

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

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| IN THE MATTER OF AMENDMENTS TO |) | |
| REGULATION NO. 26, REGULATIONS OF THE |) | DOCKET NO. 11-003-R |
| ARKANSAS OPERATING AIR PERMIT |) | |
| PROGRAM |) | |

STATEMENT OF BASIS AND PURPOSE
FOR REGULATION NO. 26, REGULATIONS OF THE ARKANSAS OPERATING
AIR PERMIT PROGRAM

The Arkansas Pollution Control and Ecology Commission (the "Commission") is given the power and responsibility to promulgate rules and regulations. Pursuant to Ark. Code Ann. § 8-1-203(b)(1), the Commission is granted the power and responsibility to promulgate rules and regulations implementing the substantive statutes which are administered by the Arkansas Department of Environmental Quality (hereinafter "ADEQ" or "Department").

On January 14, 2011, ADEQ filed a Petition to Initiate Rulemaking to Amend Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program. The revisions to the Regulations of the Arkansas Operating Air Permit Program are the result of federal regulatory changes enacted or promulgated since June 3, 2010. The proposed amendments to Regulation No. 26 were precipitated by the following:

Prevention of Significant Deterioration and Title V Greenhouse Gas ("GHG") Tailoring Rule, *75 FR 31514, June 3, 2010*; Finding of Substantial Inadequacy and SIP Call, *75 FR 77698, December 13, 2010*.

Amendment of Regulation No. 26 is necessary in order for the regulation conform to statutory language affected by the above-referenced federal rules, and to incorporate changes into Arkansas's air permitting program related to the regulation of GHGs.

The areas addressed by the amendments adopted by the Commission are:

1. Legislative and Federal Regulatory Changes.

- (A) removal of “carbon dioxide” from the list of exclusions under the definition of “air contaminant” in Chapter 2;
- (B) addition of definitions for “carbon dioxide equivalent emissions” (CO₂e) and “greenhouse gases” in Chapter 2;
- (C) revision of the definition of “Regulated Air Pollutant” (“RAP”) to clarify that GHGs will be considered RAPs only if from stationary sources emitting or having potential to emit 100,000 tons per year (“tpy”) of CO₂e and 100 tpy GHGs calculated as the sum of the six (6) well-mixed gases on a mass basis;
- (D) addition of language to the definition of “Existing part 70 source” making facilities which become a major source due to greenhouse gas emissions as of July 1, 2011, an existing part 70 source;
- (E) revision of the “Emissions subject to permitting” section so that emissions less than the 100,000 tpy carbon dioxide equivalent shall not be included in a part 70 permit unless there is a physical change or operations modification which will result in a 75,000 tpy increase or more of CO₂e;
- (F) update of the “Duty to apply” section to include the most recent revision to 40 CFR part 70, i.e. June 3, 2010; and
- (G) revision of language from the “Initial applications from existing part 70 sources” section to clarify when a facility must submit an application if it becomes subject to the part 70 permit requirements due to GHG emissions.

2. Changes proposed by the Department.

- (A) inclusion of the synonymous term “air pollutant” with the definition of “air contaminant;”

- (B) addition of a "stay provision" for rulemaking associated with GHGs, in the event that provisions of enabling federal laws are stayed or invalidated by federal judicial or legislative action;
- (C) addition of language to ensure GHG emission increases under 75,000 tpy will be processed as a minor permit modification;
- (D) clarification of the effective date for an "Existing part 70 source as September 13, 1993; and
- (E) correction of typographical errors.

The Commission finds that the proposed revisions to Regulation No. 26 facilitate implementation of the substantive statutes administered by the Department regarding GHG emissions. These rules are in the public interest, and are necessary to ensure compliance with federal law.

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