STATE OF ARKANSAS
MIKE BEEBE
GOVERNOR

November 6, 2012

Ron Curry, Regional Administrator
United States EPA Region VI
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Re: Arkansas State Implementation Plan (SIP) Revision

Dear Mr. Curry:

The Arkansas Department of Environmental Quality ("ADEQ") hereby respectfully submits, for approval from the United States Environmental Protection Agency ("EPA"), our revisions to the Arkansas Pollution Control and Ecology Commission's ("Commission") Regulation Number 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control. The Commission adopted changes to Regulation Number 19 on June 22, 2012, in response to EPA's Prevention of Significant Deterioration and Title V Greenhouse Gas ("GHG") Tailoring Rule: Final Rule" ("Tailoring Rule") (75 FR 31514, June 3, 2010,) requiring States to address GHG emissions in their Prevention of Significant Deterioration ("PSD") and Title V permitting programs beginning January 2, 2011, and in their operating permits for facilities beginning July 1, 2011. The Commission also simultaneously adopted revisions to Regulations Number 9, Fee Regulation, and Number 26, Regulations of the Arkansas Operating Permit Program, which addressed the same matter.

Arkansas could not incorporate the Deferral for CO_2 Emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs ("Biomass Deferral") (76 FR 43490, July 20, 2011,) during the Tailoring Rule rulemaking process. This was because the Arkansas GHG rulemaking had been initiated and the public hearing-and-comment period had already expired before EPA finalized the Biomass Deferral. To include the Biomass Deferral in the State regulations, ADEQ submitted an emergency rulemaking petition to the Commission and, concurrently, requested initiation of permanent rulemaking to address the Biomass Deferral. The Commission approved both emergency rulemaking on the Biomass Deferral and initiation of permanent Biomass Deferral rulemaking on June 22, 2012. The

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Commission adopted the permanent Biomass Deferral rulemaking on October 26, 2012. Requirements for a public hearing and comment period on the Biomass Deferral were satisfied during the permanent rulemaking process. Arkansas received one non-substantive comment on Regulation Number 19, which was incorporated to improve readability.

On this SIP submittal, Arkansas also requests that EPA withdraw the currently approved SIP provisions found in Regulation Number 9 and replace them with the portions of Regulation Number 9, chapters 1, 2, 3, 5 and 9, which relate to the air program.

Arkansas also requests that EPA review the decision on the proposed partial disapproval of the Arkansas SIP for the 1997 eight-hour Ozone and the 1997 and 2006 fine particulate matter ("$PM_{2.5}$") national ambient air quality standards ("NAAQS") at 110(a)(2) for portions (C), (D)(ii) and (J) (77 FR 6711, February 9, 2012,) as Arkansas has the resources and, upon EPA's approval of this SIP submittal, will have the authority to implement, maintain, and enforce the PSD program for GHG emitting sources. Thus, Arkansas has corrected the deficiencies identified in the February 9, 2012, *Federal Register* notice related to GHG emissions regulated under the PSD program.

Upon EPA's approval of this SIP submittal, Arkansas requests the withdrawal of the Federal Implementation Plan (75 FR 82246, December 30, 2010,) governing PSD permitting of GHG emissions in the State.

Arkansas requests that this SIP revision be reviewed and approved as expeditiously as possible. The package accompanying this letter consists of two hard copies and one electronic copy (on disk), summarized as follows:

- The Governor's Letter
- Arkansas State Implementation Plan Revision Introduction
- Evidence of Adoption of Regulation Changes
  - Minute Orders for Adopted Changes
  - Arkansas Register Transmittal Sheets
- State's Legal Authority to Adopt and Implement the Plan
- Regulations with Changes Indicated
- Regulations with Changes Incorporated
- Procedural Requirements
  - ADEQ Regulation Tracking Sheets
  - Arkansas Register Transmittal Sheets
  - Arkansas State Library Agency Certification Forms

- Public Participation
  - Public Notice Information
  - Public Hearing Sign-in Sheets
  - Public Comments and Responsiveness Summaries

I certify that all documents submitted to the Regional Office in electronic form are exact duplicates of the hard-copy documents. Should any questions arise, please feel free to contact Mike Bates at (501) 682-0750 or bates@adeq.state.ar.us. Thank you for your consideration of ADEQ's submission.

Sincerely,

Mike Beebe,

MB:jb
Enclosures

NOVEMBER 6, 2012

Revisions to the Arkansas State Implementation Plan

"GHG Tailoring Rule and Biomass Deferral"

Revisions to the Arkansas State Implementation Plan

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- Biomass Deferral Rule: Regulations 19 and 26

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  - Public Hearing Sign-in Sheets

  - Public Comments and Responsiveness Summaries

- Arkansas's State Implementation Plan Revision

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  - Affidavit: Public Participation Process

Tab B

Introduction: GHG Tailoring Rule and Biomass Deferral Rule

Arkansas State Implementation Plan Revision
Introduction

On June 3, 2010, the Environmental Protection Agency ("EPA") published the Prevention of Significant Deterioration and Title V Greenhouse Gas ("GHG") Tailoring Rule: Final Rule ("Tailoring Rule") (75 FR 31514), requiring States to address GHG emissions in their title V and Prevention of Significant Deterioration ("PSD") permitting programs beginning January 2, 2011, and in their operating permits for facilities beginning July 1, 2011.

In order to implement the final rule for GHG emissions in Arkansas and to incorporate it into the State permitting program, three Regulations (Numbers 9, 19, and 26) of the Arkansas Pollution Control & Ecology Commission ("Commission" or "APC&EC") required revision. Regulation Number 9 establishes permit fees for water, air, and solid waste permitting. Regulation Number 19 is applicable to any stationary source with the potential to emit any federally regulated air pollutant equal to or in excess of the threshold for a major source, to minor sources, and is federally enforceable. Regulation Number 26 is intended to meet the requirements of title V of the federal Clean Air Act and 40 C.F.R. Part 70 by establishing a comprehensive state air quality operating permit program for major sources of air contaminants emissions.

Approved Arkansas SIP components affected by this Revision

APC&EC Regulation Number 9

- 9.502 (B) and (C)

APC&EC Regulation Number 19

- Chapter 2 Definitions
  - "Carbon dioxide equivalent emissions (CO_2e)"
  - "Federally regulated air emissions" item (E)
  - "Greenhouse gases"
- 19.407 Permit Amendments
  - 19.407(C)(3)
- Chapter 9 Prevention of Significant Deterioration
  - 19.904(G)
- Appendix A Insignificant Activities List
  - Group A, Items #1 & #13

APC&EC Regulation Number 26

- 26.401 Duty to apply

The Arkansas Department of Environmental Quality ("ADEQ") filed Regulation Numbers 19 and 26 with the Commission to initiate rulemaking on January 14, 2011, and filed Regulation Number 9 with the Commission on November 18, 2011. The public hearing for Regulation Numbers 19 and 26 was held on March 8, 2011, and the public comment period was extended

through April 11, 2011. The public hearing for Regulation Number 9 was held on January 17, 2012, and the public comment period expired January 31, 2012. In addition to the initial public hearings and comment periods, public stakeholder meetings also occurred on December 14, 2010, March 11, 2011, and February 29, 2012, and additional meetings were held with the Arkansas Environmental Federation representatives through May 2012. EPA also provided comments to ADEQ on the draft language during the public review process and again in the spring of 2012. Several changes were made to the originally proposed revisions as a result of considering comments received during this lengthy process. A responsive summary addressing public comments was finalized and ADEQ presented these regulations to the Arkansas Legislative Administrative Rules and Regulations Committee (ARR), the Legislative Joint Public Health and Welfare Committee (PHW), and the Legislative Council. After the regulations were reviewed by these committees, the revised and final regulations were presented to the Arkansas Pollution Control and Ecology Commission (Commission) on June 22, 2012, for final approval. The regulations were adopted by the Commission on June 22, 2012. Following the Commission's approval, the regulations were filed with the Arkansas Secretary of State and are fully effective, as of July 9, 2012.

Also on June 22, 2012, the Commission promulgated on an emergency basis Regulation Numbers 19 and 26 addressing EPA's Deferral for CO_2 emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration and Title V Final Rule ("Biomass Deferral") (76 FR 43490, July 20, 2011), which defers GHG permitting requirements for biogenic carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources until July 21, 2014. The Emergency Rule will remain in effect for 180 days. Permanent rulemaking for the Biomass Deferral included a public hearing, held on August 1, 2012, and comment period that ended on August 15, 2012. ADEQ d received one non-substantive comment on Regulation Number 19 which was incorporated to improve readability. ADEQ presented the permanent Biomass Deferral rulemaking and responsive summaries for Regulation Numbers 19 and 26 to the PHW on September 13, 2012, and to the ARR on October 15, 2012, and, subsequently, to the Legislative Council. After Legislative approval, the Commission adopted the permanent Biomass Deferral rulemaking on October 26, 2012.. Following the Commission's approval, Regulation Numbers 19 and 26 were filed with the Arkansas Secretary of State.

Regulation Number 9: Regulations of the Arkansas Permit Fee Regulations

EPA's Tailoring Rule did not require states to change permit fee requirements to address greenhouse gases, nor did it require states to submit a new permit fee demonstration under 40 C.F.R. §70.9 for state program revisions related to the permitting of greenhouse gases (75 FR 31584, June 3, 2010). The Tailoring Rule allows states to use their discretion related to fees for GHGs, so long as fee collections are adequate for the administration of the title V program. EPA has previously determined that Arkansas's air permit fee structure is adequate to support the title V program in the state and satisfies the federal requirements (66 FR 51314, October 9, 2001).

After careful examination of the title V program and current permitting fees collected, it was concluded that existing program fees will be adequate to cover the program costs that include permitting of GHGs at Tailoring Rule levels. Therefore, Regulation Number 9 (Fee Regulation) was amended in order to prevent sources from incurring carbon dioxide and methane emission fees once Tailoring Rule changes were finalized in Regulation Numbers 19 and 26.

The regulatory amendments related to the SIP which were adopted by the Commission include:

- Exclusion of methane and carbon dioxide from being chargeable emissions in order to keep the air permit program's fee structure unchanged.

In this SIP submittal, Arkansas requests that EPA withdraw the currently approved SIP provisions found in Regulation Number 9 and replace them with the portions of Regulation Number 9 that relate to the air program. Included in this SIP revision are Chapters 1, 2, 3, 5 and 9 of Regulation Number 9. The effective date of these Regulation Number 9 provisions is July 9, 2012.

Regulation Number 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control

The changes to Regulation Number 19 were filed in response to EPA's Tailoring Rule and the Finding of Substantial Inadequacy and SIP Call issued by EPA on December 13, 2010 (75 FR 77698). The Tailoring Rule requires that greenhouse gases be subject to regulation under the Clean Air Act.

The regulatory amendments related to the SIP involve the following:

a) Addition of a provision to 19.102 (Applicability) which will stay revisions to Regulation Number 19 based on the Tailoring Rule, should that federal rule be stayed or invalidated through federal judicial or legislative action;

b) Addition of definitions in Chapter 2 for "carbon dioxide equivalent emissions" ("CO_2e") and "greenhouse gases;"

c) Revision of the definition of "Federally Regulated Air Pollutant" ("FRAP") to clarify that GHGs will only be considered FRAPs if from a stationary source emitting or having the potential to emit 75,000 tons per year ("tpy") CO_2e emissions or more when the source is regulated under Chapter 9 ("Prevention of Significant Deterioration") of Regulation Number 19;

d) Addition of language to ensure greenhouse gas emission increases of less than 75,000 tpy can be processed as "De Minimis" permit changes (Reg.19.407), thus enabling sources to avoid major permit modifications for GHG emissions under this level. Even though use of the term "*de minimis"* may seem to imply this threshold level of GHG emissions to be environmentally insignificant, that is not the intention. The proposed addition seeks only to establish streamlined permitting procedures for modifications resulting in lower levels of GHG emissions, which are separate from permitting procedures for major permits. The term "*de minimis*," as used in the context of Regulation Number 19, applies to a permitting process, and is not intended to be an excluding factor for the permitting of a source or to indicate that "*de minimis*" permitting levels will result in trivial environmental impacts. These amendments will modify ADEQ's PSD permitting program to match EPA's Tailoring Rule, so that existing facilities subject to the PSD 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 CO_2e per year or more. The requirements also apply

to preconstruction permits for new facilities that emit at least 100,000 tpy of greenhouse gases (Reg.19.904);

e) Addition of language to include the federal Biomass Deferral (Reg.19.904(G)(2)(b));

f) Renumbering for clarification (Reg.19.904(G)(2));

g) Revision of Appendix A, Group A, Insignificant Activity List, of Regulation Number 19, to clarify that activities emitting less than 75,000 tpy of carbon dioxide emissions could be considered insignificant. Without this revision, all emissions of CO_2, even those lower than Tailoring Rule permitting thresholds, would have been counted toward a facility's insignificant activity emissions of 10 (ten) tpy of "any pollutant" as allowed for in the original language. These changes were necessary to avoid specified emissions of CO_2 from triggering the need for permits at thresholds lower than the Tailoring Rule. Previously, the Appendix read so that any fuel burning equipment (design rate < 10MMBtu/hr) emitting less than ten (10) tpy of any pollutant (including GHGs) and less than 5 tpy for any combination of Hazardous Air Pollutants ("HAPs") qualified as an "insignificant activity;" and

h) Revision of Appendix A, Group A, applied to "other activities" which do not require permitting to comply with federal or State law. Such activities were previously defined in the Regulation as emitting less than "5 tpy of any pollutant regulated under this regulation or less than 1 tpy of a single HAP or 2.5 tpy of any combination of HAPs." An emissions limit of 5 tpy was too low when applied to CO_2, which is now defined as an air pollutant. The revised language reads, "emissions are less than 75,000 tpy carbon dioxide, 1 tpy of a single HAP or 2.5 tpy of any combination of HAPs, or 5 tpy of any other air pollutant regulated under this regulation," so that the exception was carried out as is intended by the regulation. These proposed changes intend for Arkansas's regulations to be as stringent as federal law. To ensure that an "insignificant activity" is truly insignificant in theory and in practice, the introductory paragraph to Appendix A includes a statement that "Any activity for which a state or federal applicable requirement applies (such as NSPS, National Emission Standards for Hazardous Air Pollutants [NESHAP], or Maximum Achievable Control Technology [MACT]) is not insignificant, even if this activity meets the criteria below." This statement pre-dates the GHG revisions and was not altered in this rulemaking. This statement means that if any federal applicable requirement, including PSD for GHG, is triggered as a result of a particular activity at a source, the emissions are subject to permitting and are not considered to be insignificant.

Making these changes will maintain consistency between Federal air pollution control programs and the Commission's regulations governing air pollution in Arkansas and, consequently, enabling ADEQ to seek EPA's approval of the Arkansas's SIP and to request the rescission of the Federal Implementation Plan (75 FR 82246, December 30, 2010) currently in place governing PSD permitting of greenhouse gas emissions in Arkansas.

Regulation Number 26: Regulations of the Arkansas Operating Permit Program

The changes to Regulation Number 26 were filed in response to EPA's Tailoring Rule (June 3, 2010) and the Finding of Substantial Inadequacy and SIP Call issued by EPA on December 13, 2010 (75 FR 77698). The Tailoring Rule requires that greenhouse gases be subject to regulation under the Clean Air Act.

The regulatory amendments related to the SIP involve the following:

- Revision of the "Duty to apply" section (26.401) to include the most recent revision to 40 C.F.R. Part 70, i.e. June 3, 2010.

These changes have been made in conjunction with changes to Regulation Number 9, Arkansas Air Pollution Control Code, and to Regulation Number 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control, to ensure consistency between the SIP and Title V program.

The changes to Regulation Numbers 9, 19, and 26 are consistent with and allowable under federal programs. The proposed changes are protective of air quality in the state and will not affect attainment goals.

The changes also clarify existing regulatory language, correct and update formatting, and remove duplicative language from other Commission regulations.

Sources affected by this program revision are found throughout the state.

These revisions do not affect ADEQ's ability to protect the National Ambient Air Quality Standards, Prevention of Significant Deterioration increments, Reasonable Further Progress demonstrations, or visibility goals.

No substantive revisions have been made to the emission limitations, work practice standards or recordkeeping/reporting requirements portions of this program.

Furthermore, the ADEQ's existing compliance and enforcement strategies will remain in place.

Tab C

Evidence of State's Adoption of the Revised Plan into Regulations

GHG Tailoring Rule

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

SUBJECT Adoption of Revisions to Regulation 9, Fee Regulation

DOCKET NO. 11-007-R

MINUTE ORDER NO. 12 - 23

Pursuant to public notice and hearing, and in consideration of comments received, the Arkansas Pollution Control and Ecology Commission hereby adopts changes to Regulation No. 9, Fee Regulation.

PROMULGATED THIS 22nd DAY OF JUNE, 2012, BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: _____
John Chamberlin, Chairman

ATTEST: _____
Teresa Marks, Director

COMMISSIONERS

_____ J. Bates	_____ D. Samples
_____ L. Bengal	_____ L. Sickel
_____ J. Chamberlin (Chair)	_____ J. Simpson
_____ J. Fox	_____ W. Thompson
_____ D. Hendrix	_____ B. White
_____ L. Hitchcock	_____ R. Young
_____ S. Jorgensen (Vice Chair)	

_____ **SUBMITTED BY: Mike Bates PASSED: 06/22/12**
J. Chamberlin, Chair

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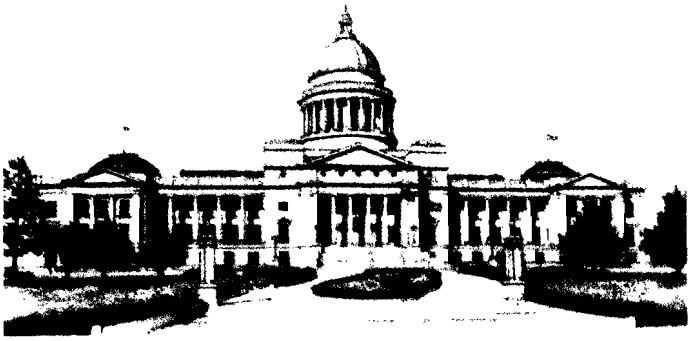

Transmittal Sheet

* Use only for **FINAL** and **EMERGENCY RULES**

Secretary of State
Mark Martin
State Capitol, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-3527
www.sos.arkansas.gov

For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Environmental Quality

Department Arkansas Pollution Control & Ecology Commission

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0750

Statutory Authority for Promulgating Rules A.C.A. §8-4-201, §8-4-202, §8-4-304, & §8-4-311

Rule Title: Reg. No. 9, Permit Fee Regulations; Docket 11-007-R; MO 12-23

Intended Effective Date
(Check One)

- ☐ Emergency (ACA 25-15-204)
- ☐ 30 Days After Filing (ACA 25-15-204)
- ☐ Other _____
  (Must be more than 30 days after filing date.)

Date	
Legal Notice Published	12/07/2012
Final Date for Public Comment	01/31/2012
Reviewed by Legislatice Council	06/13/2012
Adopted by State Agency	06/22/2012

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Mike Bates (Contact Person) bates@adeq.state.ar.us (E-mail Address) 06/29/2012 (Date)

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Signature

(501) 682-7890 charles.moulton@arkansasag.gov
Phone Number E-mail Address

Administrativer Hearing Officer
Title

06/29/2012
Date

FILED
2012 JUN 29 PM 4:15
SECRETARY OF STATE
STATE OF ARKANSAS
REGISTER DIV.

Revised 8/2011 to reflect new legislation passed in 2011.

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

SUBJECT Adoption of Revisions to Regulation 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control

DOCKET NO. 11-002-R

MINUTE ORDER NO. 12 - a1

Pursuant to public notice and hearing, and in consideration of comments received, the Arkansas Pollution Control and Ecology Commission hereby adopts changes to Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control.

PROMULGATED THIS 22nd DAY OF JUNE, 2012, BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: _____
John Chamberlin, Chairman

ATTEST: _____
Teresa Marks, Director

COMMISSIONERS

_____ J. Bates	_____ D. Samples
_____ L. Bengal	_____ L. Sickel
_____ J. Chamberlin (Chair)	_____ J. Simpson
_____ J. Fox	_____ W. Thompson
_____ D. Hendrix	_____ B. White
_____ L. Hitchcock	_____ R. Young
_____ S. Jorgensen (Vice Chair)	

_____ **SUBMITTED BY: Mike Bates** **PASSED: 06/22/12**
J. Chamberlin, Chair

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For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Environmental Quality

Department Arkansas Pollution Control & Ecology Commission

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0750

Statutory Authority for Promulgating Rules A.C.A. §8-4-201, §8-4-202, and §8-4-311

Rule Title: Reg No. 19, Regulations of the AR Plan of Implementation for Air Pollution Control; Docket No. 11-002-R; Minute Order No. 12-21

Intended Effective Date (Check One)		**Date**
☐ Emergency (ACA 25-15-204)	Legal Notice Published	02/02/2011
☐ 30 Days After Filing (ACA 25-15-204)	Final Date for Public Comment	04/11/2011
☐ Other _____ (Must be more than 30 days after filing date.)	Reviewed by Legislatice Council	06/13/2012
	Adopted by State Agency	06/22/2012

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Mike Bates (Contact Person) bates@adeq.state.ar.us (E-mail Address) 06/29/2012 (Date)

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Charles Moulton
Signature

(501) 682-7890 charles.moulton@arkansasag.gov
Phone Number E-mail Address

Administrativer Hearing Officer
Title

06/29/2012
Date

FILED
2012 JUN 29 PM 4:16
SECRETARY OF STATE
ARKANSAS
REGISTER DIV.

Revised 8/2011 to reflect new legislation passed in 2011.

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

SUBJECT Adoption of Revisions to Regulation 26, Regulations of the Arkansas Operating Air Permit Program

DOCKET NO. 11-003-R

MINUTE ORDER NO. 12 -22 **PAGE 1 OF 1**

Pursuant to public notice and hearing, and in consideration of comments received, the Arkansas Pollution Control and Ecology Commission hereby adopts changes to Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program.

PROMULGATED THIS 22nd DAY OF JUNE, 2012, BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: _____
John Chamberlin, Chairman

ATTEST: _____
Teresa Marks, Director

COMMISSIONERS

_____ J. Bates	_____ D. Samples
_____ L. Bengal	_____ L. Sickel
_____ J. Chamberlin (Chair)	_____ J. Simpson
_____ J. Fox	_____ W. Thompson
_____ D. Hendrix	_____ B. White
_____ L. Hitchcock	_____ R. Young
_____ S. Jorgensen (Vice Chair)	

_____
J. Chamberlin, Chair

SUBMITTED BY: Mike Bates **PASSED: 6/22/2012**

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Transmittal Sheet

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Secretary of State
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Little Rock, Arkansas 72201-1094
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For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Environmental Quality

Department Arkansas Pollution Control & Ecology Commission

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0750

Statutory Authority for Promulgating Rules A.C.A. §8-4-201, §8-4-202, and §8-4-311

Rule Title: Reg No. 26, Regulations of the Arkansas Operating Air Permit Program; Docket No. 11-003-R; Minute Order No. 12-22

Intended Effective Date (Check One)

- ☐ Emergency (ACA 25-15-204)
- ☐ 30 Days After Filing (ACA 25-15-204)
- ☐ Other _____ (Must be more than 30 days after filing date.)

Date

Legal Notice Published	02/02/2011
Final Date for Public Comment	04/11/2011
Reviewed by Legislatice Council	06/13/2012
Adopted by State Agency	06/22/2012

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Mike Bates (Contact Person) bates@adeq.state.ar.us (E-mail Address) 06/29/2012 (Date)

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Charles Moulton
Signature

(501) 682-7890 charles.moulton@arkansasag.gov
Phone Number E-mail Address

Administrativer Hearing Officer
Title

06/29/2012
Date

BY: _____
FILED
STATE OF ARKANSAS
2012 JUN 29 P 4:16
SECRETARY OF STATE
ADMIN. RULES DIV.

Revised 8/2011 to reflect new legislation passed in 2011.

Biomass Deferral Rule

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

SUBJECT Adoption of Revisions to Regulation 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control

DOCKET NO. 12-005-R

MINUTE ORDER NO. 12 - 40 **PAGE 1 OF 1**

Pursuant to public notice and hearing, and in consideration of comments received, the Arkansas Pollution Control and Ecology Commission hereby adopts changes to Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control.

