

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

**IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 26, REGULATIONS OF THE) DOCKET NO. 14-011-R
ARKANSAS OPERATING AIR PERMIT PROGRAM)**

**RESPONSIVE SUMMARY FOR
REGULATION NO. 26, REGULATIONS OF THE ARKANSAS OPERATING AIR
PERMIT PROGRAM**

Pursuant to Arkansas Code Annotated (Ark. Code Ann.) § 8-4-202(d)(4)(C) and Regulation¹ No. 8.815, the Arkansas Pollution Control and Ecology Commission (Commission, APC&EC) shall cause to be prepared a responsive summary, which groups public comments into similar categories and explains why the Commenters' rationale for each category is accepted or rejected.

On November 21, 2014, the Arkansas Department of Environmental Quality (Department, ADEQ) filed a Petition to Initiate Rulemaking to Amend Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program. Administrative Law Judge Charles Moulton conducted a public hearing on January 12, 2015. The following is a summary of the comments regarding the proposed amendments to Regulation No. 26 along with the Commission's response.

Comment 1: The Commenters state that the Arkansas Department of Environmental Quality (ADEQ or Department) proposes to add a definition for "Emission increase" to Regulation No. 26, Chapter 2. The Commenters believe that, instead of the proposed reference to 40 C.F.R. § 52.21, the definition of "Emission increase" should reference and clarify that the definition in no way supersedes the Prevention of Significant Deterioration (PSD) applicability determination calculation requirements found in Regulation No. 19, Chapter 9. The Commenters state that the

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proposed reference to 40 C.F.R. § 52.21 lacks a date certain and may represent an impermissible delegation of the Commission's authority. The Commenters suggest a revision consistent with the Commenters revision suggestion for the proposed revisions to Regulation No. 19, Chapter 2, to eliminate potential confusion among the regulated community and provide clarity to regulators and third parties. The Commenters suggestion revising the proposed definition of “Emission increase” as follows:

“Emissions increase” means, for emission changes not subject to Prevention of Significant Deterioration applicability under Chapter 9 of Regulation 19, the calculated sum for each air pollutant, based on the difference between the sum of the proposed permitted rates for all emissions units and the sum of the previously permitted emission rates for all emissions units.

Additionally, the Commenters state that ADEQ should provide an explanation or guidance to the regulated community regarding how this definition "Emission increase" is to be applied.

Response 1: The Department agrees with the Commenter that the addition of the definition of “emission increase” to Chapter 2 could cause potential confusion among the regulated community. The proposed definition for “emission increase” was intended to address the use of “emission increase” in relation to minor permit modification applicability; however, the definition does not necessarily apply to other uses of the phrase “emission increase” elsewhere in the regulation. Therefore, the Department will remove the proposed definition from Chapter 2 and clarify in Reg. 26.1002 that emission increases for each pollutant, for the purposes of minor permit modification applicability, are based on the differences between the sum of the proposed permitted rates for all emission units and the sum of the previously permitted emission rates for all units. No credit is allowed for emission units that have not actually operated or operated as permitted, emission reductions required by other rules or under an enforcement order, or old emission sources removed from service prior to initiation of this rulemaking on December 5, 2014.

Comment 2: The Commenters stated that these proposed regulations may create financial burdens on public utilities in the state of Arkansas, consequently affecting Arkansas rate payers. The Commenters noted that the accelerated timeframe under which these regulations are being considered is fairly problematic and affected stakeholders need some time to consider the impacts of these regulations. The Commenters pointed out, particularly on Regulation No. 19, that the potential changes to existing regulations include very complex matters. The Commenters stated, “As you know the Department is required to consider numerous factors before approving these changes to these regulations.” The Commenters also noted that “it is extremely difficult for the stakeholders to generate substantive comments regarding these complex amendments to these regulations in the timeframe that has been allotted by the Department.”

