered Priorities for Future Meetings:

1. Regulatory Structure and Regulation 31 Disposition

Discussion Aids:

- Regulations 18, 19, 26, and 31
- Regulation 35 v1 Strawman Draft
- Regulation 35 v2 Strawman Draft
- Narrative explaining how any consolidation would affect the state implementation plan (SIP)

2. Grandfathering

Discussion Aids:

Spreadsheet including the following information for each grandfathering provision:

- Regulation containing the provision
- Source the provision affects
- Relevant Dates

3. Incorporation by Reference (IBR) Dates, Simplification of the Prevention of Significant Deterioration Chapter (52.21, 52.165, & 52.166), Approved/Delegated Elements

Discussion Aids

- Spreadsheet including the following information for each “as of” date in Regulations 18, 19, & 26
 - Citation
 - Reference
 - As of Date
 - Definition/Subject
 - Links to any updated federal register notice/revisions
 - List of “Delegated” and “Approved” program elements
 - Code of Federal Regulations copies of 40 CFR 166, 165, and 52.21
4. Definitions

Discussion Aids:

- Spreadsheet including the following information for each term defined in Regulations 18, 19, and 26 including the following information:
 - Definition for each term in a given regulation
 - Each instance a term that is defined in a regulation is used in Regulations 18, 19, and 26
5. New Arkansas Statutory Requirements

Discussion Aids

- Copies of H2S, Vegetative Storm Debris, and Commercial Medical Waste Incinerator Permitting statutes
 - Strawman draft examples as to how statutory requirements could be incorporated
6. Public Notice Requirements and Regulation 8 consistency

Discussion Aids:

- Copies of public notice requirements in Regulations 8, 19, 26, and 31
- Comparison document for the public notice requirements

7. Disentanglement of Title I and Title V Permit requirements

Discussion Aids to be determined later

*Stage 1 Vapor Recovery: This discussion will be scheduled to include members of Arkansas Oil Marketers Association; Regulatory Workgroup members are welcome, but not required at this meeting.

IV. Related Discussion

- A. Deciding on regulatory structure first will allow the group to move forward more easily into discussions about regulatory content. Current considerations:
1. Four Separate Regulations
 2. One State-only regulation and one SIP/Title V regulation with IBR nonattainment Chapter
 3. One State-only regulation, one SIP/Title V regulation (excluding nonattainment NSR), and one nonattainment NSR regulation
 4. One consolidated regulation:
 - a) State-only provisions intermixed/consolidated with SIP provisions, but redacted from SIP submission. (Regulation No. 35 Strawman Draft V1, “MegaReg”)¹
 - b) Separate chapters to preserve isolation for State-only requirements, Title V requirements, and nonattainment requirements. (Regulation No. 35 Strawman Draft V2)²
- B. Some topics will be “low-hanging fruit,” such as outdated provisions for GHGs in Regulation 19, Chapter 9, PSD. But, federal language and anything NOT state-only are more difficult topics, so any suggested revisions must consider these factors (federal approvability of Arkansas programs and SIP revisions triggered by regulatory changes).
- C. Disentangling Title V: state’s one-permit system causes issues with EPA because ADEQ Title V permits have NSR provisions included, unlike most states, which operate under two-permit systems. EPA can review Title V provisions in permits, but not NSR provisions, which fall under Title I. There is some issue with timing under a one-permit system – Notice requirements are different for Title V and Title I, but under our one-permit system, the most stringent applies. Pre-construction and Operating permit modifications have only 90 days, but with Title V, modifications do not have to be folded in until the next permit renewal.

¹ Released for feedback in May 2018

² Under development for workgroup discussion purposes of Regulatory Structure, based on Regulation No. 35 Strawman Draft V1 feedback from stakeholders.

Under a one-permit system, ADEQ must notice all modifications within 90 days. “Holding” modifications until the next Title V review would not affect the permit shield, as it does not apply to NSR or minor modifications. It may be possible to issue construction permits without Title V provisions, but this will be a complex issue: ADEQ Planning and Permitting staff will work together for possible solutions, and discuss options with the two Workgroups later.

- D. “Draft Permit” vs. “Proposed Permit” – ADEQ processes permits so that if there are no comments from the initial public review of a Proposed Permit, the permit is considered Final. EPA believes the agency has the right to another review of a “Proposed Permit”, after revisions from public comments have been made to the Draft Permit.
- E. IBRs -- Unless these affect the SIP, EPA is not concerned with outdated IBRs in the state Regulations. For PSD, the 2005 IBR was outdated, but provisions such as this can be revised under “administrative changes” and EPA will not require that all other provisions are updated. EPA must SIP call the state, in order to force a SIP revision, giving time for the state to respond with a suitable SIP package. Under PSD, even when Arkansas Regulations do not have the most current federal provisions, these are still applicable to facilities real-time.
- F. Provisions for permitting procedures for the Infrastructure SIP (i-SIP) are included directly in the Air Regulations, so inclusion of Regulation 8 in the SIP is not necessary to render our minor NSR, Title V, and PSD permitting federally enforceable. In cases when Regulation No. 8 has been referenced in an Air Regulations, EPA must rely on the approved part of that provision from the previous version of the i-SIP (“disclosure statements as found in Regulation No. 8...” was the example). Regulation No. 8 is not included in Arkansas’s SIP.
- G. ADEQ will begin looking at storm debris statutes, including updates from the current session, and develop a Q&A document (“What can I burn?” Where/when/how?). (This was stated as an internal objective, not a Workgroup deliverable.)
- H. ADEQ will send a list of obsolete provisions to the Workgroup to get consensus about which are no-contest removals.
- I. Current litigation over the definition of “modification” because state agencies framed the term as being the same for NSR as for NSPS

The next EASE Regulatory Workgroup meeting will be scheduled in 2-3 weeks from the February 14, 2019 meeting date, using Doodle Poll.