PROMULGATED THIS 26th DAY OF OCTOBER, 2012, BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: _____
Stan Jorgensen, Chairman

ATTEST: _____
Teresa Marks, Director

COMMISSIONERS

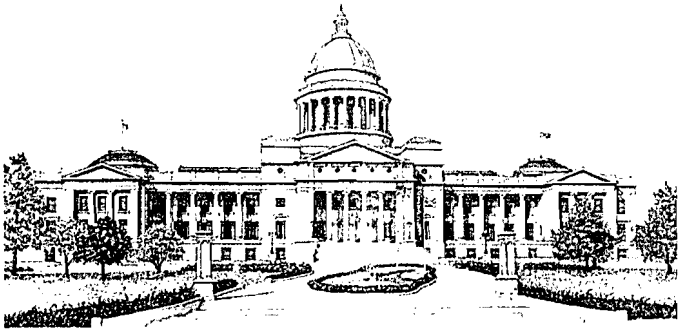
_____ J. Bates	_____ D. Samples
_____ L. Bengal	_____ L. Sickel (Vice Chair)
_____ J. Chamberlin	_____ J. Simpson
_____ J. Fox	_____ W. Thompson
_____ D. Hendrix	_____ B. White
_____ L. Hitchcock	_____ R. Young
_____ S. Jorgensen (Chair)	

_____
S. Jorgensen, Chairman

SUBMITTED BY: Mike Bates **PASSED: 10/26/2012**

EXHIBIT E

ARKANSAS REGISTER



Transmittal Sheet

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For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Pollution Control & Ecology Commission

Department Arkansas Department of Environmental Quality

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0730

Statutory Authority for Promulgating Rules A.C.A. §8-4-202

Rule Title: Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control; Docket No. 12-006-R; MO #12-45

Intended Effective Date (Check One)

- ☐ Emergency (ACA 25-15-204)
- ☐ 30 Days After Filing (ACA 25-15-204)
- ☐ Other _____ (Must be more than 30 days after filing date.)

Date	
Legal Notice Published	08/01/12
Final Date for Public Comment	08/15/12
Reviewed by Legislatice Council	08/17/12
Adopted by State Agency	10/26/12

Electronic Copy of Rule submitted under ACA 25-15-218 by:

_____ _____ _____
Contact Person E-mail Address Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act (ACA 25-15-201 et. seq.)

Charles E. Moulton
Signature

(501) 682-7890 charles.moulton@arkansasag.org
Phone Number E-mail Address

Administrative Hearing Officer
Title

November 8, 2012
Date

Tab D

State's Legal Authority to Adopt and Implement the Plan

State's Legal Authority to Adopt and Implement the Plan

The State's legal authority to adopt and implement this State Implementation Plan revision can be found in Arkansas Code Annotated (A.C.A.) § 8-1-203(b)(1).

Arkansas Code Annotated § 8-1-203

8-1-203. Powers and responsibilities of the Arkansas Pollution Control and Ecology Commission.

(a) The Arkansas Pollution Control and Ecology Commission shall meet regularly in publicly noticed open meetings to discuss and rule upon matters of environmental concern.

(b) The commission's powers and duties shall be as follows:

(1)(A) Promulgation of rules and regulations implementing the substantive statutes charged to the Arkansas Department of Environmental Quality for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than the federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report which shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, providing the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, providing the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department. However, the director shall always remain within the plenary authority of the Governor; and

(8) Upon a majority vote, initiate review of any director's decision.

(c)(1) In providing for adjudicatory review as contemplated by subdivisions (b)(4) and (5) of this section, the commission may appoint one (1) or more administrative hearing officers. The administrative hearing officers shall at all times serve as agents of the commission.

(2) In hearings upon appeals of permitting or grants decisions by the director or contested administrative enforcement or emergency actions initiated by the director, the administrative hearing officer shall administer the hearing in accordance with procedures adopted by the commission and, after due deliberation, submit his or her recommended decision to the commission.

(3)(A)(i) Commission review of any appealed or contested matter shall be upon the record compiled by the administrative hearing officer and his or her recommended decision.

(ii) Commission review shall be de novo. However, no additional evidence need be received unless the commission so decides in accordance with established administrative procedures.

(B) The commission may afford the opportunity for oral argument to all parties of the adjudicatory hearing.

(C)(i) By the majority vote of a quorum, the commission may affirm, reverse and dismiss, or reverse and remand to the director.

(ii) If the commission votes to affirm or reverse, such decision shall constitute final agency action for purposes of appeal.

(4) Any party aggrieved by the commission decision may appeal as provided by applicable law.

(d) The chair of the Arkansas Pollution Control and Ecology Commission may appoint one (1) or more committees composed of commission members to act in an advisory capacity to the full commission.

HISTORY: Acts 1991, No. 1230, § 1; 1993, No. 163, § 7; 1993, No. 165, § 7; 1993, No. 1264, § 2; 1995, No. 117, § 1.

Tab E

Regulations with Changes Indicated

VISUAL KEY TO REGULATION REVISION MARK-UP

Single Underline Red = originally proposed new language

~~Single Strikethrough Red =~~ originally proposed deletion of language

Double Underline Red = proposed addition of language after Public Comment

~~Double Strikethrough Red =~~ proposed language withdrawn after Public Comment

Examples of Combined Revision Mark-ups:

Originally proposed new language, ~~this part withdrawn after Public Comment.~~

~~Originally proposed deletion of language,~~ this part added or retained after Public Comment.

GHG Tailoring Rule

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

Regulation No. 9

Fee Regulation

Final Draft

REGULATION NO. 9
FEE REGULATION
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CHAPTER 5: AIR PERMIT FEES

AIR PERMIT FEES.

Reg.9.501 Applicability

The air permit fees contained in this section are applicable to (1) non-part 70 permits, (2) part 70 permits, and (3) general permits.

Reg.9.502 Terms Used in Fee Formulas

(A) **$/ton factor** is $16/ton until September, 1994, after which time it shall be increased annually by the percentage, if any, by which the federal Consumer Price Index exceeds that of the previous year. The Director may, after considering the factors contained in Reg.9.~~8~~901 of this regulation, decide not to increase the $/ton factor in a year when the fee fund has a balance greater than 150% of the amount of money expended from that fund in the previous year.

(B) **tons/year predominant air contaminant** is the permitted emission rate of the most predominant air contaminant (other than carbon monoxide, carbon dioxide and methane). The maximum value shall be no greater than 4,000 tons/year per facility.

(C) **tons/year chargeable emissions** is the sum of the permitted emission rates of all air contaminants (other than carbon monoxide, carbon dioxide and methane). The maximum value per air contaminant shall not exceed 4,000 tons/year per facility.

Reg.9.503 Initial Fees

Initial fees shall be assessed according to the following formulas:

(A) Non-part 70 permits

initial fee = $/ton factor x tons/year predominant air contaminant

Provided, however, no initial fee shall be less than $500 except for general permits issued to Non-part 70 sources.

(B) Part 70 permits

(1) Permits issued to part 70 sources already holding an active air permit not issued pursuant to Department Regulation #26:

initial fee = [$/ton factor x tons/year chargeable emissions]

- amount of last annual air permit fee invoice

Provided, however, that no initial fee shall be less than $1,000.

(2~~4~~) Permits issued to part 70 sources which do not hold an active air permit:

initial fee = $/ton factor x tons/year chargeable emissions

Provided, however, that no initial fee shall be less than the $/ton factor x 100.

Reg.9.504 Annual Fees

Annual fees shall be assessed according to the following formulas:

(A) Non-part 70 permits

annual fee = $/ton factor x tons/year predominant air contaminant

Provided, however, that no annual fee shall be charged for a permit in which the tons/year predominant air contaminant is less than 10 tons/year.

(B) Part 70 permits

annual fee = $/ton factor x tons/year chargeable emissions

Provided, however, that no annual fee shall be less than the $/ton factor x 100.

Reg.9.505 Modification Fees

Modification and renewal fees for air permits shall be assessed according to the following formulas:

(A) Non-part 70 permits

modification fee = $/ton factor x tons/year net emissions increase of predominant air contaminant

However, no modification fee shall be less than $400, or more than the $/ton factor x 4,000.

(B) Part 70 permits

(1) For each non-minor permit modification or each renewal permit involving a non-minor permit modification:

fee = $/ton factor x tons/year net emission increase of chargeable emissions

However, no fee shall be less than $1,000 or more than the $/ton factor x 4,000.

(2) $500 for each minor permit modification or each renewal permit involving only a minor permit modification.

Reg.9.506 Administrative Permit Amendments and Renewal Permits

There shall be no fee charged for administrative permit amendments or renewal permits not involving a permit modification, as such are defined in Regulation 26: Arkansas Operating Air Permit Program, Regulation 19: State Implementation Plan for Air Pollution Control, or Regulation 18: Arkansas Air Pollution Control Code, as applicable.

Reg.9.507 General Permits

(A) In lieu of the fees schedules above, and except as provided in 9.507(B) below, sources which qualify for a General Air Permit issued pursuant to APC&EC Reg. Nos. 18, 19, or 26 shall be subject to an Initial Fee and Annual Fee as described below:

(1) The Initial Fee of $200.00 shall be remitted with the Notice of Intent (NOI) for coverage under the applicable General Permit.

(2) Until a Notice of Termination (NOT) is submitted and approved by the Department, the Permittee shall be billed $200.00 annually thereafter on the anniversary date of coverage.

(3) When general permits are revised, no additional initial fee will be required to be submitted if the currently permitted facility has maintained coverage under the existing general permit.

(B) The following General Permit holders shall not be assessed or billed an Annual Fee:

(1) Non-part 70 General Permits in which the tons/year predominant air contaminant is less than 10 tons per year.

Reg.9.508 Permit Fees for Certain Small Businesses Subject to Part 70 Permitting Requirements

(A) For purposes of this section, the term “small business stationary source” means a stationary source that :

(1) is owned or operated by a person that employs 100 or fewer individuals
(2) is a small business concern as defined in the federal Small Business Act (www.sba.gov);
(3) is not a major stationary source;
(4) is permitted to emit less than 50 tons per year of any regulated pollutant; and
(5) is permitted to emit less than 75 tons per year of all regulated pollutants.

(B) Upon written request, the Director may reduce the Part 70 initial, Part 70 annual, or Part 70 modification fee for a small business stationary source if the source demonstrates to the satisfaction of the Director that they do not have the financial resources to pay the fee as calculated.

(C) When reducing permit fees in accordance with Reg.9.508(B), the Director shall calculate the fee as if the source is a non-Part 70 source.

Pollution Control and Ecology Commission # 014.00-019

ARKANSAS POLLUTION CONTROL and ECOLOGY COMMISSION

REGULATION NO. 19
REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR POLLUTION CONTROL

FINAL DRAFT

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CHAPTER 2: DEFINITIONS

Terms and phrases used in this regulation which are not explicitly defined herein shall have the same meaning as those terms which are used in the federal Clean Air Act. For purposes of this regulation:

"12-month period" means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

"Actual emissions" means the quantity of federally regulated air pollutants emitted from a stationary source considering emissions control equipment and actual hours of source operation or amount of material processed.

"CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions ~~in tons per year (~~tpy~~)~~, for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A - 1 to subpart A of 40 CFR part 98 - Global Warming Potentials (which is incorporated by reference as finalized by EPA as of October 30, 2009), and summing the resultant value for each to compute a tpy CO_2 equivalent emissions. For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

"Commission" means the Arkansas Pollution Control and Ecology Commission.

"Construction" means fabrication, erection, or installation of equipment. See also 40 CFR 60.2, 40 CFR 51.165, and 40 CFR 52.21.

"Control apparatus" means any device which prevents, controls, detects or records the

emission of any federally regulated air pollutants.

"Department" means the Arkansas Department of Environmental Quality, or its successor. When reference is made in this regulation to actions taken by or with reference to the Department, the reference is to the staff of the Department acting at the direction of the Director.

"Director" means the Director of the Arkansas Department of Environmental Quality, or its successor, acting directly or through the staff of the Department.

"Emission limitation" and **"emission standard"** mean a requirement established by the Department or the Administrator of the United States Environmental Protection Agency which limits the emissions of federally regulated air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

"Emission unit" means any article, machine, equipment, operation, or contrivance that emits or has the potential to emit any federally regulated air pollutant.

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device, except equipment used for any mode of vehicular transportation, capable of causing the emission of a federally regulated air pollutant into the open air, and any stack, conduit, flue, duct, vent, or similar device connected or attached to or serving the equipment.

"Federal Clean Air Act" or **"Clean Air Act"** or **"FCAA"** or **"the Act"** means the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq. and its implementing regulations as of the effective date of this regulation.

"Federally regulated air pollutant" means the following:

(A) Nitrogen oxides or any volatile organic compounds;

(B) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(C) Except as provided in (E), a~~A~~ny pollutant that is subject to any standard promulgated under 42 U.S.C. §§ 7401, et seq., as of the effective date of this regulation;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act, 42 U.S.C.§§ 7401, et seq. as amended as of July 1,1997.

(E) GHGs, except that GHGs shall not be a Federally Regulated Air Pollutant unless the GHG emissions are:

(1) from a stationary source emitting or having the potential to emit 75,000 tpy CO_2e emissions or more; and

(2) regulated under Chapter 9 of this Regulation 19.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Those emissions are those that, according to customary and good engineering practice, considering technological and economic feasibility, could not pass through a stack, chimney, vent or other functionally-equivalent opening, except that the Department will utilize the definition of fugitive emissions for those industries for which an approved EPA definition exist under federal law or regulation and which are meeting that law or regulation.

"Greenhouse gases" (GHGs) ~~is defined as~~ means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride~~, and shall be measured as CO_2e~~.

"Hazardous Air Pollutant" or **"HAP"** means any air pollutant listed pursuant to § 112 of the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq., as of the effective date of this regulation.

"Modification" means any physical change in, or change in the method of operation of, a stationary source which increases the emission rate of any federally regulated air pollutant over

permitted rates or which results in the emission of a federally regulated air pollutant not previously emitted, except that:

(A) Routine maintenance, repair, and replacement shall not be considered a physical change, and

(B) The following shall not be considered a change in the method of operation:

(1) Any change in the production rate, if such change does not exceed the permitted operating capacity of the source;

(2) Any change in the hours of operation, as long as it does not violate applicable air permit conditions; or

(3) The use of an alternate fuel or raw material, as long as it does not violate applicable air permit conditions.

(C) *De Minimis* changes, as defined in Reg. 19.407(C), and changes in ownership shall not be considered.

"National Ambient Air Quality Standard" or **"NAAQS,"** mean those ambient air quality standards promulgated by the EPA in 40 CFR Part 50.

"Opacity" means the degree to which air emissions reduce the transmission of light and obscure the view of an object in the background.

"Operator" means any person who leases, operates, controls, or supervises any equipment affected by these regulations.

"Owner" means any person who has legal or equitable title to any source, facility, or equipment affected by these regulations.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter equal to or less than 100 micrometers.

"Particulate matter emissions" means all particulate matter, other than uncombined water,

emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternate method, specified in 40 CFR Part 60 Appendix A or by a test method specified in these regulations or any supplement thereto.

"Person" means any individual or other legal entity or their legal representative or assignee.

"Plan" means the Arkansas Plan of Implementation for Air Pollution Control.

"**$PM_{2.5}$"** means particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50, or by an equivalent method designated in accordance with 40 CFR Part 53 as of December 8, 1984.

"PM_{10} emissions" means PM_{10} emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 51, Appendix M as of December 8, 1984, or by a test method specified in these regulations or any supplement thereto.

"Potential to emit" means the maximum capacity of a stationary source to emit a federally regulated air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a federally regulated air pollutant, including, but not, limited to, air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable to the extent it is regulated by the federal Clean Air Act, 42 U.S.C. §§ 7401 et seq. as of February 15, 1999. Secondary air emissions do not count in determining the potential to emit of a stationary source.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a

duly authorized representative or such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 United States dollars); or

(2) The delegation of authority to such representative is approved in advance by the Department;

(B) For partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this regulation, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For acid rain sources:

(1) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(2) The designated representative for any other purposes under Part 70.

"Secondary emissions" means those emissions of federally regulated air pollutants which, although associated with a source, are not emitted from the source itself.

"Shutdown" means the cessation of operation of equipment.

"Startup" means the setting in operation of equipment.

"Stationary source" means any building, structure, facility, or installation which emits or may

emit any federally regulated air pollutant.

"Title I modification" means any modification as defined under any regulation promulgated pursuant to Title I of the federal Clean Air Act. *De minimis* changes under Regulation 19, changes to state only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications.

"Volatile organic compounds" or **"VOC"** means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(A) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity:

acetone;
methane;
ethane;
methylene chloride (dichloromethane);
1,1,1- trichloroethane (methyl chloroform);
tetrachloroethylene (perchloroethylene);
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
trichlorofluoromethane (CFC-11);
dichlorodifluoromethane (CFC-12);
chlorodifluoromethane (HCFC-22);
trifluoromethane (HFC-23);
1,2-dichloro 1,1, 2, 2-tetrafluoroethane (CFC-114);
chloropentafluoroethane (CFC-115);
1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
1,1,1,2-tetrafluoroethane (HFC-134a);
1,1-dichloro 1-fluoroethane (HCFC-141b);
1-chloro 1,1-difluoroethane (HCFC-142b);
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
pentaflurorethane (HFC-125);
1,1,2,2-tetrafluoroethane (HFC-134);
1,1,1-trifluoroethane (HFC-143a);
1,1-difluoroethane (HFC-152a);
parachlorobenzotrifluoride (PCBTF);
cyclic, branched, or linear completely methylated siloxanes;
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);

difluoromethane (HFC-32);
ethylfluoride (HFC-161);
1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
1,1,2,2,3-pentafluoropropane (HFC-245ca);
1,1,2,3,3-pentafluoropropane (HFC 245ea);
1,1,1,2,3-pentafluoropropane (HFC-245eb);
1,1,1,3,3-pentafluoropropane (HFC-245fa);
1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
1,1,1,3,3-pentafluorobutane (HFC-365mfc);
chlorofluoromethane (HCFC-31);
1 chloro-1-fluoroethane (HCFC-151a);
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100);
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane
($(CF_3)_2CFCF_2OCH_3$);
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE 7200);
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane
($(CF_3)_2CFCF_2OC_2H_5$);
methyl acetate;
1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$ or HFE-7000);
3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane
(HFE-7500)
1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);
methyl formate ($HCOOCH_3$)
1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
and perfluorocarbon compounds which fall into these classes:

(1) cyclic, branched, or linear, completely fluorinated alkanes;

(2) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(B) For purposes of determining compliance with emission limits, VOC will be measured by the test methods in the approved State Implementation Plan (SIP) or 40 CFR Part 60, Appendix A, as of July 1, 1997, as applicable. Where such a

method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Department.

(C) As a precondition to excluding these compounds as VOC or at any time thereafter, the Department may require an owner or operator to provide monitoring or testing results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

(D) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

CHAPTER 4: MINOR SOURCE REVIEW

Reg. 19.401 General Applicability

No person shall cause or permit the operation, construction, or modification of a stationary source, whose actual emissions are:

75 tons per year or more of carbon monoxide;

40 tons per year or more of nitrogen oxides;

40 tons per year or more of sulfur dioxide;

40 tons per year or more of volatile organic compounds;

15 tons per year or more of PM_{10};

0.5 tons per year or more of lead;

2.0 ton per year or more of any single hazardous air pollutant; or

5.0 tons per year or more of any combination of hazardous air pollutants

without first obtaining a permit from the Department pursuant to the provisions of this chapter.

Reg. 19.402 Approval Criteria

No permit shall be granted or modified under this chapter unless the owner/operator demonstrates to the reasonable satisfaction of the Department that the stationary source will be constructed or modified to operate without resulting in a violation of applicable portions of this regulation or without interfering with the attainment or maintenance of a national ambient air quality standard.

Reg. 19.403 Owner/Operator's Responsibilities

Issuance of a permit by the Department does not affect the responsibility of the owner/operator to comply with applicable portions of this regulation.

Reg. 19.404 Required Information

(A) General

Application for a permit shall be made on such forms and contain such information as the Department may reasonably require, including but not limited to:

(1) information on the nature and amounts of federally regulated air pollutants to be emitted by the stationary source; and

(2) such information on the location, design, and operation of stationary source as the Department may reasonably require.

(B) Duty to Supplement Submittal

If, while processing an application that has been determined to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, the Department may request such information in writing and set a reasonable deadline for a response.

(C) Duty to Correct Submittal

Any owner/operator who fails to submit any relevant facts or who has submitted incorrect information, shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any relevant requirements that become applicable to the stationary source before final action is taken on its application.

Reg. 19.405 Action on Application

(A) Technical Review

The Department will review the application submitted under this chapter in order to ensure to their reasonable satisfaction that:

(1) the stationary source will be constructed or modified to operate without interfering with attainment or maintenance of a national ambient air quality standard;

(2) the stationary source will be constructed or modified to operate without violating any applicable regulation adopted by the U.S. Environmental Protection Agency pursuant to §§111, 112, and 114 of the Clean Air Act as amended;

(3) the stationary source will be constructed or modified to operate without resulting in a violation of any applicable provisions of this regulation;

(4) the emission rate calculations are complete and accurate; and

(5) if the facility wishes to measure and/or monitor operating parameters rather than actual emissions, the application describes a process which will be used to ensure that the calculations are translated into enforceable limits on operational parameters rather than emissions.

(B) Proposed Action

(1) If the Department initially determines the requirements of Reg. 19.405(A) are met, they shall prepare a draft permit which:

(a) contains such conditions as are necessary to comply with this Regulation;

(b) addresses all ~~recognized~~ federally regulated air pollutant emissions and all federally regulated air pollutant emitting equipment at the stationary source except pollutants or equipment specifically exempt or as specifically provided for in paragraph (c) below; and

(c) establishes Best Available Control Technology (BACT) permitted emission rates, emission limitations or other enforceable conditions for GHG emissions pursuant to Chapter 9 of this Regulation, if applicable. Draft permits for facilities not subject to a BACT determination in regard to GHG emissions pursuant to the provisions at Chapter 9 of this Regulation shall not contain permitted emission rates, emission limitations or other enforceable conditions related to GHG emissions. However, the

applicant may request that the Department include permitted emission rates, emission limitations or other enforceable conditions related to GHG emissions in the draft permit in order to set enforceable limits for the purpose of establishing synthetic minor status. In the event any provision of Regulation 19 is found to be in conflict with this Section 19.405(B)(1), this Section shall take precedence.

(2) If the Department initially determines the requirements of this chapter are not met, they shall prepare a notice of intent to deny. This notice will state the reasons for the Department's denial of the stationary source's submittal.

(3) Except as provided in Reg. 19.407, the public shall have an opportunity to comment on the Department's proposed permit decision in accordance with Reg. 19.406.

(4) Within 90 days of receipt by the Department of an initial permit application, or an application for a major modification which contains such information as required by the Department (unless said period is extended by mutual agreement between the Department and the applicant), the Department shall notify the applicant in writing of its draft permitting decision. If the Department fails to take action of the application within the prescribed time frames, the aggrieved applicant may petition the Commission for relief from Department inaction. The Commission shall either grant or deny the petition within 45 days of its submittal.

(C) Final Action

The Department shall take final action on a permit application after the close of the public comment period. The Department shall notify in writing the owner/operator and any person that submitted a written comment, of the Department's final action and the Department's reasons for its final action.

Reg. 19.406 Public Participation

(A) General

No permit shall be issued, denied, or modified unless the public has first had an opportunity to comment on the information submitted by the owner/operator and the Department's analysis, as demonstrated by the permit record, of the effect of construction or modification on ambient air quality, including the Department's proposed approval or disapproval of the permit.

(B) Public Availability of Information

For purposes of this section, opportunity to comment shall include, at a minimum:

(1) Availability for the public inspection in at least one location in the area where the source is located, or proposes to locate, and in the Department's central offices of the Department's draft decision, information submitted by the owner/operator, and any information developed by the Department in support of its draft permit decision;

(2) A 30-day period for submittal of public comment (beginning on the date of the latest newspaper notice, ending on the date 30 days later);

(3) A publication in a newspaper of general circulation in the area where the source is located or proposes to locate, and in a State publication designed to give general public notice. Such notice shall, as a minimum, describe the locations at which the information submitted by the owner/operator and the Department's analysis of this information, may be inspected and the procedure for submitting public comment;

(4) A copy of the notice, required pursuant to this subsection, shall be sent to the owner/operator and to the:

(a) Regional Administrator of the United States Environmental Protection Agency;

(b) mayor of the community where the stationary source is proposed to be constructed or modified;

(c) county judge of the county where the equipment is proposed to be constructed or modified; and

(d) appropriate air pollution control agencies of adjoining states if the construction or modification of the source will impact air quality in adjoining states.

(5) Public comments addressing the technical merits of the permit application and the Department's analysis of the effect of the proposed emissions on air quality submitted in accordance with procedures in the public notice shall be considered by the Department prior to taking final action on the permit application.

Reg. 19.407 Permit Amendments

(A) Administrative Permit Amendments

(1) An administrative permit amendment is a permit revision that:

(a) corrects a typographical error;

(b) identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change in the source;

(c) requires more frequent monitoring or reporting by the permittee;

(d) incorporates a change in the permit involving the retiring of equipment or emission units, or the decrease of permitted emissions from equipment or emission units; or

(e) incorporates a change to the facility's insignificant activities list.