Response 2: ADEQ asserts that this rulemaking process has not been accelerated and has followed state and federal requirements related to public comment period. ADEQ adhered to requirements of Reg. No. 8.812 and protocol, as found in the APC&EC Regulation Formatting and Drafting Guidelines (Guidelines), was followed for the proposed NAAQS rulemaking, which included the preparation and submission of the Economic Impact Statement (EIS), Financial Impact Statement (FIS), and Environmental Impact and Economic Benefit Analysis (EI/EBA) forms.

ADEQ does not agree that this rulemaking contains complex amendments, but revised federal requirements. ADEQ also asserts that the allotted time for public period was given as prescribed by per Reg. No. 8.805 and 8.806, “Administrative Procedures.” APC&EC and ADEQ both acknowledge that the U. S. Congress, EPA, and the state intend for (more so, require) due public process for all proposed rulemakings, and that public input is encouraged. As such, APC&EC extended the public comment period for this proposed rulemaking as requested by the public. Under the CAA guidelines, once the SIP is prepared, ADEQ will schedule another public notice and comment period, and revisions will be considered based on public input prior to submitting a complete SIP package to EPA for review. All comments received through public hearings and comment periods (and the resulting responses from ADEQ) are included as part of the SIP package that is reviewed by EPA. Therefore, this rulemaking and consequent SIP process will provide stakeholders with extensive opportunity to provide their comments.

No revisions to the final rule are necessary due to this Comment.

Comment 3: The Commenters express concern to the ambiguity between Regs. No. 19 and 26, with regard to the extent to which they would authorize the Department to require permittees, including coal-fired power plants and facilities in the State, to undertake air modeling on their own. According to the Commenters, language in Regulation No. 19 is ambiguous with regard to the ability of the Department and its Director to require modeling under certain circumstances. Therefore, the Commenters suggest changes to the amended regulation.

Response 3: ADEQ may model PSD sources, temporary sources, or those sources or pollutants specifically addressed in a NAAQS SIP submitted to EPA. The Department may also conduct and consider air dispersion modeling for those non-PSD stationary sources that voluntarily propose and agree to modeling. ADEQ can also use dispersion modeling as a tool for the development of state implementation plans and general permits.

The Department is in the process of determining what pollutant-specific or facility-specific NAAQS evaluation requirements will be required for non-PSD permitting actions. The

Department anticipates that these NAAQS evaluation requirements will be included in the subsequent NAAQS SIP that the State will submit to EPA.

No revisions to the final rule are necessary due to this Comment.

Comment 4: The Commenters believe that there is some disagreement among stakeholders over the effect of the proposed amendments and the authority that would be granted to the Department. The Commenters are unclear as to the intent of the proposed changes and believe that it is fairly problematic that the proposed changes are not clear to the people that are going to be affected by them. In addition, the Commenters state, “we are being asked to opine on the proposed changes and even provide economic analysis in regard to the proposed changes in such a short time frame that is almost impossible for this Department to discharge its duty to consider all of the facts and information pursuant to Arkansas Law for approving these changes in these proposed regulations.”

Response 4: The proposed language is in line with current Arkansas statutes and the CAA, and clarifies the authority given to the Department to comply with both State and federal requirements.

The Department has provided opportunities for stakeholders’ feedback through the public comment period, which was extended by public request. In addition, the Department has also organized a series of stakeholders meetings that have been taking place concomitantly with these rulemakings to seek their suggestions and feedback for the revisions of the State’s infrastructure SIP and NAAQS SIP that will be completed after these rulemakings are adopted.

Additionally, the SIP proposal will provide stakeholders with additional opportunity to comment on the SIP. All comments received through public hearings and comment periods (and the resulting responses from ADEQ), are included as part of the SIP package that is reviewed by EPA.

No revisions to the final rule are necessary due to this Comment.

