AEF SPECIFIC COMMENTS ON ADEQ RULE 19 STRAWMAN DRAFT (SC)

1. Chapter 1 Title, Intent, and Purpose

(a) Rule 19.103 Intent and Construction. We appreciate ADEQ considering keeping the intent and purpose language since it establishes that the purpose of Rule 19 is to comply with federal mandates under the Clean Air Act and not to address some other policy determination made under the police powers of the State of Arkansas.

(b) Addition of Rule 19.105 Division-Administered Federal Programs and Deletion of Rule 19.304 Delegated Federal Programs. We appreciate ADEQ reconsider restructuring Rule 19.304 as proposed by adding a new Rule 19.105 and deleting Rule 19.304. We believe there are legal distinctions that need to be carefully considered in delineating and specifying which federal programs are "delegated" vs. "approved." We request that this restructuring not be made at this time but for further discussion with the EASE Workgroups as to whether there may be unintended consequences with this revision.

2. Chapter 2 Definitions

(a) "Criteria Pollutant"- this should be in the past tense, i.e., "an air pollutant for which the EPA **has set** a national ambient air quality standard."

(b) "Fugitive emissions" – the last sentence has been changed from "the Department will utilize the definition of fugitive emissions" for those emissions under federal law to "the EPA-approved definition shall take precedence." The terms "will utilize" or "will use" provides a mandatory obligation on the Department's part rather than simply to state that the EPA definition shall "take precedence." We request that the original language be retained.

(c) "National ambient air quality standards" - this is an example of IBR which needs to be identified and specified in public notice of a revision of Rule 19 if applicable, and every time Rule 19 is revised.

(d) "NAAQS state implementation plan" - We are not sure why this definition is being deleted. It is a term defined by state law in ACA 8-4-303, and ACA 8-4-317 and -318 and distinguishes the NAAQS SIPs from other implementation plans. Please clarify.

(e) "PM 2.5 emissions" and "PM10 emissions" - both use the phrase **"ambient air"** which term is not defined. Perhaps consider defining this term if not during this rulemaking, but in future revisions to the Rule.

(f) "Secondary emissions" – this term is proposing to be deleted; however the term "secondary air emissions" is used in the definition of "Potential to emit" in Chapter 2. We request that the term not be deleted but instead adding the term "air" to the definition to explain the term as related to the definition of "potential to emit." Another option is to add the definition of "secondary emissions" to the definition of "potential to emit."

3. Chapter 4 Minor Source Review

(a) Rule 19.408 Exemptions from Permitting (A) Insignificant Activities. See GC 10 for our comments on this section.

(b) Rule 19.411 General Permits. ADEQ has made a few changes to this section. As a general comment, the General Permits sections of all three air Rules 18, 19 and 26 are different in some manner, and are subject to the AWAPCA and Rule 8 Administrative Procedures as well. At this time, we request that ADEQ not change the wording of any of the General Permits sections in any of the air Rules until ADEQ and EASE Workgroups and the public have had a chance to discuss the ramifications of these changes and how they conflict/differ from each other and the language of the Act at ACA 8-4-203(m)(1)(A)(i) on General Permits. See AEF GC(7)

(c) Rule 19.413 Confidentiality.

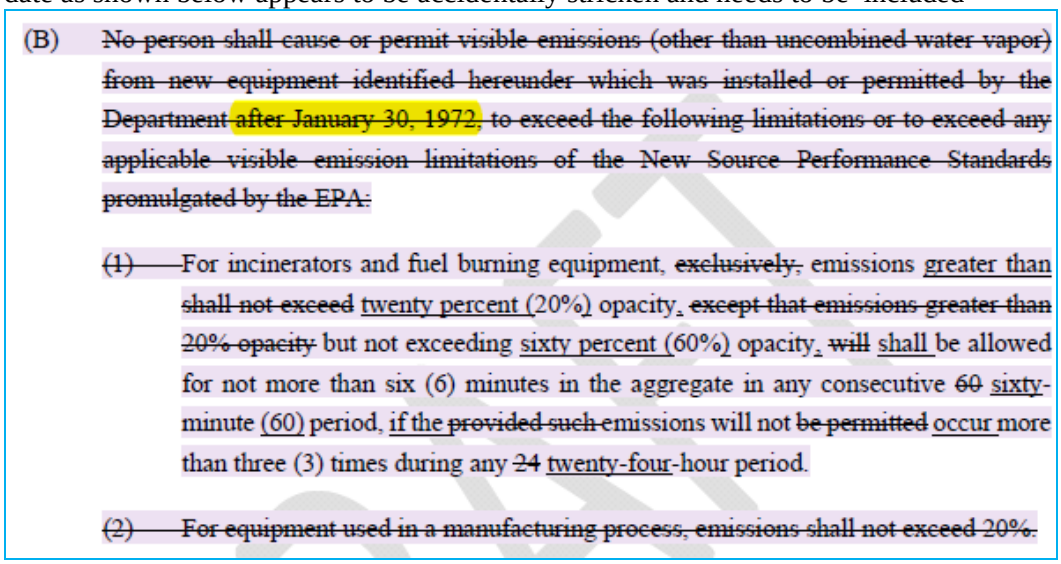
(1) This provision is included in Chapter 4 Minor New Source Review. We understand that, as such, this would be limited to minor NSR permit applications. Is that the intent?

