

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 18, ARKANSAS) DOCKET NO. 14-009-R
AIR POLLUTION CONTROL CODE)

RESPONSIVE SUMMARY FOR
REGULATION NO. 18, ARKANSAS AIR POLLUTION CONTROL CODE

Pursuant to Arkansas Code Annotated (Ark. Code Ann.) § 8-4-202(d)(4)(C) and Regulation¹ No. 8.815, the Arkansas Pollution Control and Ecology Commission (Commission, APC&EC) shall cause to be prepared a responsive summary, which groups public comments into similar categories and explains why the Commenters’ rationale for each category is accepted or rejected.

On November 21, 2014, the Arkansas Department of Environmental Quality (Department, ADEQ) filed a Petition to Initiate Rulemaking to Amend Regulation No. 18, Arkansas Air Pollution Control Code. Administrative Law Judge Charles Moulton conducted a public hearing on January 12, 2015. The following is a summary of the comments regarding the proposed amendments to Regulation No. 18 along with the Commission’s response.

Comment 1: The Commenters state that Regulation No. 18 is a “State-only” air pollution regulation and its provisions are not federally enforceable as part of an EPA-approved State Implementation Plan (SIP). Therefore, the Commenters do not see that changes are required to comply with federal requirements. Although, the Commenters understand that the proposed revisions to Regulation No. 18 may be desirable for the sake of consistency, they are not required for Arkansas to retain delegation of the federal air program. Other Commenters do not support changing Regulation No. 18 at this time since it is not necessary to do so in order for the Arkansas Department of Environmental Quality (“Department” or “ADEQ”) to retain delegation of the federal air program. In addition, some Commenters also state that Arkansas statute requires that, when changes to any rule or regulation are proposed that are more stringent than federal requirements, the Arkansas Pollution Control and Ecology Commission (“Commission” or “APC&EC) must consider the economic impacts of the environmental benefits of such rules or regulations per Arkansas Code Annotated (Ark. Code Ann.) § 8-4-311(b)(1)(B).

¹ All citations of and references to state environmental regulations contained in this document signify those regulations promulgated by the Arkansas Pollution Control and Ecology Commission.

Response 1: Even though Regulation No. 18 is not required to comply with federal requirements because it is a State-only air pollution regulation, the Department considers it important to match related proposed revisions made to Regulations No. 19 and 26, for the sake of consistency as the Commenters pointed out, and also for the sake of clarity for the regulated community. Furthermore, regulations containing different information and definitions could cause confusion and unequal treatment of sources.

Because ADEQ included a definition for “Emission increase” in Chapter 2, not required by federal law, which would serve to simplify and clarify the permitting process for sources and the Department, the considerations required at Ark. Code Ann. § 8-4-311(b)(1)(B) were addressed in Economic Impact Statement (EIS) and the Arkansas Pollution Control & Ecology Commission Economic Impact/Environmental Benefit Analysis (EI/EBA). However, due to comments on this rulemaking, ADEQ will remove this definition of “Emissions increase” from Regulation No. 18 (as well as from Regulations No. 19 and 26) and insert a description of the methodology described in the proposed definition into the minor source permitting applicability section.

No revisions to the final rule are necessary due to this Comment.

Comment 2: The Commenters point out that item number 3 of the Questionnaire for filing proposed rules and regulations with the Arkansas Legislative Council and Joint Interim Committee states that the proposed amendments to Regulation No. 18 are “required to comply with a federal statute, rule, or regulation”, and therefore are exempt from the requirements of the Small Business Administration Act, Ark. Code Ann. § 25-15-301 *et seq.* However, the Commenters state that the proposed revisions to Regulation No. 18 are not required by federal law and do not codify existing federal law. However, the Commenters point out that, in the event Regulation No. 18 is revised, Arkansas statute requires the Commission to complete appropriate environmental and economic benefit analyses with respect to the effects that the proposed revisions to Regulation No. 18 will have on small businesses.