Comment 5: The Commenters appreciate the opportunity to provide comments to the proposed revisions to the APC&EC Regulations No. 18, 19, and 26, proposed by ADEQ. The Commenters state that they have strong interests in the proposed revisions to the Regulations and the implementation of the NAAQS proposed for adoption as part of these rulemakings. The Commenters point out that these rulemakings affect the regulated community that own or operate sources that emit one or more of the pollutants and will be subjected to the new NAAQS should the Commission adopt the proposed revisions. Therefore, the Commenters state that they generally support the incorporation of the new standards into the State air pollution control

regulations, and recognize that the Commission has an obligation to do so in the normal course of federal-state regulatory affairs to avoid imposition of a Federal Implementation Plan. However, the Commenters also state, “the Commission and ADEQ have an obligation under the CAA and the Arkansas Water & Air Pollution Control Act to develop a comprehensive State Implementation Plan (“SIP”) for attainment and maintenance of the NAAQS. [40 C.F.R. § 51.161 and Ark. Code Ann. § 8-4-318].”

Response 5: The Department acknowledges and appreciates this Comment and asserts that these rulemakings are necessary to include the revised PM_{2.5}, O₃, Pb, NO₂, and SO₂ NAAQS in APC&EC regulations. The Department is in the process of developing a SIP revision, concomitantly with these proposed rulemakings, to ensure attainment and maintenance of the revised NAAQS. The SIP revisions will be made available for public comment prior to its submission to EPA.

No revisions to the final rule are necessary due to this Comment.

Comment 6: The Commenters state, “CAA requires that SIPs provide a pre-construction review process for new sources and modifications of existing sources that includes legally-enforceable procedures including the basis for determining the types and sizes of construction or modifications which will be subject to review, an application process disclosing the nature and amounts of emissions to be emitted, the permit approval and public-participation process, and the air quality data that will be used to facilitate such review [51.160].” The Commenters also state, “to ‘implement’ the NAAQS, the state must follow the process set forth in the CAA for SIP development, a process which requires the state to look at a variety of tools (from economic incentives to emissions standards) that can be applied to a range of sources (large and small, mobile and stationary), to meet the NAAQS.”

The Commenters state that EPA has emphasized that states should consider a wide range of options and their potential benefits while developing their SIPs. The Commenters understand that the SIP-development process is not intended to focus solely on large stationary sources, as those sources are already covered by other federal regulations, such as the New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and Prevention of Significant Deterioration /Nonattainment New Source Review programs. Instead, the Commenters state, “relevant ‘control strategies’ apply to all types of sources, stationary and mobile, and include, but are not limited to:

- Economic incentive or disincentive programs;
- Scheduling, relocation, and closure programs;
- Mobile source inspection and maintenance programs;
- Fuel or fuel additive programs for mobile sources; and

- Emissions limitations on stationary sources.”

The Commenters state, “EPA further stipulates that nothing in its regulations should be construed, among other things, ‘[t]o encourage a State to adopt any particular control strategy without taking into consideration the cost-effectiveness of such control strategy in relation to that of alternative control strategies,’ ‘[t]o encourage a State to prepare, adopt or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan,’ or ‘[t]o encourage a State to adopt a control strategy uniformly applicable throughout a region unless there is no satisfactory alternative way of providing for attainment and maintenance of a national standard throughout such region.’”

The Commenters believe these federal factors are echoed by some of those found at the Arkansas legislature, which requires the Commission to consider when exercising its powers and responsibilities as found at Ark. Code Ann. § 8-4-312(12) “[i]nterference with reasonable enjoyment of life by persons in the area and conduct of established enterprises that can reasonably be expected from air contaminants,” a factor it can only truly explore through the SIP development process. The Commenters believe the information provided in the SIP development steps will inform the Commission whether emissions are interfering with business and human health and will help ADEQ to determine what steps to propose to maintain (or, where needed, to achieve) compliance with the revised NAAQS.

Response 6: The Department acknowledges and appreciates this Comment.

No revisions to the final rule are necessary due to this Comment.