(2) Rule 19.413(A)(1) has been changed to provide for the definition of "trade secret," that "the applicant" derives economic value from the information not generally known. That is not what is required under the state Trade Secrets Act. ACA 4-75-601(4) provides that the test is whether **other persons**, not the applicant, can obtain economic value from disclosure or use of the information. The ADEQ revision changes the meaning and intent of the Act and the definition. We request that this change be removed, and the wording revert back to the original.

(d) Rule 19.415(A)(3) Changes Resulting in No Emissions Increases. This subsection refers to "applicable requirements" which is undefined in Rule 19. We request ADEQ consider adding the same definition for this term as in Rule 26.

4. Chapter 5 General Emissions Limitations Applicable to Equipment

(a) In Rule 19.503(B) Visible Emission Rules, the reference to the January 30, 1972 effective date as shown below appears to be accidentally stricken and needs to be included -



(B) ~~No person shall cause or permit visible emissions (other than uncombined water vapor) from new equipment identified hereunder which was installed or permitted by the Department after January 30, 1972, to exceed the following limitations or to exceed any applicable visible emission limitations of the New Source Performance Standards promulgated by the EPA:~~

~~(1)~~ For incinerators and fuel burning equipment, ~~exclusively,~~ emissions greater than ~~shall not exceed~~ twenty percent (20%) opacity, ~~except that emissions greater than 20% opacity~~ but not exceeding sixty percent (60%) opacity, ~~will~~ shall be allowed for not more than six (6) minutes in the aggregate in any consecutive ~~60~~ sixty-minute (60) period, if the ~~provided such~~ emissions will not ~~be permitted~~ occur more than three (3) times during any ~~24~~ twenty-four-hour period.

~~(2) For equipment used in a manufacturing process, emissions shall not exceed 20%.~~

(b) Also certain words have been left out of **Rule 19.503(C)** which may be important to the changes as follows (requested added words in bold to be included in this part):

> "For equipment installed and operated, or permitted by the Department, on or before January 30, 1972, **visible** emissions **(other than uncontrolled water vapor)** . . . shall not exceed forty (40%) opacity . . . "

(c) In Rule 19.503(D) Visible Emission Rules. The reference to only EPA Method 9 in this subsection may be too limiting, since there are other EPA methods now contained in the CFR for consideration of inclusion by ADEQ which could also be specifically added.

(d) Rule 19.504 Stack Height/Dispersion Rule. This section incorporates certain terms such as "stack," "nearby," and others by reference but deleted the term that they are incorporated "into this chapter." It seems that the term needs to be included otherwise the definitions will be presumed to be incorporated by reference into the entire Rule. We are not sure if this is the intent and how that would affect interpretation of these terms for the entire Rule. We request that the term "into this chapter" be retained.

5. Chapter 6 Upset and Emergency Conditions

(a) Rule 19.601 Upset Conditions. ADEQ has changed this to provide rather than the "source" "shall be deemed in violation" if it exceeds an emission limit to provide that the "source" "is in violation" if it exceeds an emission limit. (ADEQ has done the same revision in Rule 18.1101 Upsets so there is a question of consistency in use of these terms in Rules 18 and 19 also – for further ADEQ review.) There is a legal distinction changing the meaning from "shall be deemed in violation" to "is in violation" in that the party affected may be able to show that the "deemed" event is not actually the case, especially in the context of a violation of an affected source where the Division may forego any enforcement action for a "deemed" violation in the event certain conditions are met. We request that ADEQ retain the term "shall be deemed."

(b) Rule 19.602 Emergency Conditions. Currently this section is identical to Rule 18.1105 Emergency Conditions. However, in Rule 18.1105, ADEQ changes the term "source" to "stationary source" but then in Rule 18.1105(A) uses the term "permittee" rather than "stationary source." In Rule 19.602, ADEQ changes the term "source" to "owner or operator of the stationary source," but then in Rule 19.602(A) uses the term "permittee" rather than "owner or operator of the stationary source." These terms are not necessarily interchangeable; the change of terms is inconsistent and unnecessary to do; and the use of different terms in these two Rules for the same provisions is very confusing. For purposes of consistency and clarity, we highly urge that these sections not be revised at this time since currently they are identical to each other with the same interpretative meaning.