(2) The Department shall revise the permit as expeditiously as practicable and may incorporate such revisions without providing notice to the public.

(3) The applicant may implement the changes addressed in the request for an administrative amendment immediately upon approval.

(B) Change in Ownership

(1) Permits issued under this regulation shall remain freely transferable provided:

(a) the applicant for the transfer notifies the Director at least thirty (30) days in advance of the proposed transfer date on such forms as the Director may reasonably require, and

(b) submits a disclosure statement in accordance with Commission Regulation 8, Administrative Procedures, or other such documents as required by the Department.

(2) The Director may deny the issuance or transfer of any permit, license, certification, or operational authority if he or she finds, based upon the disclosure statement and other investigation which he or she deems appropriate, that:

(a) The applicant has a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction;

(b) An applicant which owns or operates other facilities in the state is not in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, the environmental laws or regulations of this state; or

(c) A person with a history of noncompliance with environmental laws or regulations of this state or any other jurisdiction is affiliated with the applicant to the extent of being capable of significantly influencing the practices or operations of the applicant which could have an impact upon the environment.

(3) Public notice requirements shall not apply to changes in ownership or changes in name.

(C) *De Minimis* Changes

(1) A proposed change to a facility will be considered *De Minimis* if:

(a) minimal judgment is required to establish the permit requirements for the change; and

(b) the change will result in a trivial environmental impact.

(2) The environmental impact of a proposed change generally will be considered trivial if the potential emissions from the change alone, without taking into account any corresponding emission reductions, will:

(a) be less than the following amounts:

(i) Seventy-five (75) tons per year of carbon monoxide,;

(ii) Forty (40) tons per year of nitrogen dioxides, sulfur dioxides, or volatile organic compounds;

(iii) Twenty-five (25) tons per year of particulate matter emissions;

(iv) Fifteen (15) tons per year of PM_{10} emissions; ~~and~~

(v) One-half (0.5) a ton per year lead; ~~and~~

~~(vi) Seventy-five thousand (75,000) tons per year of CO_2e;~~

(b) or, result in an air quality impact less than:

Pollutant	*De Minimis* Concentration	Averaging Time
carbon monoxide	500 $\mu g/m^3$	8-hour
nitrogen dioxide	10 $\mu g/m^3$	annual
PM_{10}	8 $\mu g/m^3$	24-hour
sulfur dioxide	18 $\mu g/m^3$	24-hour
lead	0.1 $\mu g/m^3$	3-month

(3) ~~The following changes will not be considered *De Minimis* changes:~~ A proposed change will be considered *De Minimis* if the increases are less than 75,000 tpy of CO_2e and other pollutant emission increases otherwise qualify as *De Minimis*

under this section.

(4) The following changes will not be considered *De Minimis* changes:

(a) any increase in the permitted emission rate at a stationary source without a corresponding physical change or change in the method of operation at the source;

(b) any change which would result in a violation of the Clean Air Act;

(c) any change seeking to change a case-by-case determination of an emission limitation established pursuant to Best Available Control Technology (BACT), §112(g), §112(i)(5), §112(j), or §111(d) of the Clean Air Act as amended as of February 15, 1999;

(d) a change that would result in a violation of any provision of this regulation;

(e) any change in a permit term, condition, or limit that a source has assumed to avoid an applicable requirement to which the source would otherwise be subject;

(f) any significant change or relaxation to existing testing, monitoring, reporting, or recordkeeping requirements; or

(g) any proposed change which requires more than minimal judgment to determine eligibility.

(~~4~~5) A source may not submit multiple applications for *De Minimis* changes that are designed to conceal a larger modification that would not be considered a *De Minimis* change. The Department will require such multiple applications be processed as a permit modification with public notice and reconstruction requirements. Deliberate misrepresentation may be grounds for permit revocation.

(~~5~~6) The applicant may implement *De Minimis* changes immediately upon approval by the Department.

(~~6~~7) The Department shall revise the permit as expeditiously as practicable and may incorporate *De Minimis* changes without providing notice to the public. The applicant may implement *De Minimis* changes immediately upon approval by the Department.

Reg. 19.408 Exemption from Permitting

(A) Insignificant Activities

Stationary sources and activities listed in Appendix A of this regulation shall be considered to be insignificant and will not require a permit under this chapter or be included in a source's permit.

(B) Grandfathering

Stationary sources operating prior to June 30, 1975, and which have not been modified since, will not be required to obtain a permit under this chapter.

Reg. 19.409 Transition

Facilities which are now subject to this regulation which were not previously subject to this regulation shall be in full compliance within 180 days of the effective date of this regulation. Facilities which are now subject to permitting under this regulation which were not previously subject to permitting under this regulation shall submit a complete application within 180 days of the effective date of this regulation. The Director may extend this compliance period on a case-by-case basis provided that the total compliance period does not exceed one year.

Reg. 19.410 Permit Revocation and Cancellation

(A) Revocation

Any permit issued under this regulation is subject to revocation, suspension, or modification in whole or in part, for cause, including without limitation:

(1) Violation of any condition of the permit;

(2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

(3) Change in any applicable regulation or change in any pre-existing condition affecting the nature of the emission that requires either a temporary or permanent reduction or elimination of the permitted emission.

(B) Cancellation

The Director may cancel a permit if the construction or modification is not begun within 18 months from the date of the permit issuance or if the work involved in the construction or modification is suspended for a total of 18 months or more.

Reg. 19.411 General Permits

(A) General Authority

The Department may, after notice and opportunity for public participation provided under this chapter, issue a general permit covering numerous similar sources. The criteria for the review and approval of permits under this chapter shall be used for general permits as well. Any general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. They shall also include enforceable emission limitations or other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this regulation. To sources that qualify, the Department shall grant the conditions and terms of the general permit. The source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

(B) Application

Sources that would qualify for a general permit must apply to the Department for coverage under the terms of the general permit or must apply for permit consistent with this chapter. The Department may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(1) When any application for the issuance of a new permit or a modification of an existing permit is filed with the Department, the Department shall cause notice of

the application to be published in a newspaper of general circulation in the county in which the proposed facility is to be located.

(2) The notice required by Reg. 19.411(B)(1) shall advise that any interested person may request a public hearing on the permit application by giving the Department a written request within ten (10) days of the publication of the notice.

(3) Should a hearing be deemed necessary by the Department, or in the event the Department desires such a hearing, the Department shall schedule a public hearing and shall, by first class mail, notify the applicant and all persons who have submitted comments of the date, time, and place thereof.

Reg. 19.412 Dispersion Modeling

The following shall apply when dispersion or other air quality modeling is used to meet the requirements of this chapter.

(A) General

All applications of air quality modeling involved in this chapter shall be based on the applicable models, data bases, and other requirements specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models) as of November 9, 2005.

(B) Substitution

Where an air quality model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific pollutant or type of stationary source. Written approval of the Administrator of the EPA must be obtained for any modification or substitution.

Reg. 19.413 Confidentiality

Information which constitutes a trade secret shall be held confidential and segregated from the public files of the Department if requested in writing by the permit applicant in accordance with this subsection.

(A) For purposes of this subsection, "Trade Secret" means any information, including formula, pattern, compilation, program, device, method, technique, process, or rate of production that:

(1) Derives independent economic value (actual or potential) from not being generally known to, and not being readily ascertainable through, proper means by other persons who can obtain economic value from its disclosure or use, and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(B) In order to establish entitlement to confidentiality, the applicant must submit a sworn affidavit to the Department that is subject to public scrutiny which describes in a manner that does not reveal trade secrets, the processes or market conditions that supports the applicant's confidentiality claim in the terms of Reg. 19.413(A)(1) and (2). This affidavit must also recite the following:

"The applicant agrees to act as an indispensable party and to exercise extraordinary diligence in any legal action arising from the Department's denial of public access to the documents or information claimed herein to be a trade secret."

If an applicant anticipates numerous permit modifications that may involve regulatory review of trade secrets, it may submit an omnibus affidavit establishing the prerequisites of Reg. 19.413(A)(1) and (2) and reference this document in future confidentiality claims.

(C) Confidentiality claims shall be afforded interim protected status until the Department determines whether the requirements of Reg. 19.413(B) are satisfied. The Department shall make such determination prior to the issuance of any permit or publication of any draft permit. In the event the Department does not make such determination prior to permit issuance, the information shall be deemed confidential until a request is made. If a third party request to review information claimed as confidential is received before the Department provides its written determination concerning the claim, the Department shall not release such information before

notifying the applicant of the request. The Department shall notify the applicant of the request and the Department's determination on the confidentiality claim at least two business days before releasing the information, at which time the applicant may choose to supplement its affidavit supporting confidentiality or seek legal recourse.

(D) For any permit application submitted subject to a claim of trade secret, the applicant shall provide two copies of the application; one prominently marked as confidential and another that is subject to public review with confidential information excised. The Department will not accept applications that are deemed totally confidential except under extraordinary circumstances guaranteeing future disclosure at a meaningful time for public review.

Reg. 19.414 Operational Flexibility-Applicant's Duty to Apply for Alternative Scenarios

Any operating scenario allowed for in a permit may be implemented by the facility without the need for any permit revision or any notification to the Department. It is incumbent upon the permit applicant to apply for any reasonably anticipated alternative facility operating scenarios at the time of permit application. The Department shall include approved alternative operating scenarios in the permit.

Reg. 19.415 Changes Resulting in No Emissions Increases

A permitted source may make changes within the facility that contravene permit terms without a permit revision if the changes:

(A) Are not modifications under any provision of Title I of the Act;

(B) Do not exceed emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions);

(C) Do not violate applicable requirements; and

(D) Do not contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements;

provided that the facility provides the Department with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days, or such shorter time frame that Department allows for emergencies. The source and Department shall attach each such notice to their copy of the relevant permit. For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

Reg. 19.416 Permit Flexibility

(A) The Department may grant an extension to any testing, compliance or other dates in the permit. No extensions shall be authorized until the permittee of the facility receives written approval from the Department. The Department may grant such a request, at its discretion, in the following circumstances:

(1) The permittee of the facility makes such a request in writing at least 15 days in advance of the deadline specified in the facility's permit;

(2) The extension does not violate a federal requirement;

(3) The permittee of the facility demonstrates the need for the extension; and

(4) The permittee of the facility documents that all reasonable measures have been taken to meet the current deadline and documents reasons the current deadline cannot be met.

(B) The Department may grant a request to allow temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limit in a facility's permit. No such activities shall be authorized until the permittee of the facility receives written approval from the Department. The Department may grant such a request, at its discretion, in the following circumstances:

(1) The permittee of the facility makes such a request in writing at least 30 days in advance of the date that temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limit in a facility's permit;

(2) Such a request does not violate a federal requirement;

(3) Such a request is temporary in nature;

(4) Such a request will not result in a condition of air pollution;

(5) The request contains such information necessary for the Department to evaluate the request, including but not limited to, quantification of such emissions and the date and time such emission will occur;

(6) Such a request will result in increased emissions less than five tons of any individual criteria pollutant, one ton of any single HAP and 2.5 tons of total HAPs; and

(7) The permittee of the facility maintains records of the dates and results of such temporary emissions and/or testing.

(C) The Department may grant a request to allow an alternative to the monitoring specified in a facility's operating permit. No such activities shall be authorized until the permittee of the facility receives written approval from the Department. The Department may grant such a request, at its discretion, in the following circumstances:

(1) The permittee operator of the facility makes such a request in writing at least 30 days in advance of the first date that the monitoring alternative will be used at the facility;

(2) Such a request does not violate a federal requirement;

(3) The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the facility's operating permit; and

(4) Any such request, if approved by the Department, is incorporated into the next permit modification application by the permittee of the facility.

Reg. 19.417 Registration

(A) Sources currently holding permits issued pursuant to Regulation 19 but whose emissions are below the permitting thresholds of 19.401, and above the registration thresholds of Reg. 18.315 may elect to continue to operate under their existing Regulation 19 permit or they may submit a registration under Reg. 18.315 and request their Regulation 19 permit to be terminated. The Regulation 19 permit shall remain in effect until terminated. If a source takes no action, the Regulation 19 permit shall remain in effect.

(B) A source otherwise subject to registration under Reg. 18.315 may elect to instead operate under a permit issued in accordance with Reg. 19.402.

CHAPTER 9: PREVENTION OF SIGNIFICANT DETERIORATION

Reg. 19.901 Title

The following rules and regulations of the Arkansas Pollution Control and Ecology Commission, adopted in accordance with the provisions of Part II of the Arkansas Water and Air Pollution Control Act at A.C.A §§8-4-101 et seq., shall be known as the Prevention of Significant Deterioration Regulations of the Arkansas Plan of Implementation for Air Pollution Control, hereinafter referred to, respectively, as the "PSD Regulations."

Reg. 19.902 Purposes

Promulgation and enforcement of these PSD Regulations is intended to further the purposes of the Plan and the Regulations of the Plan, including, but not limited to, acceptance of delegation by the EPA of authority for enforcement of regulations governing the prevention of significant deterioration of air quality and regulations governing the protection of visibility in mandatory Class I federal areas.

Reg. 19.903 Definitions

(A) "Advance notification" (of a permit application) means any written communication which establishes the applicant's intention to construct, and which provides the Department with sufficient information to determine that the proposed source may constitute a major new source or major modification, and that such source may affect any mandatory Class I federal area, including, but not limited to, submittal of a draft or partial permit application, a PSD monitoring plan, or a sufficiently detailed letter. "Advance notification" does not include general inquiries about the Department's regulations.

(B) All other terms used herein shall have the same meaning as set forth in Chapter 2 of Regulation 19 or in 40 CFR 52.21(b) [PSD] and 40 CFR 51.301 [Protection of Visibility] as of November 29, 2005, all as in effect upon the latest date of amendment of this supplement, unless manifestly inconsistent with the context in which they are used. Wherever there is a difference between the definitions in Chapter 2 of Regulation 19 and those listed in 40 CFR 52.21(b) and 40 CFR 51.301,

the federal definitions as listed in 40 CFR 52.21(b) and 40 CFR 51.301 as of November 29, 2005, shall apply.

(C) The definition for "routine maintenance, repair and replacement" in 40 CFR 52.21(b)(2)(iii)(a) is not incorporated.

Reg. 19.904 Adoption of Regulations

(A) Except where manifestly inconsistent with the provisions of the Clean Air Act, as amended, or with federal regulations adopted pursuant thereto, and as amended specifically herein by paragraphs (B), (C), (D), (E), and (F) of Reg. 19.904, the Arkansas Department of Environmental Quality shall have those responsibilities and that authority, with reference to the State of Arkansas, granted to the Administrator of the EPA under 40 CFR 52.21 (a)(2) through (bb), as in effect on November 29, 2005, which are hereby incorporated herein by reference, with the exception of 40 CFR 52.21(b)(55-58), 40 CFR 52.21(i) (9), and 40 CFR 52.21(cc), which are not incorporated. In the absence of a specific imposition of responsibility or grant of authority, the Department shall be deemed to have that responsibility and authority necessary to attain the purposes of the Plan, these PSD Regulations, and the applicable federal regulations, as incorporated herein by reference.

(B) Exclusions from the consumption of increments, as provided in 40 CFR 51.166(f)(1)(iii) as of November 29, 2005, shall be effective immediately. Submission of this Plan under the Governor's signature constitutes a request by the Governor for this exclusion.

(C) In addition to the requirements of 40 CFR 52.21(o) as of November 29, 2005, the following requirements [designated as Reg. 19.904(C)(1),(2),(3) and (4)] shall also apply:

(1) Where air quality impact analyses required under this part indicate that the issuance of a permit for any major stationary source or for any major modification would result in the consumption of more than fifty percent (50%) of any available annual increment or eighty percent (80%) of any short term increment, the person applying for such a permit shall submit to the Department an assessment of the following factors:

(a) Effects that the proposed consumption would have upon the industrial and economic development within the area of the proposed source; and

(b) Alternatives to such consumption, including alternative siting of the proposed source or portions thereof.

(2) The assessment required under subparagraph (4) above shall be made part of the application for permit and shall be made available for public inspection as provided in 40 CFR 52.21(q) as of November 29, 2005.

(3) The assessment required under subparagraph (4) above shall be in detail commensurate with the degree of proposed increment consumption, both in terms of the percentage of increment consumed and the area affected.

(4) The assessment required under subparagraph (4) above may be made effective where a proposed source would cause an increment consumption less than that specified in said subparagraph if the Director finds that unusual circumstances exist in the area of the proposed source which warrant such an assessment. The Director shall notify the applicant in writing of those circumstances which warrant said assessment. The Commission may rescind or modify the Director's action, upon a showing by the applicant that the circumstances alleged by the Director either do not exist or do not warrant the aforecited assessment.

(D) In addition to the requirements of 40 CFR 52.21(p)(1) as of November 29, 2005, the following requirements shall also apply:

Impacts on mandatory Class I federal areas include impacts on visibility. The preliminary determination that a source may affect air quality or visibility in a mandatory Class I federal area shall be made by the Department, based on screening criteria agreed upon by the Department and the Federal Land Manager.

(E) In all instances wherein the aforesaid 40 CFR 51.301 and 40 CFR 52.21 refer to the Administrator or the Environmental Protection Agency, the reference, for the purposes of paragraph (A) of Reg. 19.904, shall be deemed to mean the Arkansas

Department of Environmental Quality, unless the context plainly dictates otherwise, except in the following sections:

(1) Exclusion from increment consumption: 40 CFR 52.21(f)(1)(v), (f)(3), and (f)(4)(I);

(2) Redesignation: 40 CFR 52.21(g)(1), (g)(2), (g)(4), (g)(5), and (g)(6);

(3) Air quality models: 40 CFR 52.21 (2).

(F) Redesignation of air quality areas in Arkansas shall comply with Arkansas Code Annotated 1987 Section 8-3-101 et seq.

(G) For the purpose of the regulation of GHGs, only the standards and requirements promulgated by EPA as of June 3, 2010, related to the permitting of GHG emissions shall apply to the requirements of 40 CFR 52.21, as of November 29, 2005, incorporated by reference at Reg.19.904(A). The following definitions and requirements shall also apply:

(1) "Greenhouse gases" (GHGs) means the air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in Reg. 19.904(G)(4) through Reg.19.904(G)(5).

(2) For purposes of Reg. 19.904(G)(3) through Reg.19.904(G)(5), the term tons per year (tpy) "CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(a) Multiplying the mass amount of emissions in tpy, for each of the six greenhouse gases in the pollutant GHGs, by ~~the~~each gas's associated global warming potential published at Table A - 1 to subpart A of 40 CFR part 98 - Global Warming Potentials (as of October 30, 2009); and

(b) Sum the resultant values from Reg. 19.904(G)(2)(a) for each gas to compute a tpy CO_2e.

(c) For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(3) The term "emissions increase" as used in Reg. 19.904(G)(4) through Reg. 19.904(G)(5) shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv), as of November 29, 2005), and a significant net emissions increase (as defined in 40 CFR 52.21(b)(3), as of November 29, 2005, and 40 CFR 52.21(b)(23), as of November 29, 2005), occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii), as of November 29, 2005.

(4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit GHGs at 75,000 tpy CO_2e or more; or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of GHGs of 75,000 tpy CO_2e or more.

(5) Beginning July 1, 2011, in addition to the provisions in Reg.19.904(G)(4) of this section, the pollutant GHGs shall also be subject to regulation:

(a) At a new stationary source that will emit or have the potential to emit

100,000 tpy CO_2e or more; or

(b) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e or more, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(6) ~~In the event that any provisions of enabling federal law are overturned by a court of competent jurisdiction, such provisions adopted in this Regulation, are void and of no effect.~~If federal legislation or a federal court stays, invalidates, delays the effective date of, or otherwise renders unenforceable, in whole or in part, EPA's regulation of greenhouse gases, then the provisions of Regulation 19 concerning greenhouse gases based thereon shall be stayed and shall not be enforceable until such time as the Commission makes a final decision on whether or not to revise Regulation 19 due to the federal legislation or federal court order.

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

REGULATION NO. 19

APPENDIX A

Insignificant Activities List

APPENDIX A: INSIGNIFICANT ACTIVITIES LIST

The following types of activities or emissions are deemed insignificant on the basis of size, emission rate, production rate, or activity. Certain of these listed activities include qualifying statements intended to exclude many similar activities. By such listing, the Department exempts certain sources or types of sources from the requirements to obtain a permit or plan under this regulation. Listing in this part has no effect on any other law to which the activity may be subject. Any activity for which a state or federal applicable requirement applies (such as NSPS, National Emission Standards for Hazardous Air Pollutants [NESHAP], or Maximum Achievable Control Technology [MACT]) is not insignificant, even if this activity meets the criteria below.

Group A

The following emission units, operations, or activities must either be listed as insignificant or included in the permit application as sources to be permitted. The listing of insignificant sources does not necessarily mean that the emissions from these sources must be quantified.

1. Fuel burning equipment with a design rate less than 10 MMBtu per hour, provided that the aggregate air pollutant specific emissions from all such units listed as insignificant do not exceed 5 tons per year (tpy) of any combination of HAPs, 75000 tpy carbon dioxide, and 10 tpy of any other air pollutant.

2. Storage tanks less than or equal to 250 gallons storing organic liquids having a true vapor pressure less than or equal to 3.5 psia, provided that the aggregate air pollutant specific emissions from all such liquid storage tanks listed as insignificant do not exceed 5 tpy of any combination of HAPs and 10 tpy of any other air pollutant.

3. Storage tanks less than or equal to 10,000 gallons storing organic liquids having a true vapor pressure less than or equal to 0.5 psia, provided that the aggregate air pollutant specific emissions from all such liquid storage tanks listed as insignificant do not exceed 5 tpy of any combination of HAPs and 10 tpy of any other air pollutant.

4. Caustic storage tanks that contain no VOCs.

5. Emissions from laboratory equipment/vents used exclusively for routine chemical or physical analysis for quality control or environmental monitoring purposes provided that the aggregate air pollutant specific emissions from all such equipment/vents considered

insignificant do not exceed 5 tpy of any combination of HAPs and 10 tpy of any other air pollutant.

6. Non-commercial water washing operations of empty drums less than or equal to 55 gallons with less than three percent of the maximum container volume of material.

7. Welding or cutting equipment related to manufacturing activities that do not result in aggregate emissions of HAPs in excess of 0.1 tpy.

8. Containers of less than or equal to 5 gallons in capacity that do not emit any detectable VOCs or HAPs when closed. This includes filling, blending, or mixing of the contents of such containers by a retailer.

9. Equipment used for surface coating, painting, dipping, or spraying operations, provided the material used contains no more than 0.4 lb/gal VOCs, no hexavalent chromium, and no more than 0.1 tpy of all other HAPs.

10. Non-production equipment approved by the Department, used for waste treatability studies or other pollution prevention programs provided that the emissions are less than 10 tpy of any air pollutant regulated under this regulation or less than 2 tpy of a single HAP or 5 tpy of any combination of HAPs.[1]

11. Operation of groundwater remediation wells, including emissions from the pumps and collection activities provided that the emissions are less than 10 tpy of any air pollutant regulated under this regulation or less than 2 tpy of a single HAP or 5 tpy of any combination of HAPs. This does not include emissions from air-stripping or storage.

12. Emergency use generators, boilers, or other fuel burning equipment that is of equal or smaller capacity than the primary operating unit, cannot be used in conjunction with the primary operating unit, and does not emit or have the potential to emit regulated air pollutants in excess of the primary operating unit and not operated more than 90 days a year. This does not apply to generators which provide electricity to the distribution grid.

13. Other activities for which the facility demonstrates that no enforceable permit conditions are necessary to e~~i~~nsure compliance with any applicable law or regulation provided that

[1] The treatability study or pollution prevention program must be approved separately. The activity creating the emissions must also be determined to be insignificant as discussed in the introduction to this group.

the emissions are less than 75,000 tpy carbon dioxide, ~~5 tpy of any pollutant regulated under this regulation or less than~~ 1 tpy of a single HAP or 2.5 tpy of any combination of HAPs, or 5 tpy of any other air pollutant regulated under this regulation. These emission limits apply to the sum of all activities listed under this group.

Group B

The following emission units, operations, or activities need not be included in a permit application:

1. Combustion emissions from propulsion of mobile sources and emissions from refueling these sources unless regulated by Title II and required to obtain a permit under Title V of the federal Clean Air Act, as amended. This does not include emissions from any transportable units, such as temporary compressors or boilers. This does not include emissions from loading racks or fueling operations covered under any applicable federal requirements.

2. Air conditioning and heating units used for comfort that do not have applicable requirements under Title VI of the Act.

3. Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process.

4. Non-commercial food preparation or food preparation at restaurants, cafeterias, or caterers, etc.

5. Consumer use of office equipment and products, not including commercial printers or business primarily involved in photographic reproduction.