Comment 7: The Commenters state that the use of the terms “State Implementation Plan” and “Plan” should be consistent across regulations. The Commenters point out that existing regulations include a definition of “Plan” in Chapter 2 of Regulation No. 19, which states that the term means the Arkansas Plan of Implementation for Air Pollution Control. However, the Commenters further point out, there are instances across Regulations No. 18, 19, and 26 where the terms “Plan,” “State Implementation Plan,” and “Regulation 19” appear to be used interchangeably (see, e.g., introduction paragraph to Chapter 2 of Regulation No. 26). The Commenters suggest that the Commission review the use of those terms throughout Regulations No. 18, 19, and 26 for consistency and to ensure that those terms are appropriately incorporated.

Response 7: The Department has reviewed the use of the terms “State Implementation Plan,” “Plan,” and “Regulation 19” in Regulations No. 18, 19, and 26. The Department agrees with the Commenters’ suggestion for clarification of these terms in Regulation No. 26 and will consider including clarifying revisions in a future rulemaking so that such revisions may be open to public

comment. However, the terms used in Regulations No. 18 and 19 are not used interchangeably but applied throughout the regulations according to the description in the Definitions chapter.

Comment 8: The Commenters support the adoption of the NAAQS into Arkansas air rules and recognize proposing a common-sense approach to maintaining Arkansas's clean air. In addition, the Commenters support ADEQ's proposed changes to current state regulations, which will allow flexibility in the permitting process and would give business owners the choice to make cost-effective reductions in emissions from current operations in order to more quickly obtain new permit modifications for those changes.

Response 8: The Department acknowledges and appreciates this Comment.

No revisions to the final rule are necessary due to this Comment.

Comment 9: The Commenters are aware and respect that ADEQ has the challenge to maintain ever more stringent air quality standards imposed by the EPA. In addition, the Commenters state that this is especially true considering that ADEQ's authority over only stationary sources limits the Department's ability to control major contributing sources such as fires and traffic. Despite this limitation, the Commenters believe that ADEQ has created a valuable long-term tool to promote the growth of jobs in Arkansas through its modified permitting process and support the proposed modifications to the regulations.

Response 9: The Department acknowledges and appreciates this Comment.

No revisions to the final rule are necessary due to this Comment.

Comment 10: The Commenters recognize that implementation details, policies, and procedures will be defined in the State Implementation Plans currently under development and encourage ADEQ to continue to use a public process in the development of those implementation details.

Response 10: The Department acknowledges and appreciates this Comment.

No revisions to the final rule are necessary due to this Comment.

Comment 11: The Commenters state that they have an ongoing interest in the adoption and implementation of the NAAQS in accordance with the requirements of State and federal law and regulations and sound scientific and engineering practices. The Commenters understand that updating the State's regulations to refer to the national standards is required in the normal course of federal-state regulatory affairs. However, the Commenters state that the revised NAAQS are very stringent by historical standards and believe that due to the complexity of sources that

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regulations, and recognize that the Commission has an obligation to do so in the normal course of federal-state regulatory affairs to avoid imposition of a Federal Implementation Plan. However, the Commenters also state, “the Commission and ADEQ have an obligation under the CAA and the Arkansas Water & Air Pollution Control Act to develop a comprehensive State Implementation Plan (“SIP”) for attainment and maintenance of the NAAQS. [40 C.F.R. § 51.161 and Ark. Code Ann. § 8-4-318].”

Response 5: The Department acknowledges and appreciates this Comment and asserts that these rulemakings are necessary to include the revised PM_{2.5}, O₃, Pb, NO₂, and SO₂ NAAQS in APC&EC regulations. The Department is in the process of developing a SIP revision, concomitantly with these proposed rulemakings, to ensure attainment and maintenance of the revised NAAQS. The SIP revisions will be made available for public comment prior to its submission to EPA.

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- Economic incentive or disincentive programs;
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- Emissions limitations on stationary sources.”

The Commenters state, “EPA further stipulates that nothing in its regulations should be construed, among other things, ‘[t]o encourage a State to adopt any particular control strategy without taking into consideration the cost-effectiveness of such control strategy in relation to that of alternative control strategies,’ ‘[t]o encourage a State to prepare, adopt or submit a plan without taking into consideration the social and economic impact of the control strategy set forth in such plan,’ or ‘[t]o encourage a State to adopt a control strategy uniformly applicable throughout a region unless there is no satisfactory alternative way of providing for attainment and maintenance of a national standard throughout such region.’”