6. Chapter 7 Sampling, Monitoring and Reporting Requirements

(a) Rule 19.702 Testing Methods. We request to keep the specific references in the Rule, but also to add the generic phrase "and any other EPA approved performance specifications and quality assurance procedures." ADEQ may want the right to approve in advance any other procedures not specified in the Rule.

(b) Rule 19.703(A) Continuous Emissions Monitoring. ADEQ has rearranged the section somewhat but it has some grammatical flow problems at Rule 19.730(A)(1)-(4) – we appreciate ADEQ review of that section.

(c) Rule 19.704 Notice of Completion. The current Rule references that any "major" modification of a permit requires notification to the Department, but "major" modification is not defined in the Rule. Perhaps the reference should be to a "title I modification", but this may be an item for later discussion with the EASE Group in defining the term "major modification."

(d) Rule 19.705(D) Record Keeping and Reporting Requirements. ADEQ has added that a certifying statement must be signed by the "owner, operator or both." We are sure why "or both" has been added, and request that this change not be made at this time until further discussion with the EASE Workgroups.

7. Chapter 8 111(D) Designated Facilities

(a) Rule 19.804 Kraft Pulp Mills (TRS). The facility noted below has recently had a name change to Twin Rivers Pine Bluff, LLC.

(3) ~~Delta National Kraft~~ Mondi Pine Bluff (AFIN 35-00017); ~~of Pine Bluff.~~

(b) Table 19.8.1. The free-standing notes under Clearwater Paper Corporation below might be better arranged as footnotes.

(c) Rule 19.805(B) and (C). The multiple references to 40 CFR Part 62 as shown below need to be confirmed. They do not appear in the most current version of eCFR.

(B) The definitions under 40 CFR § 62.730 are incorporated by reference, except that Administrator means the Division.

(C) The owner or operator of a municipal solid waste landfill listed in Rule 19.805(A) shall comply with:

(1) Compliance schedules and increments of progress provisions under 40 CFR § 62.712 and Table 1 to subpart OOO of Part 62, which are hereby incorporated by reference;

8. Chapter 9 Prevention of Significant Deterioration

(a) Rule 19.902(A) and (B) Purpose and Authority (Chapter 9: Prevention of Significant Deterioration.)

(1) The term "prevention of significant deterioration" (PSD) is not defined and should be defined in this subsection or in the definitions section.

(2) ADEQ has added a new subsection, Rule 19.902(B), which is a broad grant of authority and which states that the Division:

> "shall be deemed to have the responsibility and authority to attain the purposes of the state implementation plan, this Chapter, and the applicable federal rules, as incorporated herein by reference."

Questions arise as to where the language came from; is it in a statute; whether EPA will approve this subsection; why this provision is included in the PSD section in particular; and specifically to which SIP and federal rules that ADEQ wishes to incorporate by reference. It seems that the Division's authority should be limited to administering the rules that the Commission has adopted. Also consider that the language seems inconsistent with Act 517 of 2019, Section 3 which states:

> "Broad interpretation of rulemaking authority by a state agency results in the state agency's supplanting the role of the General Assembly by effectively legislating in areas not intended by the General Assembly . . . A state agency that has been delegated rulemaking authority should limit its rulemaking to only those areas absolutely necessary and should avoid broad applications or interpretations of its rulemaking power."

Also note previous comment where we suggest it is more appropriate to use the terms "federal law" and "federal regulations" when referring to federal law rather than the term "federal rules," or using all three terms.

Due to all of these questions, we respectfully request ADEQ reconsider adding this subsection at this time and reserve for later discussion with the EASE Workgroups and the public.

(b) Rule 19.903(B)(5) Definition of "Regulated new source review pollutant." ADEQ seeks to delete the first phrase "Notwithstanding paragraphs (B)(1) through (4) of this section, the term regulated new source review pollutant shall not include any or all . . . " It is preferable to keep the phrase rather than delete it because, in the event of any enforcement action taken, by including the term, the exclusion takes legal preference over the previous definitions of "NSR pollutant."

(c) Rule 19.904(A) Adoption of Rules (PSD). ADEQ is seeking to delete (1)-(5) of Rule 19.904(A) which lists exceptions to the adoption of certain PSD regulations. It is understandable as to why the dates of adoption are being deleted, but unclear why the referenced CFR exceptions are being deleted. We request the CFR references be retained.

9. Chapter 13 – Stage I Vapor Recovery Rule 19.1312 Effective Date. The language in this subsection seems to be silent on rule applicability if and when a non-attainment area comes back into attainment – for further review and consideration by ADEQ.