6. Janitorial services and consumer use of janitorial products.

7. Internal combustion engines used for landscaping purposes.

8. Laundry activities, except for dry-cleaning and steam boilers.

9. Bathroom/toilet emissions.

10. Emergency (backup) electrical generators at residential locations.

11. Tobacco smoking rooms and areas.

12. Blacksmith forges.

13. Maintenance of grounds or buildings, including: lawn care, weed control, pest control, and water washing activities.

14. Repair, up-keep, maintenance, or construction activities not related to the source's primary business activity, and not otherwise triggering a permit modification. This may include, but is not limited to such activities as general repairs, cleaning, painting, welding, woodworking, plumbing, re-tarring roofs, installing insulation, paved/paving parking lots, miscellaneous solvent use, application of refractory, or insulation, brazing, soldering, the use of adhesives, grinding, and cutting.[2]

15. Surface-coating equipment during miscellaneous maintenance and construction activities. This activity specifically does not include any facility whose primary business activity is surface-coating or includes surface-coating or products.

16. Portable electrical generators that can be "moved by hand" from one location to another.[3]

17. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal, or plastic.

18. Brazing or soldering equipment related to manufacturing activities that do not result in emission of HAPs.[4]

19. Air compressors and pneumatically operated equipment, including hand tools.

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[2] Cleaning and painting activities qualify if they are not subject to VOC or HAP control requirements. Asphalt batch plant owners/operators must get a permit.

[3] "Moved by hand" means that it can be moved by one person without assistance of any motorized or non-motorized vehicle, conveyance, or device.

[4] Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are more appropriate for treatment as insignificant activities based on size or production thresholds. Brazing, soldering, and welding equipment, and cutting torches related directly to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this appendix.

20. Batteries and battery charging stations, except at battery manufacturing plants.

21. Storage tanks, vessels, and containers holding or storing liquid substances that do not contain any VOCs or HAPs.[5]

22. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and no volatile aqueous salt solutions, provided appropriate lids and covers are used and appropriate odor control is achieved.

23. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and non-volatile aqueous salt solutions, provided appropriate lids and covers are used and appropriate odor control is achieved.

24. Drop hammers or presses for forging or metalworking.

25. Equipment used exclusively to slaughter animals, but not including other equipment at slaughter-houses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

26. Vents from continuous emissions monitors and other analyzers.

27. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

28. Hand-held applicator equipment for hot melt adhesives with no VOCs in the adhesive.

29. Lasers used only on metals and other materials which do not emit HAPs in the process.

30. Consumer use of paper trimmers/binders.

31. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.

32. Salt baths using non-volatile salts that do not result in emissions of any air pollutant covered by this regulation.

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[5] Exemptions for storage tanks containing petroleum liquids or other volatile organic liquids are based on size and limits including storage tank capacity and vapor pressure of liquids stored and are not appropriate for this list.

33. Laser trimmers using dust collection to prevent fugitive emissions.

34. Bench-scale laboratory equipment used for physical or chemical analysis not including lab fume hoods or vents.

35. Routine calibration and maintenance of laboratory equipment or other analytical instruments.

36. Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.

37. Hydraulic and hydrostatic testing equipment.

38. Environmental chambers not using hazardous air pollutant gases.

39. Shock chambers, humidity chambers, and solar simulators.

40. Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

41. Process water filtration systems and demineralizers.

42. Demineralized water tanks and demineralizer vents.

43. Boiler water treatment operations, not including cooling towers.

44. Emissions from storage or use of water treatment chemicals, except for hazardous air pollutants or pollutants listed under regulations promulgated pursuant to Section 112(r) of the Act as of July 1, 1997, for use in cooling towers, drinking water systems, and boiler water/feed systems.

45. Oxygen scavenging (de-aeration) of water.

46. Ozone generators.

47. Fire suppression systems.

48. Emergency road flares.

49. Steam vents and safety relief valves.

50. Steam leaks.

51. Steam cleaning operations.

52. Steam and microwave sterilizers.

53. Site assessment work to characterize waste disposal or remediation sites.

54. Miscellaneous additions or upgrades of instrumentation.

55. Emissions from combustion controllers or combustion shutoff devices but not combustion units itself.

56. Use of products for the purpose of maintaining motor vehicles operated by the facility, not including air cleaning units of such vehicles (i.e. antifreeze, fuel additives).

57. Stacks or vents to prevent escape of sanitary sewer gases through the plumbing traps.

58. Emissions from equipment lubricating systems (i.e. oil mist), not including storage tanks, unless otherwise exempt.

59. Residential wood heaters, cookstoves, or fireplaces.

60. Barbecue equipment or outdoor fireplaces used in connection with any residence or recreation.

61. Log wetting areas and log flumes.

62. Periodic use of pressurized air for cleanup.

63. Solid waste dumpsters.

64. Emissions of wet lime from lime mud tanks, lime mud washers, lime mud piles, lime mud filter and filtrate tanks, and lime mud slurry tanks.

65. Natural gas odoring activities unless the Department determines that emissions constitute air pollution.

66. Emissions from engine crankcase vents.

67. Storage tanks used for the temporary containment of materials resulting from an emergency reporting to an unanticipated release.

68. Equipment used exclusively to mill or grind coatings in roll grinding rebuilding, and molding compounds where all materials charged are in paste form.

69. Mixers, blenders, roll mills, or calendars for rubber or plastic for which no materials in powder form are added and in which no hazardous air pollutants, organic solvents, diluents, or thinners are used or emitted.

70. The storage, handling, and handling equipment for bark and wood residues not subject to fugitive dispersion offsite (this applies to the equipment only).

71. Maintenance dredging of pulp and paper mill surface impoundments and ditches containing cellulosic and cellulosic derived biosolids and inorganic materials such as lime, ash, or sand.

72. Tall oil soap storage, skimming, and loading.

73. Water heaters used strictly for domestic (non-process) purposes.

74. Facility roads and parking areas, unless necessary to control offsite fugitive emissions.

75. Agricultural operations, including onsite grain storage, not including internal combustion engines or grain elevators.

76. The following natural gas and oil exploration production site equipment: separators, dehydration units, natural gas fired compressors, and pumping units. This does not include compressors located on natural gas transmission pipelines.

Pollution Control and Ecology Commission # 014.00-026

ARKANSAS POLLUTION CONTROL and ECOLOGY COMMISSION

REGULATION NO. 26
REGULATIONS OF THE ARKANSAS OPERATING AIR PERMIT PROGRAM

FINAL DRAFT

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CHAPTER 3: REQUIREMENT FOR A PERMIT, APPLICABILITY

Reg. 26.301 Requirement for a permit

(A) No part 70 source may operate unless it is operating in compliance with a part 70 permit, or unless it has filed a timely and complete application for an initial or renewal permit as required under these regulations. Existing part 70 sources shall submit initial applications according to the provisions of section 4. If a part 70 source submits a timely and complete application for an initial or renewal permit, the source's failure to have a part 70 permit is not a violation of this regulation until the Department takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit by the deadline specified in writing by the Department any additional information identified as being needed to process the application. If the Department fails to act in a timely way on a permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

(B) No proposed new part 70 source shall begin construction prior to obtaining a part 70 permit, unless the applicable permit application was submitted prior to the effective date of these regulations and the Department's draft permitting decision for such source has already proceeded to public notice in accordance with Regulation No. 19.

(C) No part 70 source shall begin construction of a new emissions unit or begin modifications to an existing emissions unit prior to obtaining a modified part 70 permit. This applies only to significant modifications and does not apply to modifications that qualify as minor modifications or changes allowed under the operational flexibility provisions of a part 70 permit. An existing part 70 source shall be subject to the permit modification procedures of Regulation No. 19 until such time that an initial part 70 permit application is due from the source.

Reg. 26.302 Sources subject to permitting

The following sources shall be subject to permitting under these regulations, unless exempted by Reg. 26.303 below:

(A) Any major source;

(B) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act (i.e., New Source Performance Standards [NSPS] regs.) However, nonmajor sources subject to section 111 of the Act are exempt from the obligation to obtain a part 70 permit until such time that the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources;

(C) Any source, including an area source, subject to a standard or other requirement under section 112 of the Act (i.e., hazardous air pollutant regs.), except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;

(D) Any source subject to Arkansas Pollution Control and Ecology Commission's Regulation 19, Chapter 9."

(E) Any acid rain source (which shall be permitted in accordance with the provisions of the federal acid rain program)~~; and~~

(F) Any source in a source category designated by the Administrator pursuant to this section.~~; and~~

~~(G) Any stationary source as of July 1, 2011, emitting or having the potential to emit 100,000 tpy CO_2e.~~

Reg. 26.303 Source category exemptions

The following source categories are exempted from the obligation to obtain a part 70 permit:

(A) All sources listed in Reg. 26.302 that are not major sources, acid rain sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act, are exempted from the obligation to obtain a part 70 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources.

(B) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters as of July 23, 1993; and

(C) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 6l.145, Standard for Demolition and Renovation as of July 23, 1993.

(D) Any other nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Act exempted by the Administrator.

Reg. 26.304 Emissions units subject to permitting

The Department shall include in the part 70 permit all applicable requirements for all relevant emissions units in the part 70 source. Some equipment with very small emission rates is exempt from permitting requirements as per Chapter 4 and Appendix A of Regulation No. 19.

Reg. 26.305 Emissions subject to permitting

All regulated air pollutant emissions and ~~recognized~~ air contaminant emissions from a part 70 source shall be included in a part 70 permit, except that GHG emissions less than ~~75~~100,000 tpy CO_2e shall not be included in a part 70 permit~~,~~ unless the part 70 source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more. Only regulated air pollutants may trigger the need for a part 70 permit or a part 70 permit modification process. A permit modification involving only air contaminants other than regulated air pollutants shall be permitted according to the procedure of Regulation No. 19. Such permits shall be incorporated into the part 70 permit by administrative permit amendment.

Reg. 26.306 Fugitive emissions subject to permitting

Fugitive emissions from a part 70 source shall be included in the permit application and the part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

CHAPTER 4: APPLICATIONS FOR PERMITS

Reg. 26.401 Duty to apply

For each source subject to 40 CFR part 70, as promulgated June 3, 2010, ~~July 21, 1992, and last modified November 27, 2001,~~ the owner or operator shall submit a timely and complete permit application (on forms supplied by the Department) in accordance with this section.

Reg. 26.402 Standard application form and required information

The Department shall provide a standard application form or forms and shall provide them to part 70 sources upon request. Information as described below for each emissions unit at a part 70 source shall be required by the application form and included by the applicant in the application.

(A) Insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application.

(B) An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required by the Arkansas Pollution Control and Ecology Commission's Regulation Number 9, Fee Regulation (Regulation 9 or Regulation No. 9). The Department may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code or the North American Industry Classification System) including any associated with alternate scenario identified by the source.

(3) The following emission-related information:

(a) A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under Reg. 26.402(A). The Department shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule in Regulation No. 9.

(b) Identification and description of all points of emissions described above in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(c) Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 70 source.

(g) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(h) Calculations on which the information in Reg. 26.402(B)(3) is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act, of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Department to define alternative operating scenarios identified by the source pursuant to Reg. 26.701(I) or to define permit terms and conditions implementing Reg. 26.802 or Reg. 26.701(J).

(8) A compliance plan for all part 70 sources that contains all the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with Reg. 26.410 and section 114(a)(3) of the Act;

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(c) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department; and

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Act.

(C) Reserved

Reg. 26.403 Initial applications from existing part 70 sources

A timely application for an ~~existing~~ initial part 70 permit for an existing part 70 source ~~existing on the effective date of these regulations~~ is one that is submitted within 12 months after the source becomes subject to the permit program, or on or before such earlier date as the Department may establish. The earliest that the Department may require an initial application from such an existing part 70 source is 6 months after the Department notifies the source in writing of its duty to apply for an initial part 70 permit.

Reg. 26.404 Applications for proposed new part 70 sources

The owner or operator proposing to construct a new part 70 source shall apply for and obtain a part 70 permit prior to the construction of the source, unless the applicable permit application was submitted prior to the effective date of these Regulations and the Department's draft permitting decision for such source has already proceeded to public comment in accordance with Regulation No. 19.

Reg. 26.405 Applications for proposed significant modifications at part 70 sources

Part 70 sources proposing to construct a new emissions unit or modify an existing emissions unit shall apply for and obtain a modified part 70 permit prior to the construction or modification of such emissions unit. This applies only to significant modifications and does not apply to modifications that qualify as minor modifications or changes allowed under the operational flexibility provisions of a part 70 permit.

Reg. 26.406 Permit renewal applications

For purposes of permit renewal, a timely application is one that is received by the Department at least 6 months prior to the date of permit expiration or such other longer time as may be approved by the Administrator that ensures that the term of the permit will not expire before the permit is renewed. In no event shall this time be greater than 18 months. Renewal permits are subject to the same procedural requirements that apply to initial permit issuance. Permit expiration terminates a part 70 source's right to operate unless a timely and complete renewal application has been received by the Department, in which case the existing permit shall remain in effect until the Department takes final action on the renewal application. If the Department fails to act in a timely way on a permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

Reg. 26.407 Complete application

To be deemed complete, an application must provide all information required by Reg. 26.402, except that applications for permit revision need supply only that information related to the proposed change. Unless the Department determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete. If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

Reg. 26.408 Confidential information

In the case where a source has submitted information to the State under a claim of confidentiality, the Department may also require the source to submit a copy of such information directly to the Administrator.

Reg. 26.409 Applicant's duty to supplement or correct application

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

Reg. 26.410 Certification by responsible official

Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these regulations shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

Biomass Deferral Rule

Pollution Control and Ecology Commission # 014.00-019

ARKANSAS POLLUTION CONTROL and ECOLOGY COMMISSION

REGULATION NO. 19
REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR POLLUTION CONTROL

INITIAL DRAFT

Submitted to the PC&E Commission in June, 2012

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CHAPTER 1: TITLE, INTENT, AND PURPOSE

Reg. 19.101 Title

The following rules and regulations, adopted in accordance with the provisions of Subchapter 2 of the Arkansas Water and Air Pollution Control Act, Arkansas Code Annotated (A.C.A) §§ 8-4-201 et seq., shall be known as "Regulations of the Arkansas Plan of Implementation of Air Pollution Control," hereinafter referred to as the "Regulations of the Plan," and "Regulation 19."

Reg. 19.102 Applicability

These regulations are applicable to any stationary source which has the potential to emit any federally regulated air pollutant.

Reg. 19.103 Intent and Construction

(A) The purpose and intent of Regulation 19, as amended, is to provide a clear delineation of those regulations that are promulgated by the Commission in satisfaction of certain requirements of the federal Clean Air Act, 42 United States Code (U.S.C.) §§ 7401 et seq., as of July 1, 1997, and the federal regulations stemming therefrom. Federal programs that the Department is responsible for administering include, but are not limited to, the attainment and maintenance of the National Ambient Air Quality Standards (40 Code of Federal Regulations [CFR] Part 50), certain delegated subparts of the New Source Performance Standards (40 CFR Part 60), provisions designed for the Prevention of Significant Deterioration (40 CFR § 52.21), minor new source review as described in Chapter 4 (40 CFR Part 51), and certain delegated subparts of the National Emission Standards for Hazardous Air Pollutants (40 CFR Parts 61 and 63) as of July 1, 1997. This subsection shall not be construed as limiting the future delegation of federal programs to the Department for administration.

(B) Regulation 19, as amended, is further intended to limit the federal enforceability of its requirements to only those mandated by federal law. Regulation 19, as amended, is also intended to facilitate a permit system for stationary sources within the State,

which permit shall provide which provisions are federally enforceable and which provisions are state enforceable.

(C) Regulation 19, as amended, presumes a single-permit system, encompassing both federal and state requirements. A regulated facility which is subject to permitting under Regulation 19 shall be required to apply for and comply with only one permit, even though that permit may contain conditions derived from the federal mandates contained in Regulation 19, as well as conditions predicated solely on state law. Regulation 19, through construction or implication, shall not support the conclusion that all conditions of a permit have become federally enforceable because the permit contains provisions derived from Regulation 19. Permits or permit conditions issued under the authority of state law, or enforcement issues arising out of state law, shall not be federally enforceable.

(D) To the extent consistent with state law and efficient protection of the State's air quality, Regulation 19 shall be construed in a manner that promotes a streamlined permitting process, mitigation of regulatory costs, and flexibility in maintaining compliance with federal mandates. Any applicable documents (e.g. "White Papers," regulatory preambles, or interpretive memoranda) issued by the Environmental Protection Agency which are consistent with this policy and the legislative intent of state laws governing air pollution control (A.C.A. § 8-4-301 et seq.) are aids for construing the requirements of Regulation 19. Any procedure applicable to major sources that promotes operational flexibility are presumed to be authorized by this regulation unless manifestly inconsistent with its substantive terms.

(E) Nothing in Regulation 19 shall be construed as curtailing the Department's or Commission's authority under state law.

Reg. 19.104 Severability

If any provision of Regulation 19 is determined to be invalid, such invalidity shall not affect other provisions of Regulation 19.

If federal legislation or a federal court stays, invalidates, delays the effective date of, or otherwise renders unenforceable, in whole or in part, EPA's regulation of greenhouse gases, then the provisions of Regulation 19 concerning greenhouse gases based thereon shall be stayed and

shall not be enforceable until such time as the Commission makes a final decision on whether or not to revise Regulation 19 due to the federal legislation or federal court order.

CHAPTER 2: DEFINITIONS

Terms and phrases used in this regulation which are not explicitly defined herein shall have the same meaning as those terms which are used in the federal Clean Air Act. For purposes of this regulation:

"12-month period" means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

"Actual emissions" means the quantity of federally regulated air pollutants emitted from a stationary source considering emissions control equipment and actual hours of source operation or amount of material processed.

"CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions tpy, for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A - 1 to subpart A of 40 CFR part 98 - Global Warming Potentials (which is incorporated by reference as finalized by EPA as of October 30, 2009), and summing the resultant value for each to compute a tpy CO_2 equivalent emissions. For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

"Commission" means the Arkansas Pollution Control and Ecology Commission.

"Construction" means fabrication, erection, or installation of equipment. See also 40 CFR 60.2, 40 CFR 51.165, and 40 CFR 52.21.

"Control apparatus" means any device which prevents, controls, detects or records the emission of any federally regulated air pollutants.

"Department" means the Arkansas Department of Environmental Quality, or its successor. When reference is made in this regulation to actions taken by or with reference to the Department, the reference is to the staff of the Department acting at the direction of the Director.

"Director" means the Director of the Arkansas Department of Environmental Quality, or its successor, acting directly or through the staff of the Department.

"Emission limitation" and **"emission standard"** mean a requirement established by the Department or the Administrator of the United States Environmental Protection Agency which limits the emissions of federally regulated air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

"Emission unit" means any article, machine, equipment, operation, or contrivance that emits or has the potential to emit any federally regulated air pollutant.

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device, except equipment used for any mode of vehicular transportation, capable of causing the emission of a federally regulated air pollutant into the open air, and any stack, conduit, flue, duct, vent, or similar device connected or attached to or serving the equipment.

"Federal Clean Air Act" or **"Clean Air Act"** or **"FCAA"** or **"the Act"** means the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq. and its implementing regulations as of the effective date of this regulation.

"Federally regulated air pollutant" means the following:

(A) Nitrogen oxides or any volatile organic compounds;

(B) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(C) Except as provided in (E), any pollutant that is subject to any standard promulgated under 42 U.S.C. §§ 7401, et seq., as of the effective date of this regulation;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act, 42 U.S.C.§§ 7401, et seq. as amended as of July 1,1997.

(E) GHGs, except that GHGs shall not be a Federally Regulated Air Pollutant unless the GHG emissions are:

(1) from a stationary source emitting or having the potential to emit 75,000 tpy CO_2e emissions or more; and

(2) regulated under Chapter 9 of this Regulation 19.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Those emissions are those that, according to customary and good engineering practice, considering technological and economic feasibility, could not pass through a stack, chimney, vent or other functionally-equivalent opening, except that the Department will utilize the definition of fugitive emissions for those industries for which an approved EPA definition exist under federal law or regulation and which are meeting that law or regulation.

"Greenhouse gases" (GHGs) means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Hazardous Air Pollutant" or **"HAP"** means any air pollutant listed pursuant to § 112 of the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq., as of the effective date of this regulation.

"Modification" means any physical change in, or change in the method of operation of, a stationary source which increases the emission rate of any federally regulated air pollutant over permitted rates or which results in the emission of a federally regulated air pollutant not

previously emitted, except that:

(A) Routine maintenance, repair, and replacement shall not be considered a physical change, and

(B) The following shall not be considered a change in the method of operation:

(1) Any change in the production rate, if such change does not exceed the permitted operating capacity of the source;

(2) Any change in the hours of operation, as long as it does not violate applicable air permit conditions; or

(3) The use of an alternate fuel or raw material, as long as it does not violate applicable air permit conditions.

(C) *De Minimis* changes, as defined in Reg. 19.407(C), and changes in ownership shall not be considered.

"National Ambient Air Quality Standard" or **"NAAQS,"** mean those ambient air quality standards promulgated by the EPA in 40 CFR Part 50.

"Opacity" means the degree to which air emissions reduce the transmission of light and obscure the view of an object in the background.

"Operator" means any person who leases, operates, controls, or supervises any equipment affected by these regulations.

"Owner" means any person who has legal or equitable title to any source, facility, or equipment affected by these regulations.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter equal to or less than 100 micrometers.

"Particulate matter emissions" means all particulate matter, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or

alternate method, specified in 40 CFR Part 60 Appendix A or by a test method specified in these regulations or any supplement thereto.

"Person" means any individual or other legal entity or their legal representative or assignee.

"Plan" means the Arkansas Plan of Implementation for Air Pollution Control.

"**$PM_{2.5}$"** means particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50, or by an equivalent method designated in accordance with 40 CFR Part 53 as of December 8, 1984.

"PM_{10} emissions" means PM_{10} emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 51, Appendix M as of December 8, 1984, or by a test method specified in these regulations or any supplement thereto.

"Potential to emit" means the maximum capacity of a stationary source to emit a federally regulated air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a federally regulated air pollutant, including, but not, limited to, air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable to the extent it is regulated by the federal Clean Air Act, 42 U.S.C. §§ 7401 et seq. as of February 15, 1999. Secondary air emissions do not count in determining the potential to emit of a stationary source.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative or such person if the representative is responsible

for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 United States dollars); or

(2) The delegation of authority to such representative is approved in advance by the Department;

(B) For partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this regulation, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For acid rain sources:

(1) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(2) The designated representative for any other purposes under Part 70.

"Secondary emissions" means those emissions of federally regulated air pollutants which, although associated with a source, are not emitted from the source itself.

"Shutdown" means the cessation of operation of equipment.

"Startup" means the setting in operation of equipment.

"Stationary source" means any building, structure, facility, or installation which emits or may emit any federally regulated air pollutant.

"Title I modification" means any modification as defined under any regulation promulgated pursuant to Title I of the federal Clean Air Act. *De minimis* changes under Regulation 19, changes to state only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications.

"Volatile organic compounds" or **"VOC"** means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(A) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity:

acetone;
methane;
ethane;
methylene chloride (dichloromethane);
1,1,1- trichloroethane (methyl chloroform);
tetrachloroethylene (perchloroethylene);
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
trichlorofluoromethane (CFC-11);
dichlorodifluoromethane (CFC-12);
chlorodifluoromethane (HCFC-22);
trifluoromethane (HFC-23);
1,2-dichloro 1,1, 2, 2-tetrafluoroethane (CFC-114);
chloropentafluoroethane (CFC-115);
1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
1,1,1,2-tetrafluoroethane (HFC-134a);
1,1-dichloro 1-fluoroethane (HCFC-141b);
1-chloro 1,1-difluoroethane (HCFC-142b);
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
pentaflurorethane (HFC-125);
1,1,2,2-tetrafluoroethane (HFC-134);
1,1,1-trifluoroethane (HFC-143a);
1,1-difluoroethane (HFC-152a);
parachlorobenzotrifluoride (PCBTF);
cyclic, branched, or linear completely methylated siloxanes;
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
difluoromethane (HFC-32);

ethylfluoride (HFC-161);
1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
1,1,2,2,3-pentafluoropropane (HFC-245ca);
1,1,2,3,3-pentafluoropropane (HFC 245ea);
1,1,1,2,3-pentafluoropropane (HFC-245eb);
1,1,1,3,3-pentafluoropropane (HFC-245fa);
1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
1,1,1,3,3-pentafluorobutane (HFC-365mfc);
chlorofluoromethane (HCFC-31);
1 chloro-1-fluoroethane (HCFC-151a);
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100);
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane
($(CF_3)_2CFCF_2OCH_3$);
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE 7200);
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane
($(CF_3)_2CFCF_2OC_2H_5$);
methyl acetate;
1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$ or HFE-7000);
3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane
(HFE-7500)
1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);
methyl formate ($HCOOCH_3$)
1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
and perfluorocarbon compounds which fall into these classes:

(1) cyclic, branched, or linear, completely fluorinated alkanes;

(2) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(B) For purposes of determining compliance with emission limits, VOC will be measured by the test methods in the approved State Implementation Plan (SIP) or 40 CFR Part 60, Appendix A, as of July 1, 1997, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these

negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Department.