The Commenters believe these federal factors are echoed by some of those found at the Arkansas legislature, which requires the Commission to consider when exercising its powers and responsibilities as found at Ark. Code Ann. § 8-4-312(12) “[i]nterference with reasonable enjoyment of life by persons in the area and conduct of established enterprises that can reasonably be expected from air contaminants,” a factor it can only truly explore through the SIP development process. The Commenters believe the information provided in the SIP development steps will inform the Commission whether emissions are interfering with business and human health and will help ADEQ to determine what steps to propose to maintain (or, where needed, to achieve) compliance with the revised NAAQS.

Response 6: The Department acknowledges and appreciates this Comment.

No revisions to the final rule are necessary due to this Comment.

Comment 7: The Commenters state that the use of the terms “State Implementation Plan” and “Plan” should be consistent across regulations. The Commenters point out that existing regulations include a definition of “Plan” in Chapter 2 of Regulation No. 19, which states that the term means the Arkansas Plan of Implementation for Air Pollution Control. However, the Commenters further point out, there are instances across Regulations No. 18, 19, and 26 where the terms “Plan,” “State Implementation Plan,” and “Regulation 19” appear to be used interchangeably (see, e.g., introduction paragraph to Chapter 2 of Regulation No. 26). The Commenters suggest that the Commission review the use of those terms throughout Regulations No. 18, 19, and 26 for consistency and to ensure that those terms are appropriately incorporated.

Response 7: The Department has reviewed the use of the terms “State Implementation Plan,” “Plan,” and “Regulation 19” in Regulations No. 18, 19, and 26. The Department agrees with the Commenters’ suggestion for clarification of these terms in Regulation No. 26 and will consider including clarifying revisions in a future rulemaking so that such revisions may be open to public

comment. However, the terms used in Regulations No. 18 and 19 are not used interchangeably but applied throughout the regulations according to the description in the Definitions chapter.

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Response 8: The Department acknowledges and appreciates this Comment.

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Comment 9: The Commenters are aware and respect that ADEQ has the challenge to maintain ever more stringent air quality standards imposed by the EPA. In addition, the Commenters state that this is especially true considering that ADEQ's authority over only stationary sources limits the Department's ability to control major contributing sources such as fires and traffic. Despite this limitation, the Commenters believe that ADEQ has created a valuable long-term tool to promote the growth of jobs in Arkansas through its modified permitting process and support the proposed modifications to the regulations.

Response 9: The Department acknowledges and appreciates this Comment.

No revisions to the final rule are necessary due to this Comment.

Comment 10: The Commenters recognize that implementation details, policies, and procedures will be defined in the State Implementation Plans currently under development and encourage ADEQ to continue to use a public process in the development of those implementation details.

Response 10: The Department acknowledges and appreciates this Comment.

No revisions to the final rule are necessary due to this Comment.

Comment 11: The Commenters state that they have an ongoing interest in the adoption and implementation of the NAAQS in accordance with the requirements of State and federal law and regulations and sound scientific and engineering practices. The Commenters understand that updating the State's regulations to refer to the national standards is required in the normal course of federal-state regulatory affairs. However, the Commenters state that the revised NAAQS are very stringent by historical standards and believe that due to the complexity of sources that

contribute to ambient concentrations of the pollutants in question, it is critical that the State develop a comprehensive plan for implementation of the standards in question, consistent with the requirements of Arkansas statute and the CAA.

Response 11: The Department acknowledges and appreciates this Comment. ADEQ has carefully considered all the elements to comply with State and federal requirements and is diligently seeking stakeholders' participation for a transparent and effective process to develop an approvable SIP.

No revisions to the final rule are necessary due to this Comment.

Prepared by:
Arkansas Department of Environmental Quality

By: 
Stuart Spencer, Associate Director, Office of Air Quality