

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 19, REGULATIONS OF THE) DOCKET NO. 12- ____ -R
ARKANSAS PLAN OF IMPLEMENTATION)
FOR AIR POLLUTION CONTROL)

PETITION TO INITIATE RULEMAKING TO AMEND REGULATION
NO. 19, REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR
POLLUTION CONTROL

The Arkansas Department of Environmental Quality (hereinafter “ADEQ” or “the Department”), for its Petition to Initiate Rulemaking to Amend Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control, states:

1. The Department requests that the Commission initiate rulemaking to amend Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control Code. Regulation No. 19 is applicable to any stationary source which has the potential to emit any federally regulated air pollutant equal to or in excess of the threshold for a major source and is federally enforceable. The changes to Regulation No. 19 are being proposed in response to the United States Environmental Protection Agency’s (“EPA”) Deferral for CO₂ Emissions from Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (“PSD”) and Title V Programs (*76 FR 43490, July 20, 2011*). The Rule defers PSD and Title V permitting requirements for biogenic CO₂ emissions from bioenergy and other biogenic stationary sources until July 21, 2014.

The Department requests that the Commission consider the initiation of rulemaking associated with the promulgation of Regulation No. 19 to be contingent upon the Commission’s decision to initiate rulemaking to amend Regulation No. 26.

2. The proposed regulatory amendments involve the following:

- (a) The definition of “CO₂ equivalent emissions” (“CO₂e”) in Chapter 2 has been modified to include the deferral for CO₂ emissions from bioenergy and other biogenic sources;
- (b) Chapter 9 in Reg. 19.904(G)(2)(c), has been updated to include the deferral for CO₂ emissions from bioenergy and other biogenic sources; and
- (c) The greenhouse gases “stay” provision has been moved, without revision, from Reg. 19.904(G)(6) to Reg. 19.104 (Severability section) to clarify the applicability of the provision.

3. The proposed changes to Regulation No. are exempt from the requirements of Act 143 of 2007, as amended by Act 809 of 2009, because the proposed changes concerning the biogenic CO₂ emissions incorporate language verbatim from a federal rule and the proposed relocation of the “stay” provision without revision qualifies as an exempted change because it does not make any substantive change to the existing state regulation. As such, a review by the Arkansas Economic Development Commission (AEDC) is not required.

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), are attached as Exhibits “D” and “E” respectively, and hereby incorporated by reference. This rulemaking is exempt from the Economic Impact/Environmental Benefit Analysis requirement under Reg. 8.812 because the proposed amendments incorporate language from a federal rule without substantive change

(Reg.8.812(A)(1)) and move preexisting language without revision to a more appropriate placement within the Regulation (Reg. 8.812(A)(4)). A proposed minute order to initiate rulemaking is attached as Exhibit "F" 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 No. 19.

Respectfully Submitted,
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY
5301 Northshore Drive
North Little Rock, Arkansas 72118-5317

By: Mike Bates

Mike Bates