(C) As a precondition to excluding these compounds as VOC or at any time thereafter, the Department may require an owner or operator to provide monitoring or testing results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

(D) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

CHAPTER 9: PREVENTION OF SIGNIFICANT DETERIORATION

Reg. 19.901 Title

The following rules and regulations of the Arkansas Pollution Control and Ecology Commission, adopted in accordance with the provisions of Part II of the Arkansas Water and Air Pollution Control Act at A.C.A §§8-4-101 et seq., shall be known as the Prevention of Significant Deterioration Regulations of the Arkansas Plan of Implementation for Air Pollution Control, hereinafter referred to, respectively, as the "PSD Regulations."

Reg. 19.902 Purposes

Promulgation and enforcement of these PSD Regulations is intended to further the purposes of the Plan and the Regulations of the Plan, including, but not limited to, acceptance of delegation by the EPA of authority for enforcement of regulations governing the prevention of significant deterioration of air quality and regulations governing the protection of visibility in mandatory Class I federal areas.

Reg. 19.903 Definitions

(A) "Advance notification" (of a permit application) means any written communication which establishes the applicant's intention to construct, and which provides the Department with sufficient information to determine that the proposed source may constitute a major new source or major modification, and that such source may affect any mandatory Class I federal area, including, but not limited to, submittal of a draft or partial permit application, a PSD monitoring plan, or a sufficiently detailed letter. "Advance notification" does not include general inquiries about the Department's regulations.

(B) All other terms used herein shall have the same meaning as set forth in Chapter 2 of Regulation 19 or in 40 CFR 52.21(b) [PSD] and 40 CFR 51.301 [Protection of Visibility] as of November 29, 2005, all as in effect upon the latest date of amendment of this supplement, unless manifestly inconsistent with the context in which they are used. Wherever there is a difference between the definitions in Chapter 2 of Regulation 19 and those listed in 40 CFR 52.21(b) and 40 CFR 51.301,

the federal definitions as listed in 40 CFR 52.21(b) and 40 CFR 51.301 as of November 29, 2005, shall apply.

(C) The definition for "routine maintenance, repair and replacement" in 40 CFR 52.21(b)(2)(iii)(a) is not incorporated.

Reg. 19.904 Adoption of Regulations

(A) Except where manifestly inconsistent with the provisions of the Clean Air Act, as amended, or with federal regulations adopted pursuant thereto, and as amended specifically herein by paragraphs (B), (C), (D), (E), and (F) of Reg. 19.904, the Arkansas Department of Environmental Quality shall have those responsibilities and that authority, with reference to the State of Arkansas, granted to the Administrator of the EPA under 40 CFR 52.21 (a)(2) through (bb), as in effect on November 29, 2005, which are hereby incorporated herein by reference, with the exception of 40 CFR 52.21(b)(55-58), 40 CFR 52.21(i) (9), and 40 CFR 52.21(cc), which are not incorporated. In the absence of a specific imposition of responsibility or grant of authority, the Department shall be deemed to have that responsibility and authority necessary to attain the purposes of the Plan, these PSD Regulations, and the applicable federal regulations, as incorporated herein by reference.

(B) Exclusions from the consumption of increments, as provided in 40 CFR 51.166(f)(1)(iii) as of November 29, 2005, shall be effective immediately. Submission of this Plan under the Governor's signature constitutes a request by the Governor for this exclusion.

(C) In addition to the requirements of 40 CFR 52.21(o) as of November 29, 2005, the following requirements [designated as Reg. 19.904(C)(1),(2),(3) and (4)] shall also apply:

(1) Where air quality impact analyses required under this part indicate that the issuance of a permit for any major stationary source or for any major modification would result in the consumption of more than fifty percent (50%) of any available annual increment or eighty percent (80%) of any short term increment, the person applying for such a permit shall submit to the Department an assessment of the following factors:

(a) Effects that the proposed consumption would have upon the industrial and economic development within the area of the proposed source; and

(b) Alternatives to such consumption, including alternative siting of the proposed source or portions thereof.

(2) The assessment required under subparagraph (4) above shall be made part of the application for permit and shall be made available for public inspection as provided in 40 CFR 52.21(q) as of November 29, 2005.

(3) The assessment required under subparagraph (4) above shall be in detail commensurate with the degree of proposed increment consumption, both in terms of the percentage of increment consumed and the area affected.

(4) The assessment required under subparagraph (4) above may be made effective where a proposed source would cause an increment consumption less than that specified in said subparagraph if the Director finds that unusual circumstances exist in the area of the proposed source which warrant such an assessment. The Director shall notify the applicant in writing of those circumstances which warrant said assessment. The Commission may rescind or modify the Director's action, upon a showing by the applicant that the circumstances alleged by the Director either do not exist or do not warrant the aforecited assessment.

(D) In addition to the requirements of 40 CFR 52.21(p)(1) as of November 29, 2005, the following requirements shall also apply:

Impacts on mandatory Class I federal areas include impacts on visibility. The preliminary determination that a source may affect air quality or visibility in a mandatory Class I federal area shall be made by the Department, based on screening criteria agreed upon by the Department and the Federal Land Manager.

(E) In all instances wherein the aforesaid 40 CFR 51.301 and 40 CFR 52.21 refer to the Administrator or the Environmental Protection Agency, the reference, for the purposes of paragraph (A) of Reg. 19.904, shall be deemed to mean the Arkansas

Department of Environmental Quality, unless the context plainly dictates otherwise, except in the following sections:

(1) Exclusion from increment consumption: 40 CFR 52.21(f)(1)(v), (f)(3), and (f)(4)(I);

(2) Redesignation: 40 CFR 52.21(g)(1), (g)(2), (g)(4), (g)(5), and (g)(6);

(3) Air quality models: 40 CFR 52.21 (2).

(F) Redesignation of air quality areas in Arkansas shall comply with Arkansas Code Annotated 1987 Section 8-3-101 et seq.

(G) For the purpose of the regulation of GHGs, only the standards and requirements promulgated by EPA as of June 3, 2010, related to the permitting of GHG emissions shall apply to the requirements of 40 CFR 52.21, as of November 29, 2005, incorporated by reference at Reg.19.904(A). The following definitions and requirements shall also apply:

(1) "Greenhouse gases" (GHGs) means the air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in Reg. 19.904(G)(4) through Reg.19.904(G)(5).

(2) For purposes of Reg. 19.904(G)(3) through Reg.19.904(G)(5)~~:~~:

(a) ~~t~~The term tons per year (tpy) "CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(i~~a~~) Multiplying the mass amount of emissions in tpy, for each of the six greenhouse gases in the pollutant GHGs, by each gas's associated global warming potential published at Table A - 1 to subpart A of 40 CFR part 98 - Global Warming Potentials (as of October 30, 2009); and

(iib) Sum the resultant values from Reg. 19.904(G)(2)(a)(i) for each gas to compute a tpy CO_2e.

(bc) For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(3) The term "emissions increase" as used in Reg. 19.904(G)(4) through Reg. 19.904(G)(5) shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv), as of November 29, 2005), and a significant net emissions increase (as defined in 40 CFR 52.21(b)(3), as of November 29, 2005, and 40 CFR 52.21(b)(23), as of November 29, 2005), occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii), as of November 29, 2005.

(4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit GHGs at 75,000 tpy CO_2e or more; or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of GHGs of 75,000 tpy CO_2e or more.

(5) Beginning July 1, 2011, in addition to the provisions in Reg.19.904(G)(4) of this section, the pollutant GHGs shall also be subject to regulation:

(a) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e or more; or

(b) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e or more, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

~~(6) If federal legislation or a federal court stays, invalidates, delays the effective date of, or otherwise renders unenforceable, in whole or in part, EPA's regulation of greenhouse gases, then the provisions of Regulation 19 concerning greenhouse gases based thereon shall be stayed and shall not be enforceable until such time as the Commission makes a final decision on whether or not to revise Regulation 19 due to the federal legislation or federal court order.~~

Tab F

Regulations with Changes Incorporated

GHG Tailoring Rule

Pollution Control and Ecology Commission #014.00-009

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

Regulation No. 9

Fee Regulation

Adopted by the PC&E Commission June 22, 2012

REGULATION NO. 9
FEE REGULATION
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CHAPTER 1: TITLE

Reg.9.101 Title

This regulation shall be known by and may be cited by the short title "Regulation No. 9: Fees."

Reg.9.102 Purpose

It is the purpose of this regulation to develop and implement a system of fees for permits issued by the Arkansas Department of Environmental Quality pursuant to the provisions of the Water and Air Pollution Control Act (Act 472 of 1949, as amended, A.C.A. §8-4-101 et seq.) or the Solid Waste Management Act (Act 237 of 1971, as amended, A.C.A. §8-6-201 et seq.). Act 817 of 1983, as amended, Act 1254 of 1993, as amended, and Act 1052 of 1999 (A.C.A. § 8-1-101 et seq.) authorize the collection and enforcement of these fees and authorize their use to defray the costs of operating the Department.

It is also the purpose of this regulation to assess reasonable fees to establish and to administer the State Environmental Laboratory Certification Program Act (Act 876 of 1985, as amended, A.C.A. § 8-2-201 et seq.)

Reg.9.103 Applicability

Permit fees established by this regulation shall be applicable to all water permits, including no-discharge and closed system permits, issued under the provisions of the Water and Air Pollution Control Act, as amended, all air permits issued under the Water and Air Pollution Control Act, as amended, or any federal water or air permit program where permitting authority has been delegated to the Department (unless fees for such a program are otherwise provided by law), and all solid waste disposal permits issued under the provisions of the Solid Waste Management Act, as amended, and the Solid Waste Management Code. Facilities operating under the provisions of the "Permits by Rule" or "Authorization by Rule" will be exempted from this regulation until such time that the facility submits an application for an individual permit within each applicable permit category.

Laboratory certification fees established by this regulation shall be applicable to all laboratories certified by the Department. The fees include, but are not limited to, the reasonable costs of administering the provisions of the program and the reasonable administrative costs of initial issuance, initial certificate, renewed certificates, and the expenses associated with conducting evaluations.

Reg.9.104 Severability

If any provision of this Regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not effect other provisions or applications of this Regulation which can be given effect without the invalid portion or application, and to this end the provisions of this Regulation are declared to be severable.

CHAPTER 2: DEFINITIONS

All terms used in this regulation, unless the context otherwise requires, or unless specifically defined in the enabling legislation or in federal regulations adopted by reference for program management, shall have their usual meaning. In addition, for purposes of this regulation, the following definitions apply:

"Administrative Permit Amendment" means a minor change or permit revision which is not typically considered a permit modification, as defined by applicable statutes or regulations, or a minor modification which does not require public notice and opportunity for comment. For example, typographical corrections or revisions, or other changes initiated by the Department, might be considered administrative permit amendments. Some minor changes requested by the permittee may also qualify as administrative permit amendments. For purposes of Chapter 5, administrative permit amendments are defined in Regulations 18, 19, and 26. The Director, in his discretion, may decide whether a revision would be considered an administrative amendment. No fee will be charged for administrative permit amendments.

"Annual Fee" means the fee required to be submitted upon the facility-specific annual invoice date for a permit issued pursuant to the Water and Air Pollution Control Act, as amended, or the Solid Waste Management Act, as amended.

"Category" means one type of laboratory test or group of laboratory tests for similar materials or classes of materials or which utilize similar methods or related methods.

"Certificate" means the annual document showing those parameters for which a laboratory has received certification. The annual period begins at receipt of fee payments or at the expiration of a current certificate.

"Commission" means the Arkansas Pollution Control and Ecology Commission.

"Confined Animal Operation" means any lot or facility where livestock or fowl have been, are, or will be stabled or confined and fed or maintained, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any significant portion of the lot or facility.

"Department" means the Arkansas Department of Environmental Quality (ADEQ) or its successor.

"Director" means the Director of the Arkansas Department of Environmental Quality or his designated representative.

"Discretionary Major Facility" means an industrial facility discharging wastewater under the terms of a National Pollutant Discharge Elimination System (NPDES) permit that does not meet the numerical rating criteria as an NPDES non-municipal major facility, but which is designated as a major permittee by the Department or the U.S. Environmental Protection Agency (EPA). Such facilities are assigned an Major Rating Code (MRAT) greater than 500.

"EPA" means the United States Environmental Protection Agency.

"Evaluation" means a review of the quality control and quality assurance procedures, records keeping, reporting procedures, methodology, and analytical techniques of a laboratory for measuring or establishing specific parameters.

"Facility" means an activity or operation within a specific geographical location including property contiguous thereto. A facility may consist of several manufacturing, treatment, storage, or disposal operational units. For purposes of this permit fee regulation, a facility shall be considered to be all property, facilities, or operations owned, leased, or operated by a single entity, whether a municipal, county, or state government, corporation, partnership, or proprietorship in the same geographical area, forming an integral part of the same activity or operation, whether or not such activity lies within the boundaries of the city or county. For purposes of permit fee assessment only, such property, facilities, or operations shall be considered as a single facility if they are regulated by a common state or federal permit within each permit category, or in the future such consolidation of multiple permits can be realized within the scope of applicable permitting regulations, and the facilities or operations are under the supervision of a single plant manager/superintendent.

"Initial Fee" means the fee which is required by law to be submitted with all applications for permits issued pursuant to the Water and Air Pollution Control Act, as amended, and the Solid Waste Management Act, as amended, and which must be received by the Department prior to the issuance of such a permit.

"Issue Date" means the date the Department signed the permit.

"Laboratory" means any facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, soil or subsoil materials, or any other analyses related to environmental quality evaluations.

"Major Municipal Facility" means a publicly owned treatment works (POTW) with a design flow or daily average flow of 1.0 million gallons per day (mgd) or greater, or a POTW designated as a major facility by the Department or EPA.

"Modification Fee" means that fee required by law to be submitted for modification of any existing or future permit required by the Water and Air Pollution Control Act, as amended, or the Solid Waste Management Act, as amended, such modification being either at the request of the permittee or as required by law or regulation. The fee may vary depending upon whether the permit modification or renewal is considered to be a minor or major modification, as defined in applicable statutes or regulations, or otherwise determined by the Director.

"Non-Municipal Major Facility" means a facility subject to the National Pollution Discharge Elimination System (NPDES) whose status is determined following completion of an NPDES Permit Rating Worksheet (current version) in which points are allocated on the basis of toxic pollutant potential, permitted flow or the ratio of wastewater to stream flow volume, conventional pollutants mass loadings, public health impacts (including proximity to drinking water supplies and potential for human health toxicity), and water quality factors. Additional

points can be assessed for certain steam electric power plants or for separate storm sewers serving a population greater than 100,000. The total points accumulated is known as the Major Rating Code or MRAT, which is the numeric total of ranking points assigned to non-municipal facilities and used to delineate them as a major or minor facility. Currently, a facility with an MRAT of eighty (80) points or more is designated as a "non-municipal major" facility. Additionally, EPA or the Department may designate an NPDES permittee as a "discretionary major" facility. Once an MRAT for a major facility is calculated and approved by EPA, the Department may recommend increases or decreases to an MRAT, but only EPA is authorized to change an individual permittee's MRAT or designation as a "major" facility.

"Non-Part 70 Permit" means an air permit that is issued pursuant to a regulation other than Part 70 of Title 40 of the Code of Federal Regulations (40 CFR Part 70).

"Parameter" means the characteristic or characteristics of a laboratory sample determined by an analytic laboratory testing procedure.

"Part 70 Permit" means an air permit that is issued pursuant to 40 CFR Part 70.

"Program" means the Arkansas State Environmental Laboratory Certification Program.

"Renewal Permit" means a permit issued to a facility upon expiration of an existing permit. A modification fee may be assessed, depending upon whether the renewal is considered to be a minor or major modification, as defined in applicable statutes or regulations, or otherwise determined by the Director.

CHAPTER 3: PERMIT FEE PAYMENT

Reg.9.301 Permit Fee Payment

(A) Fee Calculation

The applicant may calculate the initial permit application fee or permit modification fee and include it with the permit application, or the applicant may request that the Department calculate the fee after reviewing the application and forward an invoice to the applicant for payment.

(B) Fee Payment

Applicable permit fees shall be paid by check or money order payable to the Department for deposit in the State Treasury. The permit will not be issued until such fee is received by the Department.

(C) Annual Fee Payment

Annual fees shall be due forty-five (45) days after the first day of the month in which the Permittee is billed for the required annual fee. Failure to receive this bill does not relieve the Permittee from liability for the annual fee, but late charges will not be assessed until forty-five (45) days after the Permittee has been notified that the annual fee is due. The Director may waive annual fees or a portion thereof, for new facilities which are not in operation, unless such waiver is otherwise prohibited by State or Federal law.

(D) Failure to Pay Annual Fees

A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as established in these regulations. Continued refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Department, which may result in revocation of the permit. When payment of fees is made by check which is subsequently returned due to insufficient funds, all review work on the particular application will immediately cease until the fee is paid in cash or by money order.

(E) First Annual Fee Payment

The annual fee shall be assessed upon the facility-specific annual invoice date. The Department shall credit the first annual fee, on a prorated basis, if the initial fee for the permit was assessed within 12 months of the first annual fee for the permit. The Department may credit the annual fee, on a prorated basis, if a modification fee for the permit was assessed within 12 months of the annual fee for the permit.

(F) Annual Fee Late Payment Charge

A late payment charge shall be assessed to facilities failing to pay the annual fee within forty-five (45) days of the billing date, and shall be assessed at the rate of ten percent (10%) of the annual fee.

LATE PAYMENT CHARGE = TEN PERCENT (10%) OF ANNUAL FEE

Reg.9.302 Refunds

Except for pre-site investigation fees and interim authority or variance application fees as described in Chapters 6 and 7, up to forty percent (40%) of a fee submitted pursuant to this regulation is refundable in the event that the request for the permit action for which the fee was submitted is withdrawn by the applicant prior to the final permit decision. The Director shall retain as much of the above-cited forty percent (40%) as he in his sole discretion, determines is necessary to cover the reasonable administrative and technical review costs incurred in the review process.

CHAPTER 5: AIR PERMIT FEES

AIR PERMIT FEES.

Reg.9.501 Applicability

The air permit fees contained in this section are applicable to (1) non-part 70 permits, (2) part 70 permits, and (3) general permits.

Reg.9.502 Terms Used in Fee Formulas

(A) **$/ton factor** is $16/ton until September, 1994, after which time it shall be increased annually by the percentage, if any, by which the federal Consumer Price Index exceeds that of the previous year. The Director may, after considering the factors contained in Reg.9.901 of this regulation, decide not to increase the $/ton factor in a year when the fee fund has a balance greater than 150% of the amount of money expended from that fund in the previous year.

(B) **tons/year predominant air contaminant** is the permitted emission rate of the most predominant air contaminant (other than carbon monoxide, carbon dioxide and methane). The maximum value shall be no greater than 4,000 tons/year per facility.

(C) **tons/year chargeable emissions** is the sum of the permitted emission rates of all air contaminants (other than carbon monoxide, carbon dioxide and methane). The maximum value per air contaminant shall not exceed 4,000 tons/year per facility.

Reg.9.503 Initial Fees

Initial fees shall be assessed according to the following formulas:

(A) Non-part 70 permits

initial fee = $/ton factor x tons/year predominant air contaminant

Provided, however, no initial fee shall be less than $500 except for general permits issued to Non-part 70 sources.

(B) Part 70 permits

(1) Permits issued to part 70 sources already holding an active air permit not issued pursuant to Department Regulation #26:

initial fee = [$/ton factor x tons/year chargeable emissions]

- amount of last annual air permit fee invoice

Provided, however, that no initial fee shall be less than $1,000.

(2) Permits issued to part 70 sources which do not hold an active air permit:

initial fee = $/ton factor x tons/year chargeable emissions

Provided, however, that no initial fee shall be less than the $/ton factor x 100.

Reg.9.504 Annual Fees

Annual fees shall be assessed according to the following formulas:

(A) Non-part 70 permits

annual fee = $/ton factor x tons/year predominant air contaminant

Provided, however, that no annual fee shall be charged for a permit in which the tons/year predominant air contaminant is less than 10 tons/year.

(B) Part 70 permits

annual fee = $/ton factor x tons/year chargeable emissions

Provided, however, that no annual fee shall be less than the $/ton factor x 100.

Reg.9.505 Modification Fees

Modification and renewal fees for air permits shall be assessed according to the following formulas:

(A) Non-part 70 permits

modification fee = $/ton factor x tons/year net emissions increase of predominant air contaminant

However, no modification fee shall be less than $400, or more than the $/ton factor x 4,000.

(B) Part 70 permits

(1) For each non-minor permit modification or each renewal permit involving a non-minor permit modification:

fee = $/ton factor x tons/year net emission increase of chargeable emissions

However, no fee shall be less than $1,000 or more than the $/ton factor x 4,000.

(2) $500 for each minor permit modification or each renewal permit involving only a minor permit modification.

Reg.9.506 Administrative Permit Amendments and Renewal Permits

There shall be no fee charged for administrative permit amendments or renewal permits not involving a permit modification, as such are defined in Regulation 26: Arkansas Operating Air Permit Program, Regulation 19: State Implementation Plan for Air Pollution Control, or Regulation 18: Arkansas Air Pollution Control Code, as applicable.

Reg.9.507 General Permits

(A) In lieu of the fees schedules above, and except as provided in 9.507(B) below, sources which qualify for a General Air Permit issued pursuant to APC&EC Reg. Nos. 18, 19, or 26 shall be subject to an Initial Fee and Annual Fee as described below:

(1) The Initial Fee of $200.00 shall be remitted with the Notice of Intent (NOI) for coverage under the applicable General Permit.

(2) Until a Notice of Termination (NOT) is submitted and approved by the Department, the Permittee shall be billed $200.00 annually thereafter on the anniversary date of coverage.

(3) When general permits are revised, no additional initial fee will be required to be submitted if the currently permitted facility has maintained coverage under the existing general permit.

(B) The following General Permit holders shall not be assessed or billed an Annual Fee:

(1) Non-part 70 General Permits in which the tons/year predominant air contaminant is less than 10 tons per year.

Reg.9.508 Permit Fees for Certain Small Businesses Subject to Part 70 Permitting Requirements

(A) For purposes of this section, the term "small business stationary source" means a stationary source that :

(1) is owned or operated by a person that employs 100 or fewer individuals
(2) is a small business concern as defined in the federal Small Business Act (www.sba.gov);
(3) is not a major stationary source;
(4) is permitted to emit less than 50 tons per year of any regulated pollutant; and
(5) is permitted to emit less than 75 tons per year of all regulated pollutants.

(B) Upon written request, the Director may reduce the Part 70 initial, Part 70 annual, or Part 70 modification fee for a small business stationary source if the source demonstrates to the satisfaction of the Director that they do not have the financial resources to pay the fee as calculated.

(C) When reducing permit fees in accordance with Reg.9.508(B), the Director shall calculate the fee as if the source is a non-Part 70 source.

CHAPTER 9: ADMINISTRATIVE PROCEDURES

Reg.9.901 Department Review of Fees

The Department shall undertake a biennial re-evaluation of the permit fee schedule as contained in this regulation within sixty (60) days of receiving its approved budget for the next biennium. The evaluation shall reflect the current needs of the Department to perform essential permitting, compliance, enforcement and monitoring activities; the resources available; the balance of the permit fee fund from the previous biennium; anticipated state and federal appropriations; status of delegation of federal programs; and any other factors deemed relevant to the study by the Department.

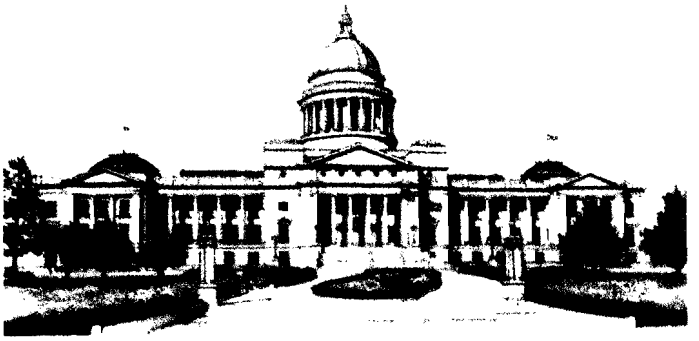
Reg.9.902 Appeals

If any applicant/permittee disagrees with the Department's decision on an assessment of fees, the applicant/permittee may appeal such decision in accordance with the applicable provisions of the Water and Air Pollution Control Act, the Solid Waste Management Act, the State Environmental Laboratory Certification Program Act, and Pollution Control and Ecology Commission Regulation No. 8, Administrative Procedures.

Reg.9.903 Effective Date

This regulation is effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.

