

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY
COMMISSION

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

PETITION TO INITIATE RULEMAKING TO AMEND REGULATION
NUMBER 26, REGULATIONS OF THE ARKANSAS OPERATING AIR PERMIT
PROGRAM

The Arkansas Department of Environmental Quality (hereinafter “ADEQ” or “the Department”), for its Petition to Initiate Rulemaking to Amend Regulation Number 26, Regulations of the Arkansas Operating Air Permit Program, states:

1. The Department requests that the Commission Initiate Rulemaking to amend Regulation Number 26, Regulations of the Arkansas Operating Air Permit Program. By separate petition, the Department proposes changes to Regulation Number 18 and Regulation Number 19 contingent upon the Commission promulgating Regulation Number 26. The Department requests that the Commission consider the initiation of rulemaking associated with the promulgation of Regulation Number 26 to be contingent upon the Commission’s decision to initiate rulemaking to amend Regulation Number 18 and Regulation Number 19. 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 26 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 26 currently excludes carbon dioxide from being an air contaminant. For state regulations to incorporate the necessary regulatory requirements to implement 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 the definition of "Major Source" to include the threshold limits specific to greenhouse gases. The term "air pollutant" has been included in the definition of "air contaminant" in Chapter 2 of Regulation Number 26.
- (b) The definition of "Regulated air pollutant" has been modified to include greenhouse gases. The effective date given in the definition of "Existing part 70 source" has been clarified as September 13, 1993, and in addition proposed language has also been added 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.
- (c) The "Sources subject to permitting" section (Reg.26.302) has been updated to

include the GHG Tailoring Rule threshold of 100,000 tons per year (“tpy”).

- (d) The “Emission subject to permitting” section (Reg.26.305) has been modified so that emissions less than the 75,000 tpy carbon dioxide equivalent shall not be included in a part 70 permit. In addition, the “Duty to apply” section (Reg.26.401) has been updated to include the most recent revision to 40 CFR part 70, i.e. June 3, 2010.
- (e) Language from the “Initial applications from existing part 70 sources” section (Reg.26.403) has been revised to clarify the effective date for existing part 70 sources is found in the definition of “Existing part 70 sources.”
- (f) Greenhouse gas emissions at levels under 75,000 tpy 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. In addition, the 75,000 tpy carbon dioxide equivalent threshold has been included as eligible for minor permit modification.
- (g) Updating formatting, correcting typographical errors and inconsistencies in the regulation.

3. The proposed changes to Regulation Number 26 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 26.

Respectfully Submitted,
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