

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY
COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 26, REGULATIONS OF THE) DOCKET NO. 12-____-R
ARKANSAS OPERATING AIR PERMIT)
PROGRAM)

PETITION TO PROMULGATE AN EMERGENCY RULEMAKING TO AMEND
REGULATION NO. 26, REGULATIONS OF THE ARKANSAS OPERATING AIR
PERMIT PROGRAM

The Arkansas Department of Environmental Quality (hereinafter “ADEQ” or “the Department”), for its Petition to Promulgate an Emergency Rulemaking to Amend Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program, states:

1. The Department requests that the Commission Promulgate an Emergency Rulemaking to amend Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program. The changes to Regulation No. 26 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 request to promulgate this emergency rulemaking is to ensure that Regulation No. 26 will remain consistent with and not more stringent than federal regulations until such time that nonemergency rulemaking has been completed in response to the EPA’s Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule (“Tailoring Rule”) (*75 FR 31514, June 3, 2010*) in order to reflect the three year federal deferral from consideration of CO₂ emissions from bioenergy and other biogenic sources.

The Department requests that the Commission consider the promulgation of Regulation No. 26 to be contingent upon the Commission's decision to promulgate emergency rulemaking to amend Regulation No. 19, proposed by the Department on a separate petition.

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.
3. The proposed changes to Regulation No. 26 are exempt from the requirements of Act 143 of 2007 because the proposed changes are to incorporate language verbatim from a federal rule and the proposed rule is adopted as an emergency rulemaking. 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 because the proposed rule is an emergency rule that is temporary in duration (Reg. 8.812(A)(5)). A proposed minute order to promulgate this emergency rulemaking is attached as Exhibit "F," and is hereby incorporated by reference.

WHEREFORE, ADEQ requests that the Commission promulgate the emergency rulemaking process, adopt the proposed Minute Orders, and adopt the proposed amendments to Regulation No. 26.

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

By: Mike Bates

Mike Bates