

TO: Charles Moulton, Hearing Officer
Arkansas Pollution Control and Ecology Commissioners

FROM: Mike Bates, Chief, Air Division *MB*

DATE: January 14, 2011

SUBJECT: Proposed Revisions to Regulation Number 26, Regulations of the Arkansas Operating Air Permit Program

The Arkansas Department of Environmental Quality (ADEQ) proposes revisions to Regulation Number 26, Regulations of the Arkansas Operating Air Permit Program.

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 be consistent with EPA's Tailoring Rule, the exclusion of carbon dioxide from air contaminant needs to be removed. The proposed amendments to Regulation Number 26 also include the addition of definitions for "greenhouse gases" and "carbon dioxide equivalents." The definition of "Regulated Air Pollutant" has been updated to include greenhouse gases and the definition of "Major Source" has been modified with the inclusion of threshold limits specific to greenhouse gases. The term "air pollutant" has been included in the definition of "air contaminant." 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. Language is being proposed to ensure emission levels under 75,000 tons per year ("tons per year") will be considered "De Minimis" and increases of greenhouse gases under this level will not require a major permit modification. The "Sources subject to permitting" section (Reg.26.302) has been updated to include the GHG Tailoring Rule threshold of 100,000 tpy. 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, and 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."

These amendments will modify ADEQ's Title V permitting program to match EPA's Tailoring Rule, so that beginning January 2, 2011, facilities currently subject to either the Prevention of Significant Deterioration or the Title V permitting program, will be required to include greenhouse

gases in their permits if they increase their emissions of greenhouse gases by 75,000 tons of carbon dioxide equivalent per year. On July 1, 2011, the requirements will also apply to preconstruction permits for facilities that emit at least 100,000 tons of greenhouse gases and existing facilities that increase their emissions by at least 75,000 tons per year, even if they do not exceed thresholds for other pollutants. Making these changes will maintain consistency between Federal air pollution control programs and the Commission's regulations governing air pollution in Arkansas, as well as maintain consistency across air pollution regulations.