Response 2: Item number 3 of the “Questionnaire for Filing Proposed Rules and Regulations with The Arkansas Legislative Council and Joint Interim Committee,” poses the following question: Is this rule required to comply with a federal statute, rule, or regulation? ADEQ provided a list of federal rules referring to proposed language revisions to Regulation No. 18 and explained in item number 7 that the proposed rule revises the State air code (non-enforceable regulations) to be consistent with federal rule changes. ADEQ also stated: “The proposed revisions will streamline permitting for changes at facilities with no net increases in emissions. [...] Additionally, ADEQ will be able to issue state-enforceable permits addressing fine particulate matter which will help protect Arkansas from falling into nonattainment (NA) status for the pollutant.” Even though Regulation No. 18 is a State-only regulation and is not obligated

to incorporate federal requirements, the proposed amendments will update Regulation No. 18 with provisions that are proposed in Regulation No. 19 in relation to the revisions of National Ambient Air Quality Standards (NAAQS) and will maintain consistency among the air regulations and clarity for the regulated community.

In addition to the federal requirements, ADEQ proposed to include a definition for “Emission increase” in Chapter 2, not required by federal law, but which would serve to simplify and clarify the permitting process for sources and the Department. However, due to comments on this rulemaking, ADEQ will remove the definition of “Emission increase” from Regulation No. 18 (as well as from Regulations No. 19 and 26) and insert a description of the methodology described in the proposed definition into the minor source permitting applicability section.

ADEQ also included in the initiation packet the EIS and the EI/EBA addressing the impact the proposed revisions of Regulation No. 18 will have on small businesses.

No revisions to the final rule are necessary due to this Comment.

Comment 3: The Commenters suggest amendments to the definitions of PM_{2.5} and PM₁₀. The Commenters state that the proposed definition of “PM_{2.5} in Regulation No. 18, Chapter 2, defines PM_{2.5} by how it is measured (e.g. “by a reference method based on Appendix L of 40 C.F.R. Part 50, as of the effective date of the federal rule published by EPA in the Federal Register on October 17, 2006 (71 FR 61226), or by an approved regional method designated in accordance with Appendix C of 40 C.F.R. Part 53”). However, the Commenters state the methods at issue are for determining PM_{2.5} concentrations in the ambient air, not in emissions. The Commenters further assert that there is no separate definition of “PM_{2.5} Emissions” in Regulation No. 18 as is proposed for Regulation No. 19, but there are several instances in Regulation No. 18 where PM_{2.5} is intended to refer to emissions (e.g. Regulation 18.307(C)(2)), and conclude that the proposed definition of PM_{2.5} (and PM₁₀) should be amended to mirror those definitions proposed for Regulation No. 19.

Response 3: The Department agrees with the Commenters and will include the proposed definitions of PM_{2.5} emissions and PM₁₀ emissions to mirror those definitions proposed for Regulation No. 19.

Comment 4: The Commenters state that in the event ADEQ and/or the Commission decide that Regulation No. 18 should be revised, for the purpose of consistency and uniformity between Regulations No. 18, 19, and 26. For Regulation No. 18, they suggest the following revisions:

To maintain uniformity and consistency between Regulations No. 18 and 19, the proposed revision to Reg. 18.307(C)(2) should correspond to the proposed revision to Reg. 19.407(C)(2). Specifically, Reg. 18.307(C)(2) should be revised as follows:

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

In addition, the Commenters suggest that in the event the proposed revisions to Regulation No. 18 be adopted, the Commission should also incorporate a definition of "emissions increase," consistent with the proposed definitions found in Regulations No. 19 and 26.

