

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY
COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 18, ARKANSAS) DOCKET NO. 11-____-R
AIR POLLUTION CONTROL CODE)

PETITION TO INITIATE RULEMAKING TO AMEND REGULATION
NUMBER 18, ARKANSAS AIR POLLUTION CONTROL CODE

The Arkansas Department of Environmental Quality (hereinafter “ADEQ” or “the Department”), for its Petition to Initiate Rulemaking to Amend Regulation Number 18, Arkansas Air Pollution Control Code, states:

1. The Department requests that the Commission Initiate Rulemaking to amend Regulation Number 18, Arkansas Air Pollution Control Code. By separate petition, the Department proposes changes to Regulation Number 19 and Regulation Number 26 contingent upon the Commission promulgating Regulation Number 18. The Department requests that the Commission consider the initiation of rulemaking associated with the promulgation of Regulation Number 18 to be contingent upon the Commission’s decision to initiate rulemaking to amend Regulation Number 19 and Regulation Number 26. The Department makes this request to avoid the potential of either of two possible results:

- (a) The greenhouse gas regulation provisions the Department proposes will not be effective unless all three regulations are initiated simultaneously; and
- (b) Regulations containing different permitting thresholds could cause confusion and unequal treatment of sources.

The changes to Regulation Number 18 are being proposed in response to the United States Environmental Protection Agency’s (“EPA”) June 3, 2010, Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (“Tailoring Rule”).

The Tailoring Rule requires that greenhouse gases be subject to regulation under the Clean Air Act. Carbon dioxide is one of the gases listed in the Tailoring Rule as a greenhouse gas. The Arkansas Pollution Control and Ecology Commission's ("Commission") Regulation Number 18 currently excludes carbon dioxide from being an air contaminant. For state regulations be consistent with EPA's Tailoring Rule, the exclusion of carbon dioxide from air contaminant needs to be removed.

2. The proposed regulatory amendments precipitated by the above referenced need involve the following:

- (a) Because making this change will automatically cause carbon dioxide to become subject to permitting, changes are also being proposed to Chapter 3 of Regulation Number 18 to prevent greenhouse gases from triggering the need for a permit unless that permit would be required under Regulation Number 19 or Regulation Number 26.
- (b) The term "air pollutant" has been included in the definition of "air contaminant" in Chapter 2 of Regulation Number 18.
- (c) Greenhouse gas emissions at levels under 75,000 tons per year are being proposed to be added as "De Minimis," so that any increase of greenhouse gases under this level will not require a major permit modification.
- (d) Changes made to Appendix A of Regulation Number 18 seek to clarify that activities emitting less than 75,000 tons per year of carbon dioxide emissions are included in the Group A Insignificant Activities List for Appendix A, Regulation Number 18.
- (e) Updating formatting, correcting typographical errors and inconsistencies in

3. The proposed changes to Regulation Number 18 have been sent for review by the Arkansas Economic Development Commission (AEDC) as required Under Act 143 of 2007.

4. Mike Bates or other Air Division staff from ADEQ will be available to answer questions concerning this proposed rulemaking. A red-lined version of the regulation showing the proposed changes is attached as Exhibit “A” and is hereby incorporated by reference. A copy of the Legislative Questionnaire is attached as Exhibit “B”, and a copy of a Financial Impact Statement for the proposed revision is attached as Exhibit “C”, both of which are incorporated by reference. A memo regarding compliance with Act 143 of 2007 and an analysis of the impact to small business required pursuant to Act 143 of 2007 (formerly Executive Order 05-04), is attached as Exhibit “D” and hereby incorporated by reference. This rulemaking is exempt from the Economic Impact/Environmental Benefit Analysis requirement under Reg. 8.812 because the proposed rule incorporates language of the GHG Tailoring Rule without substantive change, and because the proposed amendments are required for the GHG Tailoring Rule to be implemented as intended. A proposed minute order is attached as Exhibit “E” and is hereby incorporated by reference.

WHEREFORE, ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and adopt the proposed amendments to Regulation Number 18.

Respectfully Submitted,
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By: 
Mike Bates