ARKANSAS REGISTER



Transmittal Sheet

* Use only for **FINAL** and **EMERGENCY RULES**

Secretary of State
Mark Martin
State Capitol, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-3527
www.sos.arkansas.gov

For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Environmental Quality

Department Arkansas Pollution Control & Ecology Commission

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0750

Statutory Authority for Promulgating Rules A.C.A. §8-4-201, §8-4-202, §8-4-304, & §8-4-311

Rule Title: Reg. No. 9, Permit Fee Regulations; Docket 11-007-R; MO 12-23

Intended Effective Date
(Check One)

- ☐ Emergency (ACA 25-15-204)
- ☐ 30 Days After Filing (ACA 25-15-204)
- ☐ Other _____
  (Must be more than 30 days after filing date.)

Date	
Legal Notice Published	12/07/2012
Final Date for Public Comment	01/31/2012
Reviewed by Legislatice Council	06/13/2012
Adopted by State Agency	06/22/2012

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Mike Bates (Contact Person) bates@adeq.state.ar.us (E-mail Address) 06/29/2012 (Date)

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Signature

(501) 682-7890 charles.moulton@arkansasag.gov
Phone Number E-mail Address

Administrativer Hearing Officer
Title

06/29/2012
Date

FILED
2012 JUN 29 PM 4:15
SECRETARY OF STATE
STATE OF ARKANSAS
REGISTER DIV.

Revised 8/2011 to reflect new legislation passed in 2011.

ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION
101 EAST CAPITOL
SUITE 205
LITTLE ROCK, ARKANSAS 72201
PHONE: (501) 682-7890
FAX: (501) 682-7891

June 29, 2012

Ms. Donna Davis
Administrative Rules and Regulations Committee
Room 433, State Capitol Building
Little Rock, Arkansas 72201

RE: Regulation No. 9, Permit Fee Regulation; Docket No. 11-007-R - **FINAL FILING**.

Dear Ms. Davis:

I am enclosing the following for filing with your office:

1. Two (2) hard copies of the amendment to Regulation No. 9, Permit Fee Regulation.
2. Two (2) copies of Commission Minute Order No. 12-23
3. Two (2) copies of the Financial Impact Statement.

Please provide written confirmation of your receipt of these materials by file-marking the enclosed copy of this letter and returning it to me.

Thank you for your assistance in this matter.

Respectfully,

Charles Moulton
Administrative Hearing Officer

Enclosures

ARKANSAS STATE LIBRARY

Agency Certification Form
For Depositing Final Rules and Regulations At the Arkansas State Library

Documents Services • Arkansas State Library
One Capitol Mall • Little Rock, AR 72201-1094
501-682-2326 Phone; 501-682-1532 FAX

For Office Use Only

Effective Date: **Classification Number:**

Name of Agency: Arkansas Department of Environmental Quality

Contact Person: Mike Bates **Telephone:** (501) 682-0750

Statutory Authority for Promulgating Rules: A.C.A. §8-4-201, §8-4-202, §8-4-304, and §8-4-311

Title of Rule: Regulation No 9, Permit Fee Regulations; Docket No 11-007-R; Minute Order No. 12-23.

Rule Status	Effective Date Status	Effective Date
☐ New Rule/Regulation	☐ Emergency	
☒ Amended Rule/Regulation	☒ 10 Days after filing	July 9, 2012
☐ Repealed Rule/Regulation	☐ Other	
☐ Order	☐ Repealed	
☐ Emergency Rule/Regulation	Adopted by State Agency	

☐ Rule above is proposed and will be replaced by final version

☒ Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature: _____ Date: June 29, 2012

Title: Administrative Hearing Officer

1/14/99

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

SUBJECT Adoption of Revisions to Regulation 9, Fee Regulation

DOCKET NO. 11-007-R

MINUTE ORDER NO. 12 - 23

PAGE 1 OF 1

Pursuant to public notice and hearing, and in consideration of comments received, the Arkansas Pollution Control and Ecology Commission hereby adopts changes to Regulation No. 9, Fee Regulation.

PROMULGATED THIS 22nd DAY OF JUNE, 2012, BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: _____
John Chamberlin, Chairman

ATTEST: _____
Teresa Marks, Director

COMMISSIONERS

_____ J. Bates	_____ D. Samples
_____ L. Bengal	_____ L. Sickel
_____ J. Chamberlin (Chair)	_____ J. Simpson
_____ J. Fox	_____ W. Thompson
_____ D. Hendrix	_____ B. White
_____ L. Hitchcock	_____ R. Young
_____ S. Jorgensen (Vice Chair)	

_____ **SUBMITTED BY: Mike Bates PASSED: 06/22/12**
J. Chamberlin, Chair

Pollution Control and Ecology Commission # 014.00-019

ARKANSAS POLLUTION CONTROL and ECOLOGY COMMISSION

REGULATION NO. 19
REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR POLLUTION CONTROL

Adopted by the PC&E Commission June 22, 2012

TABLE OF CONTENTS

CHAPTER 2: DEFINITIONS

Terms and phrases used in this regulation which are not explicitly defined herein shall have the same meaning as those terms which are used in the federal Clean Air Act. For purposes of this regulation:

"12-month period" means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

"Actual emissions" means the quantity of federally regulated air pollutants emitted from a stationary source considering emissions control equipment and actual hours of source operation or amount of material processed.

"CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions tpy, for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A - 1 to subpart A of 40 CFR part 98 - Global Warming Potentials (which is incorporated by reference as finalized by EPA as of October 30, 2009), and summing the resultant value for each to compute a tpy CO_2 equivalent emissions. For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

"Commission" means the Arkansas Pollution Control and Ecology Commission.

"Construction" means fabrication, erection, or installation of equipment. See also 40 CFR 60.2, 40 CFR 51.165, and 40 CFR 52.21.

"Control apparatus" means any device which prevents, controls, detects or records the emission of any federally regulated air pollutants.

"Department" means the Arkansas Department of Environmental Quality, or its successor. When reference is made in this regulation to actions taken by or with reference to the Department, the reference is to the staff of the Department acting at the direction of the Director.

"Director" means the Director of the Arkansas Department of Environmental Quality, or its successor, acting directly or through the staff of the Department.

"Emission limitation" and **"emission standard"** mean a requirement established by the Department or the Administrator of the United States Environmental Protection Agency which limits the emissions of federally regulated air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

"Emission unit" means any article, machine, equipment, operation, or contrivance that emits or has the potential to emit any federally regulated air pollutant.

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device, except equipment used for any mode of vehicular transportation, capable of causing the emission of a federally regulated air pollutant into the open air, and any stack, conduit, flue, duct, vent, or similar device connected or attached to or serving the equipment.

"Federal Clean Air Act" or **"Clean Air Act"** or **"FCAA"** or **"the Act"** means the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq. and its implementing regulations as of the effective date of this regulation.

"Federally regulated air pollutant" means the following:

(A) Nitrogen oxides or any volatile organic compounds;

(B) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(C) Except as provided in (E), any pollutant that is subject to any standard promulgated under 42 U.S.C. §§ 7401, et seq., as of the effective date of this regulation;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act, 42 U.S.C.§§ 7401, et seq. as amended as of July 1,1997.

(E) GHGs, except that GHGs shall not be a Federally Regulated Air Pollutant unless the GHG emissions are:

(1) from a stationary source emitting or having the potential to emit 75,000 tpy CO_2e emissions or more; and

(2) regulated under Chapter 9 of this Regulation 19.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Those emissions are those that, according to customary and good engineering practice, considering technological and economic feasibility, could not pass through a stack, chimney, vent or other functionally-equivalent opening, except that the Department will utilize the definition of fugitive emissions for those industries for which an approved EPA definition exist under federal law or regulation and which are meeting that law or regulation.

"Greenhouse gases" (GHGs) means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Hazardous Air Pollutant" or **"HAP"** means any air pollutant listed pursuant to § 112 of the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq., as of the effective date of this regulation.

"Modification" means any physical change in, or change in the method of operation of, a stationary source which increases the emission rate of any federally regulated air pollutant over permitted rates or which results in the emission of a federally regulated air pollutant not

previously emitted, except that:

(A) Routine maintenance, repair, and replacement shall not be considered a physical change, and

(B) The following shall not be considered a change in the method of operation:

(1) Any change in the production rate, if such change does not exceed the permitted operating capacity of the source;

(2) Any change in the hours of operation, as long as it does not violate applicable air permit conditions; or

(3) The use of an alternate fuel or raw material, as long as it does not violate applicable air permit conditions.

(C) *De Minimis* changes, as defined in Reg. 19.407(C), and changes in ownership shall not be considered.

"National Ambient Air Quality Standard" or **"NAAQS,"** mean those ambient air quality standards promulgated by the EPA in 40 CFR Part 50.

"Opacity" means the degree to which air emissions reduce the transmission of light and obscure the view of an object in the background.

"Operator" means any person who leases, operates, controls, or supervises any equipment affected by these regulations.

"Owner" means any person who has legal or equitable title to any source, facility, or equipment affected by these regulations.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter equal to or less than 100 micrometers.

"Particulate matter emissions" means all particulate matter, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or

alternate method, specified in 40 CFR Part 60 Appendix A or by a test method specified in these regulations or any supplement thereto.

"Person" means any individual or other legal entity or their legal representative or assignee.

"Plan" means the Arkansas Plan of Implementation for Air Pollution Control.

"**$PM_{2.5}$"** means particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50, or by an equivalent method designated in accordance with 40 CFR Part 53 as of December 8, 1984.

"PM_{10} emissions" means PM_{10} emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 51, Appendix M as of December 8, 1984, or by a test method specified in these regulations or any supplement thereto.

"Potential to emit" means the maximum capacity of a stationary source to emit a federally regulated air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a federally regulated air pollutant, including, but not, limited to, air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable to the extent it is regulated by the federal Clean Air Act, 42 U.S.C. §§ 7401 et seq. as of February 15, 1999. Secondary air emissions do not count in determining the potential to emit of a stationary source.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative or such person if the representative is responsible

for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 United States dollars); or

(2) The delegation of authority to such representative is approved in advance by the Department;

(B) For partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this regulation, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For acid rain sources:

(1) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(2) The designated representative for any other purposes under Part 70.

"Secondary emissions" means those emissions of federally regulated air pollutants which, although associated with a source, are not emitted from the source itself.

"Shutdown" means the cessation of operation of equipment.

"Startup" means the setting in operation of equipment.

"Stationary source" means any building, structure, facility, or installation which emits or may emit any federally regulated air pollutant.

"Title I modification" means any modification as defined under any regulation promulgated pursuant to Title I of the federal Clean Air Act. *De minimis* changes under Regulation 19, changes to state only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications.

"Volatile organic compounds" or **"VOC"** means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(A) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity:

acetone;
methane;
ethane;
methylene chloride (dichloromethane);
1,1,1- trichloroethane (methyl chloroform);
tetrachloroethylene (perchloroethylene);
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
trichlorofluoromethane (CFC-11);
dichlorodifluoromethane (CFC-12);
chlorodifluoromethane (HCFC-22);
trifluoromethane (HFC-23);
1,2-dichloro 1,1, 2, 2-tetrafluoroethane (CFC-114);
chloropentafluoroethane (CFC-115);
1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
1,1,1,2-tetrafluoroethane (HFC-134a);
1,1-dichloro 1-fluoroethane (HCFC-141b);
1-chloro 1,1-difluoroethane (HCFC-142b);
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
pentaflurorethane (HFC-125);
1,1,2,2-tetrafluoroethane (HFC-134);
1,1,1-trifluoroethane (HFC-143a);
1,1-difluoroethane (HFC-152a);
parachlorobenzotrifluoride (PCBTF);
cyclic, branched, or linear completely methylated siloxanes;
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
difluoromethane (HFC-32);

ethylfluoride (HFC-161);
1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
1,1,2,2,3-pentafluoropropane (HFC-245ca);
1,1,2,3,3-pentafluoropropane (HFC 245ea);
1,1,1,2,3-pentafluoropropane (HFC-245eb);
1,1,1,3,3-pentafluoropropane (HFC-245fa);
1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
1,1,1,3,3-pentafluorobutane (HFC-365mfc);
chlorofluoromethane (HCFC-31);
1 chloro-1-fluoroethane (HCFC-151a);
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100);
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane
($(CF_3)_2CFCF_2OCH_3$);
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE 7200);
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane
($(CF_3)_2CFCF_2OC_2H_5$);
methyl acetate;
1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$ or HFE-7000);
3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane
(HFE-7500)
1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);
methyl formate ($HCOOCH_3$)
1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
and perfluorocarbon compounds which fall into these classes:

(1) cyclic, branched, or linear, completely fluorinated alkanes;

(2) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(B) For purposes of determining compliance with emission limits, VOC will be measured by the test methods in the approved State Implementation Plan (SIP) or 40 CFR Part 60, Appendix A, as of July 1, 1997, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these

negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Department.

(C) As a precondition to excluding these compounds as VOC or at any time thereafter, the Department may require an owner or operator to provide monitoring or testing results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

(D) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

CHAPTER 4: MINOR SOURCE REVIEW

Reg. 19.401 General Applicability

No person shall cause or permit the operation, construction, or modification of a stationary source, whose actual emissions are:

75 tons per year or more of carbon monoxide;

40 tons per year or more of nitrogen oxides;

40 tons per year or more of sulfur dioxide;

40 tons per year or more of volatile organic compounds;

15 tons per year or more of PM_{10};

0.5 tons per year or more of lead;

2.0 ton per year or more of any single hazardous air pollutant; or

5.0 tons per year or more of any combination of hazardous air pollutants

without first obtaining a permit from the Department pursuant to the provisions of this chapter.

Reg. 19.402 Approval Criteria

No permit shall be granted or modified under this chapter unless the owner/operator demonstrates to the reasonable satisfaction of the Department that the stationary source will be constructed or modified to operate without resulting in a violation of applicable portions of this regulation or without interfering with the attainment or maintenance of a national ambient air quality standard.

Reg. 19.403 Owner/Operator's Responsibilities

Issuance of a permit by the Department does not affect the responsibility of the owner/operator to comply with applicable portions of this regulation.

Reg. 19.404 Required Information

(A) General

Application for a permit shall be made on such forms and contain such information as the Department may reasonably require, including but not limited to:

(1) information on the nature and amounts of federally regulated air pollutants to be emitted by the stationary source; and

(2) such information on the location, design, and operation of stationary source as the Department may reasonably require.

(B) Duty to Supplement Submittal

If, while processing an application that has been determined to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, the Department may request such information in writing and set a reasonable deadline for a response.

(C) Duty to Correct Submittal

Any owner/operator who fails to submit any relevant facts or who has submitted incorrect information, shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any relevant requirements that become applicable to the stationary source before final action is taken on its application.

Reg. 19.405 Action on Application

(A) Technical Review

The Department will review the application submitted under this chapter in order to ensure to their reasonable satisfaction that:

(1) the stationary source will be constructed or modified to operate without interfering with attainment or maintenance of a national ambient air quality standard;

(2) the stationary source will be constructed or modified to operate without violating any applicable regulation adopted by the U.S. Environmental Protection Agency pursuant to §§111, 112, and 114 of the Clean Air Act as amended;

(3) the stationary source will be constructed or modified to operate without resulting in a violation of any applicable provisions of this regulation;

(4) the emission rate calculations are complete and accurate; and

(5) if the facility wishes to measure and/or monitor operating parameters rather than actual emissions, the application describes a process which will be used to ensure that the calculations are translated into enforceable limits on operational parameters rather than emissions.

(B) Proposed Action

(1) If the Department initially determines the requirements of Reg. 19.405(A) are met, they shall prepare a draft permit which:

(a) contains such conditions as are necessary to comply with this Regulation;

(b) addresses all federally regulated air pollutant emissions and all federally regulated air pollutant emitting equipment at the stationary source except pollutants or equipment specifically exempt or as specifically provided for in paragraph (c) below; and

(c) establishes Best Available Control Technology (BACT) permitted emission rates, emission limitations or other enforceable conditions for GHG emissions pursuant to Chapter 9 of this Regulation, if applicable. Draft permits for facilities not subject to a BACT determination in regard to GHG emissions pursuant to the provisions at Chapter 9 of this Regulation shall not contain permitted emission rates, emission limitations or other enforceable conditions related to GHG emissions. However, the

applicant may request that the Department include permitted emission rates, emission limitations or other enforceable conditions related to GHG emissions in the draft permit in order to set enforceable limits for the purpose of establishing synthetic minor status. In the event any provision of Regulation 19 is found to be in conflict with this Section 19.405(B)(1), this Section shall take precedence.

(2) If the Department initially determines the requirements of this chapter are not met, they shall prepare a notice of intent to deny. This notice will state the reasons for the Department's denial of the stationary source's submittal.

(3) Except as provided in Reg. 19.407, the public shall have an opportunity to comment on the Department's proposed permit decision in accordance with Reg. 19.406.

(4) Within 90 days of receipt by the Department of an initial permit application, or an application for a major modification which contains such information as required by the Department (unless said period is extended by mutual agreement between the Department and the applicant), the Department shall notify the applicant in writing of its draft permitting decision. If the Department fails to take action of the application within the prescribed time frames, the aggrieved applicant may petition the Commission for relief from Department inaction. The Commission shall either grant or deny the petition within 45 days of its submittal.

(C) Final Action

The Department shall take final action on a permit application after the close of the public comment period. The Department shall notify in writing the owner/operator and any person that submitted a written comment, of the Department's final action and the Department's reasons for its final action.

Reg. 19.406 Public Participation

(A) General

No permit shall be issued, denied, or modified unless the public has first had an opportunity to comment on the information submitted by the owner/operator and the Department's analysis, as demonstrated by the permit record, of the effect of construction or modification on ambient air quality, including the Department's proposed approval or disapproval of the permit.

(B) Public Availability of Information

For purposes of this section, opportunity to comment shall include, at a minimum:

(1) Availability for the public inspection in at least one location in the area where the source is located, or proposes to locate, and in the Department's central offices of the Department's draft decision, information submitted by the owner/operator, and any information developed by the Department in support of its draft permit decision;

(2) A 30-day period for submittal of public comment (beginning on the date of the latest newspaper notice, ending on the date 30 days later);

(3) A publication in a newspaper of general circulation in the area where the source is located or proposes to locate, and in a State publication designed to give general public notice. Such notice shall, as a minimum, describe the locations at which the information submitted by the owner/operator and the Department's analysis of this information, may be inspected and the procedure for submitting public comment;

(4) A copy of the notice, required pursuant to this subsection, shall be sent to the owner/operator and to the:

(a) Regional Administrator of the United States Environmental Protection Agency;

(b) mayor of the community where the stationary source is proposed to be constructed or modified;

(c) county judge of the county where the equipment is proposed to be constructed or modified; and

(d) appropriate air pollution control agencies of adjoining states if the construction or modification of the source will impact air quality in adjoining states.

(5) Public comments addressing the technical merits of the permit application and the Department's analysis of the effect of the proposed emissions on air quality submitted in accordance with procedures in the public notice shall be considered by the Department prior to taking final action on the permit application.

Reg. 19.407 Permit Amendments

(A) Administrative Permit Amendments

(1) An administrative permit amendment is a permit revision that:

(a) corrects a typographical error;

(b) identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change in the source;

(c) requires more frequent monitoring or reporting by the permittee;

(d) incorporates a change in the permit involving the retiring of equipment or emission units, or the decrease of permitted emissions from equipment or emission units; or

(e) incorporates a change to the facility's insignificant activities list.

(2) The Department shall revise the permit as expeditiously as practicable and may incorporate such revisions without providing notice to the public.

(3) The applicant may implement the changes addressed in the request for an administrative amendment immediately upon approval.

(B) Change in Ownership

(1) Permits issued under this regulation shall remain freely transferable provided:

(a) the applicant for the transfer notifies the Director at least thirty (30) days in advance of the proposed transfer date on such forms as the Director may reasonably require, and

(b) submits a disclosure statement in accordance with Commission Regulation 8, Administrative Procedures, or other such documents as required by the Department.

(2) The Director may deny the issuance or transfer of any permit, license, certification, or operational authority if he or she finds, based upon the disclosure statement and other investigation which he or she deems appropriate, that:

(a) The applicant has a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction;

(b) An applicant which owns or operates other facilities in the state is not in substantial compliance with, or on a legally enforceable schedule that will result in compliance with, the environmental laws or regulations of this state; or

(c) A person with a history of noncompliance with environmental laws or regulations of this state or any other jurisdiction is affiliated with the applicant to the extent of being capable of significantly influencing the practices or operations of the applicant which could have an impact upon the environment.

(3) Public notice requirements shall not apply to changes in ownership or changes in name.

(C) *De Minimis* Changes

(1) A proposed change to a facility will be considered *De Minimis* if:

(a) minimal judgment is required to establish the permit requirements for the change; and

(b) the change will result in a trivial environmental impact.

(2) The environmental impact of a proposed change generally will be considered trivial if the potential emissions from the change alone, without taking into account any corresponding emission reductions, will:

(a) be less than the following amounts:

(i) Seventy-five (75) tons per year of carbon monoxide,;

(ii) Forty (40) tons per year of nitrogen dioxides, sulfur dioxides, or volatile organic compounds;

(iii) Twenty-five (25) tons per year of particulate matter emissions;

(iv) Fifteen (15) tons per year of PM_{10} emissions; and

(v) One-half (0.5) a ton per year lead;

(b) or, result in an air quality impact less than:

Pollutant	*De Minimis* Concentration	Averaging Time
carbon monoxide	500 $\mu g/m^3$	8-hour
nitrogen dioxide	10 $\mu g/m^3$	annual
PM_{10}	8 $\mu g/m^3$	24-hour
sulfur dioxide	18 $\mu g/m^3$	24-hour
lead	0.1 $\mu g/m^3$	3-month

(3) A proposed change will be considered *De Minimis* if the increases are less than 75,000 tpy of CO_2e and other pollutant emission increases otherwise qualify as *De Minimis* under this section.

(4) The following changes will not be considered *De Minimis* changes:

(a) any increase in the permitted emission rate at a stationary source without a corresponding physical change or change in the method of operation at the source;

(b) any change which would result in a violation of the Clean Air Act;

(c) any change seeking to change a case-by-case determination of an emission limitation established pursuant to Best Available Control Technology (BACT), §112(g), §112(i)(5), §112(j), or §111(d) of the Clean Air Act as amended as of February 15, 1999;

(d) a change that would result in a violation of any provision of this regulation;

(e) any change in a permit term, condition, or limit that a source has assumed to avoid an applicable requirement to which the source would otherwise be subject;

(f) any significant change or relaxation to existing testing, monitoring, reporting, or recordkeeping requirements; or

(g) any proposed change which requires more than minimal judgment to determine eligibility.

(5) A source may not submit multiple applications for *De Minimis* changes that are designed to conceal a larger modification that would not be considered a *De Minimis* change. The Department will require such multiple applications be processed as a permit modification with public notice and reconstruction requirements. Deliberate misrepresentation may be grounds for permit revocation.

(6) The applicant may implement *De Minimis* changes immediately upon approval by the Department.

(7) The Department shall revise the permit as expeditiously as practicable and may incorporate *De Minimis* changes without providing notice to the public. The

applicant may implement *De Minimis* changes immediately upon approval by the Department.

Reg. 19.408 Exemption from Permitting

(A) Insignificant Activities

Stationary sources and activities listed in Appendix A of this regulation shall be considered to be insignificant and will not require a permit under this chapter or be included in a source's permit.

(B) Grandfathering

Stationary sources operating prior to June 30, 1975, and which have not been modified since, will not be required to obtain a permit under this chapter.

Reg. 19.409 Transition

Facilities which are now subject to this regulation which were not previously subject to this regulation shall be in full compliance within 180 days of the effective date of this regulation. Facilities which are now subject to permitting under this regulation which were not previously subject to permitting under this regulation shall submit a complete application within 180 days of the effective date of this regulation. The Director may extend this compliance period on a case-by-case basis provided that the total compliance period does not exceed one year.

Reg. 19.410 Permit Revocation and Cancellation

(A) Revocation

Any permit issued under this regulation is subject to revocation, suspension, or modification in whole or in part, for cause, including without limitation:

(1) Violation of any condition of the permit;

(2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

(3) Change in any applicable regulation or change in any pre-existing condition affecting the nature of the emission that requires either a temporary or permanent reduction or elimination of the permitted emission.

(B) Cancellation

The Director may cancel a permit if the construction or modification is not begun within 18 months from the date of the permit issuance or if the work involved in the construction or modification is suspended for a total of 18 months or more.

Reg. 19.411 General Permits

(A) General Authority

The Department may, after notice and opportunity for public participation provided under this chapter, issue a general permit covering numerous similar sources. The criteria for the review and approval of permits under this chapter shall be used for general permits as well. Any general permit shall comply with all requirements applicable to other permits and shall identify criteria by which sources may qualify for the general permit. They shall also include enforceable emission limitations or other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this regulation. To sources that qualify, the Department shall grant the conditions and terms of the general permit. The source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

(B) Application

Sources that would qualify for a general permit must apply to the Department for coverage under the terms of the general permit or must apply for permit consistent with this chapter. The Department may grant a source's request for authorization to operate under a general permit, but such a grant shall not be a final permit action for purposes of judicial review.