Response 4: The Department agrees with the Commenter that the proposed revision to Reg. 18.307(C)(2) should be amended to maintain uniformity and consistency between Regulations No. 18 and 19. The Department will revise Reg. 18.307(C)(2) as follows:

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

ADEQ would like to point out that changes listed in Reg. 18.307(C)(3)(a) still limits what can be considered a De Minimis change. Namely, any increase in the permitted emission rate at a stationary source without a corresponding physical change or change in method of operation at the source shall not be considered De Minimis. No credit is allowed for emission units that have not actually operated or operated as permitted, emission reductions required by other rules or under an enforcement order, or old emission sources removed from service prior to initiation of this rulemaking on December 5, 2014.

The Department acknowledges the Commenters suggestion to incorporate a definition of “emissions increase,” consistent with the proposed definitions found in Regulations No. 19 and 26 into Regulation No. 18; however, based on comments received regarding the definition of “emission increase” in Regulations No. 19 and 26, the Department has decided to remove the definition of “emission increase” from Chapter 2 of Regulations No. 18, 19, and 26 and to include language in Reg. 18.307(C)(2), Reg. 19.407(C)(2), and Reg. 26.1002 that clarifies, for the purposes of determining whether a change can be considered De Minimis, emission increases are 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.

Comment 5: The Commenters point out “Reg. 18.301(B)(3) states that, ‘Except as provided for by law or regulation, any source subject to the requirements of a rule promulgated under 40 CFR

Part 60, Part 61, or Part 63 as of June 27, 2008 is required to obtain a permit under this chapter regardless of emissions except for...’ 18.301(B)(3) then proceeds to list several [New Source Performance Standards] NSPS and [National Emission Standards for Hazardous Air Pollutants] NESHAP rules which have broad application at sites with actual emissions less than permitting or registration levels.” The Commenters state that within the oil and natural gas industry, there are several sites that only operate an affected glycol dehydrator under NESHAP HH (Oil and Natural Gas Production) or NESHAP HHH (Natural Gas Transmission and Storage). According to the Commenters, these facilities obtain air permits even though the actual emissions are less than those required for a permit or registration. Thus, the Commenters state, “With the addition of these two rules to 18.301(B)(3), facilities would not be required to obtain a permit unless actual emissions rose to the level of a permit or registration. This would minimize the permitting burden at ADEQ and facilities would still be responsible for complying with all applicable underlying federal regulations.” Therefore, the Commenters request that ADEQ add the following two NESHAP rules to Reg. 18.301(B)(3):

40 C.F.R. Part 63, Subpart HH (Oil and Natural Gas Production)

40 C.F.R. Part 63, Subpart HHH (Natural Gas Transmission and Storage)

Response 5: The Commenter is incorrect to imply that the Department does not regulate sources with emissions less than the thresholds codified in Reg. 18.301(a). The impacts of Subparts HH and HHH of 40 C.F.R. Part 63 have not yet been evaluated by the Department. In addition to these two rules, other NSPS and NESHAP rules have also been promulgated after June 27, 2008, which also need to be evaluated in this context. ADEQ will propose language to address rules promulgated under 40 C.F.R. Part 60, Part 61, or Part 63 after June 27, 2008, at a later date.

No revisions to the final rule are necessary due to this Comment.

Comment 6: The Commenters appreciate the opportunity to provide comments to the proposed revisions to the APC&EC Regulations No. 18, 19, and 26, proposed by the ADEQ. The Commenters state that they have strong interests in the proposed revisions to the Regulations and the implementation of the NAAQS proposed for adoption as part of these rulemakings. The Commenters point out that these rulemakings affect the regulated community that own or operate sources that emit one or more of the pollutants and will be subjected to the new NAAQS should the Commission adopt the proposed revisions. Therefore, the Commenters state that they generally support the incorporation of the new standards into the State air pollution control regulations, and recognize that the Commission has an obligation to do so in the normal course of federal-state regulatory affairs to avoid imposition of a Federal Implementation Plan. However, the Commenters also state, “the Commission and ADEQ have an obligation under the CAA and the Arkansas Water & Air Pollution Control Act to develop a comprehensive State Implementation Plan (“SIP”) for attainment and maintenance of the NAAQS. [CITE 51.161 and 8-4-318].”

