




ARKANSAS
Department of Environmental Quality

Memorandum

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

FROM: Mike Bates, Chief, Air Division 

DATE: June 8, 2012

SUBJECT: Proposed Revisions to Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program

The Arkansas Department of Environmental Quality ("ADEQ") proposes revisions to Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program.

The substantive changes to Regulation No. 26 are being proposed in response to the United States Environmental Protection Agency's ("EPA") July 20, 2011, *"Deferral for CO₂ Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration ("PSD") and Title V Programs, Final Rule"* (76 FR 43490). This Final Rule defers the application of the PSD and Title V permitting requirements to biogenic carbon dioxide ("CO₂") emissions from bioenergy and other biogenic stationary sources until July 21, 2014. The amendments to Regulation No. 26 include the deferral for CO₂ emissions from bioenergy and other biogenic sources under the Title V Program in the definition of "CO₂ equivalent emissions" ("CO₂e").

Failure to implement these revisions would have adverse impacts on the general welfare of the state and requires adoption of an emergency rule by the ADEQ. The implementation of this emergency rule for biogenic CO₂ emission deferral will keep entities from having to comply with permitting requirements which are otherwise more stringent than federal requirements, and could prevent them from being subject to more costly PSD permit fees and compliance as a result of biogenic CO₂ emissions that will be deferred with this rule. Otherwise, the owners or operators of these entities may incur financial liabilities, new debts, and profit and/or productivity loss due to inability to operate vital equipment, all of which could cause undue economic hardship on businesses and individuals in the state. Because this rulemaking adopts a federal requirement, there will be no impacts to the environment in Arkansas that would not have otherwise occurred. With the revised regulation, all facilities or entities that engage in biomass combustion or decomposition of biologically based materials (such as electric utilities burning biomass fuels, municipal solid waste landfills, sewage treatment facilities and food/beverage processors burning agricultural biomass residues) will not be subject to the regulation of carbon dioxide emissions from such combustion. Facilities affected by this amendment will experience reduced regulatory burden since they will not be subject to the biogenic carbon dioxide emissions permitting and will, therefore, experience a positive economic impact, including safeguarding employment in the State. The adoption of this emergency rulemaking will also have a positive impact on Arkansas's environment because it will potentially encourage facilities to use biomass fuels as an alternative to fossil fuels.

Making the proposed amendments will maintain consistency between federal air pollution control programs and the Commission's regulations governing air pollution in Arkansas and it will maintain compliance with the federal deferral of permitting requirements for biogenic CO₂ emissions. The Department requests that the Commission consider the promulgation of an emergency rulemaking to amend Regulation No. 26 to ensure that Regulation No. 26 will remain consistent and be no more stringent than federal regulations until such time that formal rulemaking has been completed on this matter. The Department also requests that the Commission consider this promulgation to amend Regulation No. 26 to be contingent upon the Commission's decision to promulgate an emergency rulemaking to amend Regulation No. 19.