(1) When any application for the issuance of a new permit or a modification of an existing permit is filed with the Department, the Department shall cause notice of

the application to be published in a newspaper of general circulation in the county in which the proposed facility is to be located.

(2) The notice required by Reg. 19.411(B)(1) shall advise that any interested person may request a public hearing on the permit application by giving the Department a written request within ten (10) days of the publication of the notice.

(3) Should a hearing be deemed necessary by the Department, or in the event the Department desires such a hearing, the Department shall schedule a public hearing and shall, by first class mail, notify the applicant and all persons who have submitted comments of the date, time, and place thereof.

Reg. 19.412 Dispersion Modeling

The following shall apply when dispersion or other air quality modeling is used to meet the requirements of this chapter.

(A) General

All applications of air quality modeling involved in this chapter shall be based on the applicable models, data bases, and other requirements specified in Appendix W of 40 CFR Part 51 (Guideline on Air Quality Models) as of November 9, 2005.

(B) Substitution

Where an air quality model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific pollutant or type of stationary source. Written approval of the Administrator of the EPA must be obtained for any modification or substitution.

Reg. 19.413 Confidentiality

Information which constitutes a trade secret shall be held confidential and segregated from the public files of the Department if requested in writing by the permit applicant in accordance with this subsection.

(A) For purposes of this subsection, "Trade Secret" means any information, including formula, pattern, compilation, program, device, method, technique, process, or rate of production that:

(1) Derives independent economic value (actual or potential) from not being generally known to, and not being readily ascertainable through, proper means by other persons who can obtain economic value from its disclosure or use, and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(B) In order to establish entitlement to confidentiality, the applicant must submit a sworn affidavit to the Department that is subject to public scrutiny which describes in a manner that does not reveal trade secrets, the processes or market conditions that supports the applicant's confidentiality claim in the terms of Reg. 19.413(A)(1) and (2). This affidavit must also recite the following:

"The applicant agrees to act as an indispensable party and to exercise extraordinary diligence in any legal action arising from the Department's denial of public access to the documents or information claimed herein to be a trade secret."

If an applicant anticipates numerous permit modifications that may involve regulatory review of trade secrets, it may submit an omnibus affidavit establishing the prerequisites of Reg. 19.413(A)(1) and (2) and reference this document in future confidentiality claims.

(C) Confidentiality claims shall be afforded interim protected status until the Department determines whether the requirements of Reg. 19.413(B) are satisfied. The Department shall make such determination prior to the issuance of any permit or publication of any draft permit. In the event the Department does not make such determination prior to permit issuance, the information shall be deemed confidential until a request is made. If a third party request to review information claimed as confidential is received before the Department provides its written determination concerning the claim, the Department shall not release such information before

notifying the applicant of the request. The Department shall notify the applicant of the request and the Department's determination on the confidentiality claim at least two business days before releasing the information, at which time the applicant may choose to supplement its affidavit supporting confidentiality or seek legal recourse.

(D) For any permit application submitted subject to a claim of trade secret, the applicant shall provide two copies of the application; one prominently marked as confidential and another that is subject to public review with confidential information excised. The Department will not accept applications that are deemed totally confidential except under extraordinary circumstances guaranteeing future disclosure at a meaningful time for public review.

Reg. 19.414 Operational Flexibility-Applicant's Duty to Apply for Alternative Scenarios

Any operating scenario allowed for in a permit may be implemented by the facility without the need for any permit revision or any notification to the Department. It is incumbent upon the permit applicant to apply for any reasonably anticipated alternative facility operating scenarios at the time of permit application. The Department shall include approved alternative operating scenarios in the permit.

Reg. 19.415 Changes Resulting in No Emissions Increases

A permitted source may make changes within the facility that contravene permit terms without a permit revision if the changes:

(A) Are not modifications under any provision of Title I of the Act;

(B) Do not exceed emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions);

(C) Do not violate applicable requirements; and

(D) Do not contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements;

provided that the facility provides the Department with written notification as required below in advance of the proposed changes, which shall be a minimum of 7 days, or such shorter time frame that Department allows for emergencies. The source and Department shall attach each such notice to their copy of the relevant permit. For each such change, the written notification required above shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

Reg. 19.416 Permit Flexibility

(A) The Department may grant an extension to any testing, compliance or other dates in the permit. No extensions shall be authorized until the permittee of the facility receives written approval from the Department. The Department may grant such a request, at its discretion, in the following circumstances:

(1) The permittee of the facility makes such a request in writing at least 15 days in advance of the deadline specified in the facility's permit;

(2) The extension does not violate a federal requirement;

(3) The permittee of the facility demonstrates the need for the extension; and

(4) The permittee of the facility documents that all reasonable measures have been taken to meet the current deadline and documents reasons the current deadline cannot be met.

(B) The Department may grant a request to allow temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limit in a facility's permit. No such activities shall be authorized until the permittee of the facility receives written approval from the Department. The Department may grant such a request, at its discretion, in the following circumstances:

(1) The permittee of the facility makes such a request in writing at least 30 days in advance of the date that temporary emissions and/or testing that would otherwise exceed a permitted emission rate, throughput requirement or other limit in a facility's permit;

(2) Such a request does not violate a federal requirement;

(3) Such a request is temporary in nature;

(4) Such a request will not result in a condition of air pollution;

(5) The request contains such information necessary for the Department to evaluate the request, including but not limited to, quantification of such emissions and the date and time such emission will occur;

(6) Such a request will result in increased emissions less than five tons of any individual criteria pollutant, one ton of any single HAP and 2.5 tons of total HAPs; and

(7) The permittee of the facility maintains records of the dates and results of such temporary emissions and/or testing.

(C) The Department may grant a request to allow an alternative to the monitoring specified in a facility's operating permit. No such activities shall be authorized until the permittee of the facility receives written approval from the Department. The Department may grant such a request, at its discretion, in the following circumstances:

(1) The permittee operator of the facility makes such a request in writing at least 30 days in advance of the first date that the monitoring alternative will be used at the facility;

(2) Such a request does not violate a federal requirement;

(3) The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the facility's operating permit; and

(4) Any such request, if approved by the Department, is incorporated into the next permit modification application by the permittee of the facility.

CHAPTER 9: PREVENTION OF SIGNIFICANT DETERIORATION

Reg. 19.901 Title

The following rules and regulations of the Arkansas Pollution Control and Ecology Commission, adopted in accordance with the provisions of Part II of the Arkansas Water and Air Pollution Control Act at A.C.A §§8-4-101 et seq., shall be known as the Prevention of Significant Deterioration Regulations of the Arkansas Plan of Implementation for Air Pollution Control, hereinafter referred to, respectively, as the "PSD Regulations."

Reg. 19.902 Purposes

Promulgation and enforcement of these PSD Regulations is intended to further the purposes of the Plan and the Regulations of the Plan, including, but not limited to, acceptance of delegation by the EPA of authority for enforcement of regulations governing the prevention of significant deterioration of air quality and regulations governing the protection of visibility in mandatory Class I federal areas.

Reg. 19.903 Definitions

(A) "Advance notification" (of a permit application) means any written communication which establishes the applicant's intention to construct, and which provides the Department with sufficient information to determine that the proposed source may constitute a major new source or major modification, and that such source may affect any mandatory Class I federal area, including, but not limited to, submittal of a draft or partial permit application, a PSD monitoring plan, or a sufficiently detailed letter. "Advance notification" does not include general inquiries about the Department's regulations.

(B) All other terms used herein shall have the same meaning as set forth in Chapter 2 of Regulation 19 or in 40 CFR 52.21(b) [PSD] and 40 CFR 51.301 [Protection of Visibility] as of November 29, 2005, all as in effect upon the latest date of amendment of this supplement, unless manifestly inconsistent with the context in which they are used. Wherever there is a difference between the definitions in Chapter 2 of Regulation 19 and those listed in 40 CFR 52.21(b) and 40 CFR 51.301,

the federal definitions as listed in 40 CFR 52.21(b) and 40 CFR 51.301 as of November 29, 2005, shall apply.

(C) The definition for "routine maintenance, repair and replacement" in 40 CFR 52.21(b)(2)(iii)(a) is not incorporated.

Reg. 19.904 Adoption of Regulations

(A) Except where manifestly inconsistent with the provisions of the Clean Air Act, as amended, or with federal regulations adopted pursuant thereto, and as amended specifically herein by paragraphs (B), (C), (D), (E), and (F) of Reg. 19.904, the Arkansas Department of Environmental Quality shall have those responsibilities and that authority, with reference to the State of Arkansas, granted to the Administrator of the EPA under 40 CFR 52.21 (a)(2) through (bb), as in effect on November 29, 2005, which are hereby incorporated herein by reference, with the exception of 40 CFR 52.21(b)(55-58), 40 CFR 52.21(i) (9), and 40 CFR 52.21(cc), which are not incorporated. In the absence of a specific imposition of responsibility or grant of authority, the Department shall be deemed to have that responsibility and authority necessary to attain the purposes of the Plan, these PSD Regulations, and the applicable federal regulations, as incorporated herein by reference.

(B) Exclusions from the consumption of increments, as provided in 40 CFR 51.166(f)(1)(iii) as of November 29, 2005, shall be effective immediately. Submission of this Plan under the Governor's signature constitutes a request by the Governor for this exclusion.

(C) In addition to the requirements of 40 CFR 52.21(o) as of November 29, 2005, the following requirements [designated as Reg. 19.904(C)(1),(2),(3) and (4)] shall also apply:

(1) Where air quality impact analyses required under this part indicate that the issuance of a permit for any major stationary source or for any major modification would result in the consumption of more than fifty percent (50%) of any available annual increment or eighty percent (80%) of any short term increment, the person applying for such a permit shall submit to the Department an assessment of the following factors:

(a) Effects that the proposed consumption would have upon the industrial and economic development within the area of the proposed source; and

(b) Alternatives to such consumption, including alternative siting of the proposed source or portions thereof.

(2) The assessment required under subparagraph (4) above shall be made part of the application for permit and shall be made available for public inspection as provided in 40 CFR 52.21(q) as of November 29, 2005.

(3) The assessment required under subparagraph (4) above shall be in detail commensurate with the degree of proposed increment consumption, both in terms of the percentage of increment consumed and the area affected.

(4) The assessment required under subparagraph (4) above may be made effective where a proposed source would cause an increment consumption less than that specified in said subparagraph if the Director finds that unusual circumstances exist in the area of the proposed source which warrant such an assessment. The Director shall notify the applicant in writing of those circumstances which warrant said assessment. The Commission may rescind or modify the Director's action, upon a showing by the applicant that the circumstances alleged by the Director either do not exist or do not warrant the aforecited assessment.

(D) In addition to the requirements of 40 CFR 52.21(p)(1) as of November 29, 2005, the following requirements shall also apply:

Impacts on mandatory Class I federal areas include impacts on visibility. The preliminary determination that a source may affect air quality or visibility in a mandatory Class I federal area shall be made by the Department, based on screening criteria agreed upon by the Department and the Federal Land Manager.

(E) In all instances wherein the aforesaid 40 CFR 51.301 and 40 CFR 52.21 refer to the Administrator or the Environmental Protection Agency, the reference, for the purposes of paragraph (A) of Reg. 19.904, shall be deemed to mean the Arkansas

Department of Environmental Quality, unless the context plainly dictates otherwise, except in the following sections:

(1) Exclusion from increment consumption: 40 CFR 52.21(f)(1)(v), (f)(3), and (f)(4)(I);

(2) Redesignation: 40 CFR 52.21(g)(1), (g)(2), (g)(4), (g)(5), and (g)(6);

(3) Air quality models: 40 CFR 52.21 (2).

(F) Redesignation of air quality areas in Arkansas shall comply with Arkansas Code Annotated 1987 Section 8-3-101 et seq.

(G) For the purpose of the regulation of GHGs, only the standards and requirements promulgated by EPA as of June 3, 2010, related to the permitting of GHG emissions shall apply to the requirements of 40 CFR 52.21, as of November 29, 2005, incorporated by reference at Reg.19.904(A). The following definitions and requirements shall also apply:

(1) "Greenhouse gases" (GHGs) means the air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in Reg. 19.904(G)(4) through Reg.19.904(G)(5).

(2) For purposes of Reg. 19.904(G)(3) through Reg.19.904(G)(5), the term tons per year (tpy) "CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(a) Multiplying the mass amount of emissions in tpy, for each of the six greenhouse gases in the pollutant GHGs, by each gas's associated global warming potential published at Table A - 1 to subpart A of 40 CFR part 98 - Global Warming Potentials (as of October 30, 2009); and

(b) Sum the resultant values from Reg. 19.904(G)(2)(a) for each gas to compute a tpy CO_2e.

(c) For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(3) The term "emissions increase" as used in Reg. 19.904(G)(4) through Reg. 19.904(G)(5) shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv), as of November 29, 2005), and a significant net emissions increase (as defined in 40 CFR 52.21(b)(3), as of November 29, 2005, and 40 CFR 52.21(b)(23), as of November 29, 2005), occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii), as of November 29, 2005.

(4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit GHGs at 75,000 tpy CO_2e or more; or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of GHGs of 75,000 tpy CO_2e or more.

(5) Beginning July 1, 2011, in addition to the provisions in Reg.19.904(G)(4) of this section, the pollutant GHGs shall also be subject to regulation:

(a) At a new stationary source that will emit or have the potential to emit

100,000 tpy CO_2e or more; or

(b) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e or more, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

(6) If federal legislation or a federal court stays, invalidates, delays the effective date of, or otherwise renders unenforceable, in whole or in part, EPA's regulation of greenhouse gases, then the provisions of Regulation 19 concerning greenhouse gases based thereon shall be stayed and shall not be enforceable until such time as the Commission makes a final decision on whether or not to revise Regulation 19 due to the federal legislation or federal court order.

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

REGULATION NO. 19

APPENDIX A

Insignificant Activities List

APPENDIX A: INSIGNIFICANT ACTIVITIES LIST

The following types of activities or emissions are deemed insignificant on the basis of size, emission rate, production rate, or activity. Certain of these listed activities include qualifying statements intended to exclude many similar activities. By such listing, the Department exempts certain sources or types of sources from the requirements to obtain a permit or plan under this regulation. Listing in this part has no effect on any other law to which the activity may be subject. Any activity for which a state or federal applicable requirement applies (such as NSPS, National Emission Standards for Hazardous Air Pollutants [NESHAP], or Maximum Achievable Control Technology [MACT]) is not insignificant, even if this activity meets the criteria below.

Group A

The following emission units, operations, or activities must either be listed as insignificant or included in the permit application as sources to be permitted. The listing of insignificant sources does not necessarily mean that the emissions from these sources must be quantified.

1. Fuel burning equipment with a design rate less than 10 MMBtu per hour, provided that the aggregate air pollutant specific emissions from all such units listed as insignificant do not exceed 5 tons per year (tpy) of any combination of HAPs, 75000 tpy carbon dioxide, and 10 tpy of any other air pollutant.

2. Storage tanks less than or equal to 250 gallons storing organic liquids having a true vapor pressure less than or equal to 3.5 psia, provided that the aggregate air pollutant specific emissions from all such liquid storage tanks listed as insignificant do not exceed 5 tpy of any combination of HAPs and 10 tpy of any other air pollutant.

3. Storage tanks less than or equal to 10,000 gallons storing organic liquids having a true vapor pressure less than or equal to 0.5 psia, provided that the aggregate air pollutant specific emissions from all such liquid storage tanks listed as insignificant do not exceed 5 tpy of any combination of HAPs and 10 tpy of any other air pollutant.

4. Caustic storage tanks that contain no VOCs.

5. Emissions from laboratory equipment/vents used exclusively for routine chemical or physical analysis for quality control or environmental monitoring purposes provided that the aggregate air pollutant specific emissions from all such equipment/vents considered

insignificant do not exceed 5 tpy of any combination of HAPs and 10 tpy of any other air pollutant.

6. Non-commercial water washing operations of empty drums less than or equal to 55 gallons with less than three percent of the maximum container volume of material.

7. Welding or cutting equipment related to manufacturing activities that do not result in aggregate emissions of HAPs in excess of 0.1 tpy.

8. Containers of less than or equal to 5 gallons in capacity that do not emit any detectable VOCs or HAPs when closed. This includes filling, blending, or mixing of the contents of such containers by a retailer.

9. Equipment used for surface coating, painting, dipping, or spraying operations, provided the material used contains no more than 0.4 lb/gal VOCs, no hexavalent chromium, and no more than 0.1 tpy of all other HAPs.

10. Non-production equipment approved by the Department, used for waste treatability studies or other pollution prevention programs provided that the emissions are less than 10 tpy of any air pollutant regulated under this regulation or less than 2 tpy of a single HAP or 5 tpy of any combination of HAPs.[1]

11. Operation of groundwater remediation wells, including emissions from the pumps and collection activities provided that the emissions are less than 10 tpy of any air pollutant regulated under this regulation or less than 2 tpy of a single HAP or 5 tpy of any combination of HAPs. This does not include emissions from air-stripping or storage.

12. Emergency use generators, boilers, or other fuel burning equipment that is of equal or smaller capacity than the primary operating unit, cannot be used in conjunction with the primary operating unit, and does not emit or have the potential to emit regulated air pollutants in excess of the primary operating unit and not operated more than 90 days a year. This does not apply to generators which provide electricity to the distribution grid.

13. Other activities for which the facility demonstrates that no enforceable permit conditions are necessary to ensure compliance with any applicable law or regulation provided that

[1] The treatability study or pollution prevention program must be approved separately. The activity creating the emissions must also be determined to be insignificant as discussed in the introduction to this group.

the emissions are less than 75,000 tpy carbon dioxide, 1 tpy of a single HAP or 2.5 tpy of any combination of HAPs, or 5 tpy of any other air pollutant regulated under this regulation. These emission limits apply to the sum of all activities listed under this group.

Group B

The following emission units, operations, or activities need not be included in a permit application:

1. Combustion emissions from propulsion of mobile sources and emissions from refueling these sources unless regulated by Title II and required to obtain a permit under Title V of the federal Clean Air Act, as amended. This does not include emissions from any transportable units, such as temporary compressors or boilers. This does not include emissions from loading racks or fueling operations covered under any applicable federal requirements.

2. Air conditioning and heating units used for comfort that do not have applicable requirements under Title VI of the Act.

3. Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing/industrial or commercial process.

4. Non-commercial food preparation or food preparation at restaurants, cafeterias, or caterers, etc.

5. Consumer use of office equipment and products, not including commercial printers or business primarily involved in photographic reproduction.

6. Janitorial services and consumer use of janitorial products.

7. Internal combustion engines used for landscaping purposes.

8. Laundry activities, except for dry-cleaning and steam boilers.

9. Bathroom/toilet emissions.

10. Emergency (backup) electrical generators at residential locations.

11. Tobacco smoking rooms and areas.

12. Blacksmith forges.

13. Maintenance of grounds or buildings, including: lawn care, weed control, pest control, and water washing activities.

14. Repair, up-keep, maintenance, or construction activities not related to the source's primary business activity, and not otherwise triggering a permit modification. This may include, but is not limited to such activities as general repairs, cleaning, painting, welding, woodworking, plumbing, re-tarring roofs, installing insulation, paved/paving parking lots, miscellaneous solvent use, application of refractory, or insulation, brazing, soldering, the use of adhesives, grinding, and cutting.[2]

15. Surface-coating equipment during miscellaneous maintenance and construction activities. This activity specifically does not include any facility whose primary business activity is surface-coating or includes surface-coating or products.

16. Portable electrical generators that can be "moved by hand" from one location to another.[3]

17. Hand-held equipment for buffing, polishing, cutting, drilling, sawing, grinding, turning, or machining wood, metal, or plastic.

18. Brazing or soldering equipment related to manufacturing activities that do not result in emission of HAPs.[4]

19. Air compressors and pneumatically operated equipment, including hand tools.

20. Batteries and battery charging stations, except at battery manufacturing plants.

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[2] Cleaning and painting activities qualify if they are not subject to VOC or HAP control requirements. Asphalt batch plant owners/operators must get a permit.

[3] "Moved by hand" means that it can be moved by one person without assistance of any motorized or non-motorized vehicle, conveyance, or device.

[4] Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are more appropriate for treatment as insignificant activities based on size or production thresholds. Brazing, soldering, and welding equipment, and cutting torches related directly to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this appendix.

21. Storage tanks, vessels, and containers holding or storing liquid substances that do not contain any VOCs or HAPs.[5]

22. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and no volatile aqueous salt solutions, provided appropriate lids and covers are used and appropriate odor control is achieved.

23. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and non-volatile aqueous salt solutions, provided appropriate lids and covers are used and appropriate odor control is achieved.

24. Drop hammers or presses for forging or metalworking.

25. Equipment used exclusively to slaughter animals, but not including other equipment at slaughter-houses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

26. Vents from continuous emissions monitors and other analyzers.

27. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

28. Hand-held applicator equipment for hot melt adhesives with no VOCs in the adhesive.

29. Lasers used only on metals and other materials which do not emit HAPs in the process.

30. Consumer use of paper trimmers/binders.

31. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam.

32. Salt baths using non-volatile salts that do not result in emissions of any air pollutant covered by this regulation.

33. Laser trimmers using dust collection to prevent fugitive emissions.

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[5] Exemptions for storage tanks containing petroleum liquids or other volatile organic liquids are based on size and limits including storage tank capacity and vapor pressure of liquids stored and are not appropriate for this list.

34. Bench-scale laboratory equipment used for physical or chemical analysis not including lab fume hoods or vents.

35. Routine calibration and maintenance of laboratory equipment or other analytical instruments.

36. Equipment used for quality control/assurance or inspection purposes, including sampling equipment used to withdraw materials for analysis.

37. Hydraulic and hydrostatic testing equipment.

38. Environmental chambers not using hazardous air pollutant gases.

39. Shock chambers, humidity chambers, and solar simulators.

40. Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

41. Process water filtration systems and demineralizers.

42. Demineralized water tanks and demineralizer vents.

43. Boiler water treatment operations, not including cooling towers.

44. Emissions from storage or use of water treatment chemicals, except for hazardous air pollutants or pollutants listed under regulations promulgated pursuant to Section 112(r) of the Act as of July 1, 1997, for use in cooling towers, drinking water systems, and boiler water/feed systems.

45. Oxygen scavenging (de-aeration) of water.

46. Ozone generators.

47. Fire suppression systems.

48. Emergency road flares.

49. Steam vents and safety relief valves.

50. Steam leaks.

51. Steam cleaning operations.

52. Steam and microwave sterilizers.

53. Site assessment work to characterize waste disposal or remediation sites.

54. Miscellaneous additions or upgrades of instrumentation.

55. Emissions from combustion controllers or combustion shutoff devices but not combustion units itself.

56. Use of products for the purpose of maintaining motor vehicles operated by the facility, not including air cleaning units of such vehicles (i.e. antifreeze, fuel additives).

57. Stacks or vents to prevent escape of sanitary sewer gases through the plumbing traps.

58. Emissions from equipment lubricating systems (i.e. oil mist), not including storage tanks, unless otherwise exempt.

59. Residential wood heaters, cookstoves, or fireplaces.

60. Barbecue equipment or outdoor fireplaces used in connection with any residence or recreation.

61. Log wetting areas and log flumes.

62. Periodic use of pressurized air for cleanup.

63. Solid waste dumpsters.

64. Emissions of wet lime from lime mud tanks, lime mud washers, lime mud piles, lime mud filter and filtrate tanks, and lime mud slurry tanks.

65. Natural gas odoring activities unless the Department determines that emissions constitute air pollution.

66. Emissions from engine crankcase vents.

67. Storage tanks used for the temporary containment of materials resulting from an emergency reporting to an unanticipated release.

68. Equipment used exclusively to mill or grind coatings in roll grinding rebuilding, and molding compounds where all materials charged are in paste form.

69. Mixers, blenders, roll mills, or calendars for rubber or plastic for which no materials in powder form are added and in which no hazardous air pollutants, organic solvents, diluents, or thinners are used or emitted.

70. The storage, handling, and handling equipment for bark and wood residues not subject to fugitive dispersion offsite (this applies to the equipment only).

71. Maintenance dredging of pulp and paper mill surface impoundments and ditches containing cellulosic and cellulosic derived biosolids and inorganic materials such as lime, ash, or sand.

72. Tall oil soap storage, skimming, and loading.

73. Water heaters used strictly for domestic (non-process) purposes.

74. Facility roads and parking areas, unless necessary to control offsite fugitive emissions.

75. Agricultural operations, including onsite grain storage, not including internal combustion engines or grain elevators.

76. The following natural gas and oil exploration production site equipment: separators, dehydration units, natural gas fired compressors, and pumping units. This does not include compressors located on natural gas transmission pipelines.