Response 6: The Department acknowledges and appreciates this comment and asserts that these rulemakings are necessary to include the revised PM_{2.5}, O₃, Pb, NO₂, and SO₂ NAAQS into APC&EC regulations. The Department is in the process of developing a SIP revision, concomitantly with these proposed rulemakings, to ensure attainment and maintenance of the revised NAAQS. The SIP revisions will be made available for public comment prior to its submission to EPA.

No revisions to the final rule are necessary due to this Comment.

Comment 7: The Commenters state that the use of the terms “State Implementation Plan” and “Plan” should be consistent across regulations. The Commenters point out that existing regulations include a definition of “Plan” in Chapter 2 of Regulation No. 19, which states that the term means the Arkansas Plan of Implementation for Air Pollution Control. However, the Commenters further point out, there are instances across Regulations No. 18, 19, and 26 where the terms “Plan,” “State Implementation Plan,” and “Regulation 19” appear to be used interchangeably (see, e.g., introduction paragraph to Chapter 2 of Regulation No. 26). The Commenters suggest that the Commission review the use of those terms throughout Regulations No. 18, 19, and 26 for consistency and to ensure that those terms are appropriately incorporated.

Response 7: The Department has reviewed the use of the terms “State Implementation Plan,” “Plan,” and “Regulation 19” in Regulations No. 18, 19, and 26. Regulation No. 18 only refers to Regulation No. 19 as the “Regulations of the Arkansas Plan of Implementation for Air Pollution Control (Regulation 19)” and does not intend to refer to “State Implementation Plan.” However, the terms used in Regulation No. 19 are not used interchangeably but applied throughout the regulations according to the description in the Definitions chapter. The Department agrees with the Commenters’ suggestion for clarification on these terms in Regulation No. 26 and will consider including clarifying revisions in a future rulemaking so that such revisions may be open to public comment.

No revisions to the final rule are necessary due to this Comment.

Comment 8: The Commenters support the adoption of the NAAQS into Arkansas air rules and recognize proposing a common-sense approach to maintaining Arkansas’s clean air. In addition, the Commenters support ADEQ’s proposed changes to current state regulations, which will allow flexibility in the permitting process and would give business owners the choice to make cost-effective reductions in emissions from current operations in order to more quickly obtain new permit modifications for those changes.

Response 8: The Department acknowledges and appreciates this Comment.

No revisions to the final rule are necessary due to this Comment.

Comment 9: The Commenters are aware and respect that ADEQ has the challenge to maintain ever more stringent air quality standards imposed by the EPA. In addition, the Commenters state that this is especially true considering that ADEQ's authority over only stationary sources limits the Department's ability to control major contributing sources such as fires and traffic. Despite this limitation, the Commenters believe that ADEQ has created a valuable long-term tool to promote the growth of jobs in Arkansas through its modified permitting process and support the proposed modifications to the regulations.

Response 9: The Department acknowledges and appreciates this Comment.

No revisions to the final rule are necessary due to this Comment.

Comment 10: The Commenters state that they have an ongoing interest in the adoption and implementation of the NAAQS in accordance with the requirements of State and federal law and regulations and sound scientific and engineering practices. The Commenters understand that updating the State's regulations to refer to the national standards is required in the normal course of federal-state regulatory affairs. However, the Commenters state that the revised NAAQS are very stringent by historical standards and believe that due to the complexity of sources that contribute to ambient concentrations of the pollutants in question, it is critical that the State develop a comprehensive plan for implementation of the standards in question, consistent with the requirements of Arkansas statute and the CAA.

Response 10: The Department acknowledges and appreciates this Comment. ADEQ has carefully considered all the elements to comply with State and federal requirements and is diligently seeking stakeholders' participation for a transparent and effective process to develop an approvable SIP.

No revisions to the final rule are necessary due to this Comment.

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