ARKANSAS REGISTER

Transmittal Sheet

* Use only for **FINAL** and **EMERGENCY RULES**

Secretary of State
Mark Martin
State Capitol, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-3527
www.sos.arkansas.gov

For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Environmental Quality

Department Arkansas Pollution Control & Ecology Commission

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0750

Statutory Authority for Promulgating Rules A.C.A. §8-4-201, §8-4-202, and §8-4-311

Rule Title: Reg No. 19, Regulations of the AR Plan of Implementation for Air Pollution Control; Docket No. 11-002-R; Minute Order No. 12-21

Intended Effective Date (Check One)		**Date**
☐ Emergency (ACA 25-15-204)	Legal Notice Published	02/02/2011
☐ 30 Days After Filing (ACA 25-15-204)	Final Date for Public Comment	04/11/2011
☐ Other _____ (Must be more than 30 days after filing date.)	Reviewed by Legislatice Council	06/13/2012
	Adopted by State Agency	06/22/2012

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Mike Bates (Contact Person) bates@adeq.state.ar.us (E-mail Address) 06/29/2012 (Date)

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Charles Moulton
Signature

(501) 682-7890 charles.moulton@arkansasag.gov
Phone Number E-mail Address

Administrativer Hearing Officer
Title

06/29/2012
Date

FILED
2012 JUN 29 PM 4:16
SECRETARY OF STATE
ARKANSAS
REGISTER DIV.

Revised 8/2011 to reflect new legislation passed in 2011.

ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION
101 EAST CAPITOL
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LITTLE ROCK, ARKANSAS 72201
PHONE: (501) 682-7890
FAX: (501) 682-7891

June 29, 2012

Ms. Donna Davis
Administrative Rules and Regulations Committee
Room 433, State Capitol Building
Little Rock, Arkansas 72201

RE: Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control; Docket No. 11-002-R - **FINAL FILING**.

Dear Ms. Davis:

I am enclosing the following for filing with your office:

1. Two (2) hard copies of the amendment to Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control.
2. Two (2) copies of Commission Minute Order No. 12-21
3. Two (2) copies of the Financial Impact Statement.

Please provide written confirmation of your receipt of these materials by file-marking the enclosed copy of this letter and returning it to me.

Thank you for your assistance in this matter.

Respectfully,

Charles Moulton
Administrative Hearing Officer

Enclosures

ARKANSAS STATE LIBRARY

Agency Certification Form
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One Capitol Mall • Little Rock, AR 72201-1094
501-682-2326 Phone; 501-682-1532 FAX

For Office Use Only

Effective Date: **Classification Number:**

Name of Agency: Arkansas Department of Environmental Quality

Contact Person: Mike Bates **Telephone:** (501) 682-0750

Statutory Authority for Promulgating Rules: A.C.A. §8-4-201, §8-4-202, and §8-4-311

Title of Rule: Regulation No 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control; Docket No 11-002-R; Minute Order No. 12-21.

Rule Status	Effective Date Status	Effective Date
☐ New Rule/Regulation	☐ Emergency	
☒ Amended Rule/Regulation	☒ 10 Days after filing	July 9, 2012
☐ Repealed Rule/Regulation	☐ Other	
☐ Order	☐ Repealed	
☐ Emergency Rule/Regulation	Adopted by State Agency	

☐ Rule above is proposed and will be replaced by final version

☒ Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature: Charles Moore Date: June 29, 2012

Title: Administrative Hearing Officer

1/14/99

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

SUBJECT Adoption of Revisions to Regulation 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control

DOCKET NO. 11-002-R

MINUTE ORDER NO. 12 - a1

Pursuant to public notice and hearing, and in consideration of comments received, the Arkansas Pollution Control and Ecology Commission hereby adopts changes to Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control.

PROMULGATED THIS 22nd DAY OF JUNE, 2012, BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: _____
John Chamberlin, Chairman

ATTEST: _____
Teresa Marks, Director

COMMISSIONERS

_____ J. Bates	_____ D. Samples
_____ L. Bengal	_____ L. Sickel
_____ J. Chamberlin (Chair)	_____ J. Simpson
_____ J. Fox	_____ W. Thompson
_____ D. Hendrix	_____ B. White
_____ L. Hitchcock	_____ R. Young
_____ S. Jorgensen (Vice Chair)	

_____ **SUBMITTED BY: Mike Bates** **PASSED: 06/22/12**
J. Chamberlin, Chair

Pollution Control and Ecology Commission # 014.00-026

ARKANSAS POLLUTION CONTROL and ECOLOGY COMMISSION

REGULATION NO. 26
REGULATIONS OF THE ARKANSAS OPERATING AIR PERMIT PROGRAM

Adopted by the PC&E Commission June 22, 2012

TABLE OF CONTENTS

CHAPTER 3: REQUIREMENT FOR A PERMIT, APPLICABILITY

Reg. 26.301 Requirement for a permit

(A) No part 70 source may operate unless it is operating in compliance with a part 70 permit, or unless it has filed a timely and complete application for an initial or renewal permit as required under these regulations. Existing part 70 sources shall submit initial applications according to the provisions of section 4. If a part 70 source submits a timely and complete application for an initial or renewal permit, the source's failure to have a part 70 permit is not a violation of this regulation until the Department takes final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit by the deadline specified in writing by the Department any additional information identified as being needed to process the application. If the Department fails to act in a timely way on a permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

(B) No proposed new part 70 source shall begin construction prior to obtaining a part 70 permit, unless the applicable permit application was submitted prior to the effective date of these regulations and the Department's draft permitting decision for such source has already proceeded to public notice in accordance with Regulation No. 19.

(C) No part 70 source shall begin construction of a new emissions unit or begin modifications to an existing emissions unit prior to obtaining a modified part 70 permit. This applies only to significant modifications and does not apply to modifications that qualify as minor modifications or changes allowed under the operational flexibility provisions of a part 70 permit. An existing part 70 source shall be subject to the permit modification procedures of Regulation No. 19 until such time that an initial part 70 permit application is due from the source.

Reg. 26.302 Sources subject to permitting

The following sources shall be subject to permitting under these regulations, unless exempted by Reg. 26.303 below:

(A) Any major source;

(B) Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act (i.e., New Source Performance Standards [NSPS] regs.) However, nonmajor sources subject to section 111 of the Act are exempt from the obligation to obtain a part 70 permit until such time that the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources;

(C) Any source, including an area source, subject to a standard or other requirement under section 112 of the Act (i.e., hazardous air pollutant regs.), except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;

(D) Any source subject to Arkansas Pollution Control and Ecology Commission's Regulation 19, Chapter 9.

(E) Any acid rain source (which shall be permitted in accordance with the provisions of the federal acid rain program); and

(F) Any source in a source category designated by the Administrator pursuant to this section.

Reg. 26.303 Source category exemptions

The following source categories are exempted from the obligation to obtain a part 70 permit:

(A) All sources listed in Reg. 26.302 that are not major sources, acid rain sources, or solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act, are exempted from the obligation to obtain a part 70 permit until such time as the Administrator completes a rulemaking to determine how the program should be structured for nonmajor sources.

(B) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 60, Subpart AAA - Standards of Performance for New Residential Wood Heaters as of July 23, 1993; and

(C) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR part 61, Subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 6l.145, Standard for Demolition and Renovation as of July 23, 1993.

(D) Any other nonmajor sources subject to a standard or other requirement under either section 111 or 112 of the Act exempted by the Administrator.

Reg. 26.304 Emissions units subject to permitting

The Department shall include in the part 70 permit all applicable requirements for all relevant emissions units in the part 70 source. Some equipment with very small emission rates is exempt from permitting requirements as per Chapter 4 and Appendix A of Regulation No. 19.

Reg. 26.305 Emissions subject to permitting

All regulated air pollutant emissions and recognized air contaminant emissions from a part 70 source shall be included in a part 70 permit, except that GHG emissions less than 100,000 tpy CO_2e shall not be included in a part 70 permit unless the part 70 source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000

tpy CO_2e or more. Only regulated air pollutants may trigger the need for a part 70 permit or a part 70 permit modification process. A permit modification involving only air contaminants other than regulated air pollutants shall be permitted according to the procedure of Regulation No. 19. Such permits shall be incorporated into the part 70 permit by administrative permit amendment.

Reg. 26.306 Fugitive emissions subject to permitting

Fugitive emissions from a part 70 source shall be included in the permit application and the part 70 permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

CHAPTER 4: APPLICATIONS FOR PERMITS

Reg. 26.401 Duty to apply

For each source subject to 40 CFR part 70, as promulgated June 3, 2010, the owner or operator shall submit a timely and complete permit application (on forms supplied by the Department) in accordance with this section.

Reg. 26.402 Standard application form and required information

The Department shall provide a standard application form or forms and shall provide them to part 70 sources upon request. Information as described below for each emissions unit at a part 70 source shall be required by the application form and included by the applicant in the application.

(A) Insignificant activities which are exempted because of size or production rate, a list of such insignificant activities must be included in the application.

(B) An application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required by the Arkansas Pollution Control and Ecology Commission's Regulation Number 9, Fee Regulation (Regulation 9 or Regulation No. 9). The Department may use discretion in developing application forms that best meet program needs and administrative efficiency. The forms and attachments chosen, however, shall include the elements specified below:

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by Standard Industrial Classification Code or the North American Industry Classification System) including any associated with alternate scenario identified by the source.

(3) The following emission-related information:

(a) A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under Reg. 26.402(A). The Department shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the fee schedule in Regulation No. 9.

(b) Identification and description of all points of emissions described above in sufficient detail to establish the basis for fees and applicability of requirements of the Act.

(c) Emissions rate in tpy and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(d) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(e) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(f) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the part 70 source.

(g) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(h) Calculations on which the information in Reg. 26.402(B)(3) is based.

(4) The following air pollution control requirements:

(a) Citation and description of all applicable requirements, and

(b) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other applicable requirements of the Act, of this part or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements.

(7) Additional information as determined to be necessary by the Department to define alternative operating scenarios identified by the source pursuant to Reg. 26.701(I) or to define permit terms and conditions implementing Reg. 26.802 or Reg. 26.701(J).

(8) A compliance plan for all part 70 sources that contains all the following:

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A description as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(c) A compliance schedule as follows:

(i) For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.

(e) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(a) A certification of compliance with all applicable requirements by a responsible official consistent with Reg. 26.410 and section 114(a)(3) of the Act;

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(c) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department; and

(d) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the Act.

(C) Reserved

Reg. 26.403 Initial applications from existing part 70 sources

A timely application for an initial part 70 permit for an existing part 70 source is one that is submitted within 12 months after the source becomes subject to the permit program, or on or before such earlier date as the Department may establish. The earliest that the Department may require an initial application from such an existing part 70 source is 6 months after the Department notifies the source in writing of its duty to apply for an initial part 70 permit.

Reg. 26.404 Applications for proposed new part 70 sources

The owner or operator proposing to construct a new part 70 source shall apply for and obtain a part 70 permit prior to the construction of the source, unless the applicable permit application

was submitted prior to the effective date of these Regulations and the Department's draft permitting decision for such source has already proceeded to public comment in accordance with Regulation No. 19.

Reg. 26.405 Applications for proposed significant modifications at part 70 sources

Part 70 sources proposing to construct a new emissions unit or modify an existing emissions unit shall apply for and obtain a modified part 70 permit prior to the construction or modification of such emissions unit. This applies only to significant modifications and does not apply to modifications that qualify as minor modifications or changes allowed under the operational flexibility provisions of a part 70 permit.

Reg. 26.406 Permit renewal applications

For purposes of permit renewal, a timely application is one that is received by the Department at least 6 months prior to the date of permit expiration or such other longer time as may be approved by the Administrator that ensures that the term of the permit will not expire before the permit is renewed. In no event shall this time be greater than 18 months. Renewal permits are subject to the same procedural requirements that apply to initial permit issuance. Permit expiration terminates a part 70 source's right to operate unless a timely and complete renewal application has been received by the Department, in which case the existing permit shall remain in effect until the Department takes final action on the renewal application. If the Department fails to act in a timely way on a permit renewal, EPA may invoke its authority under section 505(e) of the Act to terminate or revoke and reissue the permit.

Reg. 26.407 Complete application

To be deemed complete, an application must provide all information required by Reg. 26.402, except that applications for permit revision need supply only that information related to the proposed change. Unless the Department determines that an application is not complete within 60 days of receipt of the application, such application shall be deemed to be complete. If, while processing an application that has been determined or deemed to be complete, the Department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

Reg. 26.408 Confidential information

In the case where a source has submitted information to the State under a claim of confidentiality, the Department may also require the source to submit a copy of such information directly to the Administrator.

Reg. 26.409 Applicant's duty to supplement or correct application

Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become

applicable to the source after the date it filed a complete application but prior to release of a draft permit.

Reg. 26.410 Certification by responsible official

Any application form, report, or compliance certification submitted pursuant to these regulations shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these regulations shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

ARKANSAS REGISTER

Transmittal Sheet

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Secretary of State
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For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Environmental Quality

Department Arkansas Pollution Control & Ecology Commission

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0750

Statutory Authority for Promulgating Rules A.C.A. §8-4-201, §8-4-202, and §8-4-311

Rule Title: Reg No. 26, Regulations of the Arkansas Operating Air Permit Program; Docket No. 11-003-R; Minute Order No. 12-22

Intended Effective Date (Check One)

- ☐ Emergency (ACA 25-15-204)
- ☐ 30 Days After Filing (ACA 25-15-204)
- ☐ Other _____ (Must be more than 30 days after filing date.)

Date

Legal Notice Published	02/02/2011
Final Date for Public Comment	04/11/2011
Reviewed by Legislatice Council	06/13/2012
Adopted by State Agency	06/22/2012

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Mike Bates (Contact Person) bates@adeq.state.ar.us (E-mail Address) 06/29/2012 (Date)

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Charles Moulton
Signature

(501) 682-7890 charles.moulton@arkansasag.gov
Phone Number E-mail Address

Administrativer Hearing Officer
Title

06/29/2012
Date

BY: _____
FILED
STATE OF ARKANSAS
2012 JUN 29 P 4:16
SECRETARY OF STATE
ADMIN. RULES DIV.

Revised 8/2011 to reflect new legislation passed in 2011.

ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION
101 EAST CAPITOL
SUITE 205
LITTLE ROCK, ARKANSAS 72201
PHONE: (501) 682-7890
FAX: (501) 682-7891

June 29, 2012

Ms. Donna Davis
Administrative Rules and Regulations Committee
Room 433, State Capitol Building
Little Rock, Arkansas 72201

RE: Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program; Docket No. 11-003-R - **FINAL FILING**.

Dear Ms. Davis:

I am enclosing the following for filing with your office:

1. Two (2) hard copies of the amendment to Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program.
2. Two (2) copies of Commission Minute Order No. 12-22
3. Two (2) copies of the Financial Impact Statement.

Please provide written confirmation of your receipt of these materials by file-marking the enclosed copy of this letter and returning it to me.

Thank you for your assistance in this matter.

Respectfully,

Charles Moulton
Administrative Hearing Officer

Enclosures

ARKANSAS STATE LIBRARY

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For Office Use Only

Effective Date: **Classification Number:**

Name of Agency: Arkansas Department of Environmental Quality

Contact Person: Mike Bates **Telephone:** (501) 682-0750

Statutory Authority for Promulgating Rules: A.C.A. §8-4-201, §8-4-202, and §8-4-311

Title of Rule: Regulation No 26, Regulations of the Arkansas Operating Air Permit Program; Docket No 11-003-R; Minute Order No. 12-22.

Rule Status	Effective Date Status	Effective Date
☐ New Rule/Regulation	☐ Emergency	
☒ Amended Rule/Regulation	☒ 10 Days after filing	July 9, 2012
☐ Repealed Rule/Regulation	☐ Other	
☐ Order	☐ Repealed	
☐ Emergency Rule/Regulation	Adopted by State Agency	

☐ Rule above is proposed and will be replaced by final version

☒ Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature: Chuck Munt Date: June 29, 2012

Title: Administrative Hearing Officer

1/14/99

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

SUBJECT Adoption of Revisions to Regulation 26, Regulations of the Arkansas Operating Air Permit Program

DOCKET NO. 11-003-R

MINUTE ORDER NO. 12 -22 **PAGE 1 OF 1**

Pursuant to public notice and hearing, and in consideration of comments received, the Arkansas Pollution Control and Ecology Commission hereby adopts changes to Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program.

PROMULGATED THIS 22nd DAY OF JUNE, 2012, BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: _____
John Chamberlin, Chairman

ATTEST: _____
Teresa Marks, Director

COMMISSIONERS

_____ J. Bates	_____ D. Samples
_____ L. Bengal	_____ L. Sickel
_____ J. Chamberlin (Chair)	_____ J. Simpson
_____ J. Fox	_____ W. Thompson
_____ D. Hendrix	_____ B. White
_____ L. Hitchcock	_____ R. Young
_____ S. Jorgensen (Vice Chair)	

_____
J. Chamberlin, Chair

SUBMITTED BY: Mike Bates **PASSED: 6/22/2012**

Biomass Deferral Rule

Pollution Control and Ecology Commission # 014.00-019

ARKANSAS POLLUTION CONTROL and ECOLOGY COMMISSION

REGULATION NO. 19
REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR POLLUTION CONTROL

Adopted by the PC&E Commission: October 26, 2012

TABLE OF CONTENTS

CHAPTER 1: TITLE, INTENT, AND PURPOSE

Reg. 19.101 Title

The following rules and regulations, adopted in accordance with the provisions of Subchapter 2 of the Arkansas Water and Air Pollution Control Act, Arkansas Code Annotated (A.C.A) §§ 8-4-201 et seq., shall be known as "Regulations of the Arkansas Plan of Implementation of Air Pollution Control," hereinafter referred to as the "Regulations of the Plan," and "Regulation 19."

Reg. 19.102 Applicability

These regulations are applicable to any stationary source which has the potential to emit any federally regulated air pollutant.

Reg. 19.103 Intent and Construction

(A) The purpose and intent of Regulation 19, as amended, is to provide a clear delineation of those regulations that are promulgated by the Commission in satisfaction of certain requirements of the federal Clean Air Act, 42 United States Code (U.S.C.) §§ 7401 et seq., as of July 1, 1997, and the federal regulations stemming therefrom. Federal programs that the Department is responsible for administering include, but are not limited to, the attainment and maintenance of the National Ambient Air Quality Standards (40 Code of Federal Regulations [CFR] Part 50), certain delegated subparts of the New Source Performance Standards (40 CFR Part 60), provisions designed for the Prevention of Significant Deterioration (40 CFR § 52.21), minor new source review as described in Chapter 4 (40 CFR Part 51), and certain delegated subparts of the National Emission Standards for Hazardous Air Pollutants (40 CFR Parts 61 and 63) as of July 1, 1997. This subsection shall not be construed as limiting the future delegation of federal programs to the Department for administration.

(B) Regulation 19, as amended, is further intended to limit the federal enforceability of its requirements to only those mandated by federal law. Regulation 19, as amended, is also intended to facilitate a permit system for stationary sources within the State,

which permit shall provide which provisions are federally enforceable and which provisions are state enforceable.

(C) Regulation 19, as amended, presumes a single-permit system, encompassing both federal and state requirements. A regulated facility which is subject to permitting under Regulation 19 shall be required to apply for and comply with only one permit, even though that permit may contain conditions derived from the federal mandates contained in Regulation 19, as well as conditions predicated solely on state law. Regulation 19, through construction or implication, shall not support the conclusion that all conditions of a permit have become federally enforceable because the permit contains provisions derived from Regulation 19. Permits or permit conditions issued under the authority of state law, or enforcement issues arising out of state law, shall not be federally enforceable.

(D) To the extent consistent with state law and efficient protection of the State's air quality, Regulation 19 shall be construed in a manner that promotes a streamlined permitting process, mitigation of regulatory costs, and flexibility in maintaining compliance with federal mandates. Any applicable documents (e.g. "White Papers," regulatory preambles, or interpretive memoranda) issued by the Environmental Protection Agency which are consistent with this policy and the legislative intent of state laws governing air pollution control (A.C.A. § 8-4-301 et seq.) are aids for construing the requirements of Regulation 19. Any procedure applicable to major sources that promotes operational flexibility are presumed to be authorized by this regulation unless manifestly inconsistent with its substantive terms.

(E) Nothing in Regulation 19 shall be construed as curtailing the Department's or Commission's authority under state law.

Reg. 19.104 Severability

If any provision of Regulation 19 is determined to be invalid, such invalidity shall not affect other provisions of Regulation 19.

If federal legislation or a federal court stays, invalidates, delays the effective date of, or otherwise renders unenforceable, in whole or in part, EPA's regulation of greenhouse gases, then the provisions of Regulation 19 concerning greenhouse gases based thereon shall be stayed and

shall not be enforceable until such time as the Commission makes a final decision on whether or not to revise Regulation 19 due to the federal legislation or federal court order.

CHAPTER 2: DEFINITIONS

Terms and phrases used in this regulation which are not explicitly defined herein shall have the same meaning as those terms which are used in the federal Clean Air Act. For purposes of this regulation:

"12-month period" means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

"Actual emissions" means the quantity of federally regulated air pollutants emitted from a stationary source considering emissions control equipment and actual hours of source operation or amount of material processed.

"CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed by multiplying the mass amount of emissions tpy, for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A - 1 to subpart A of 40 CFR part 98 - Global Warming Potentials (which is incorporated by reference as finalized by EPA as of October 30, 2009), and summing the resultant value for each to compute a tpy CO_2 equivalent emissions. For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

"Commission" means the Arkansas Pollution Control and Ecology Commission.

"Construction" means fabrication, erection, or installation of equipment. See also 40 CFR 60.2, 40 CFR 51.165, and 40 CFR 52.21.

"Control apparatus" means any device which prevents, controls, detects or records the emission of any federally regulated air pollutants.

"Department" means the Arkansas Department of Environmental Quality, or its successor. When reference is made in this regulation to actions taken by or with reference to the Department, the reference is to the staff of the Department acting at the direction of the Director.

"Director" means the Director of the Arkansas Department of Environmental Quality, or its successor, acting directly or through the staff of the Department.

"Emission limitation" and **"emission standard"** mean a requirement established by the Department or the Administrator of the United States Environmental Protection Agency which limits the emissions of federally regulated air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

"Emission unit" means any article, machine, equipment, operation, or contrivance that emits or has the potential to emit any federally regulated air pollutant.

"EPA" means the United States Environmental Protection Agency.

"Equipment" means any device, except equipment used for any mode of vehicular transportation, capable of causing the emission of a federally regulated air pollutant into the open air, and any stack, conduit, flue, duct, vent, or similar device connected or attached to or serving the equipment.

"Federal Clean Air Act" or **"Clean Air Act"** or **"FCAA"** or **"the Act"** means the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq. and its implementing regulations as of the effective date of this regulation.

"Federally regulated air pollutant" means the following:

(A) Nitrogen oxides or any volatile organic compounds;

(B) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(C) Except as provided in (E), any pollutant that is subject to any standard promulgated under 42 U.S.C. §§ 7401, et seq., as of the effective date of this regulation;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act, 42 U.S.C.§§ 7401, et seq. as amended as of July 1,1997.

(E) GHGs, except that GHGs shall not be a Federally Regulated Air Pollutant unless the GHG emissions are:

(1) from a stationary source emitting or having the potential to emit 75,000 tpy CO_2e emissions or more; and

(2) regulated under Chapter 9 of this Regulation 19.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. Those emissions are those that, according to customary and good engineering practice, considering technological and economic feasibility, could not pass through a stack, chimney, vent or other functionally-equivalent opening, except that the Department will utilize the definition of fugitive emissions for those industries for which an approved EPA definition exist under federal law or regulation and which are meeting that law or regulation.

"Greenhouse gases" (GHGs) means the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

"Hazardous Air Pollutant" or **"HAP"** means any air pollutant listed pursuant to § 112 of the Clean Air Act, as amended, 42 U.S.C. §§ 7401, et seq., as of the effective date of this regulation.

"Modification" means any physical change in, or change in the method of operation of, a stationary source which increases the emission rate of any federally regulated air pollutant over permitted rates or which results in the emission of a federally regulated air pollutant not

previously emitted, except that:

(A) Routine maintenance, repair, and replacement shall not be considered a physical change, and

(B) The following shall not be considered a change in the method of operation:

(1) Any change in the production rate, if such change does not exceed the permitted operating capacity of the source;

(2) Any change in the hours of operation, as long as it does not violate applicable air permit conditions; or

(3) The use of an alternate fuel or raw material, as long as it does not violate applicable air permit conditions.

(C) *De Minimis* changes, as defined in Reg. 19.407(C), and changes in ownership shall not be considered.

"National Ambient Air Quality Standard" or **"NAAQS,"** mean those ambient air quality standards promulgated by the EPA in 40 CFR Part 50.

"Opacity" means the degree to which air emissions reduce the transmission of light and obscure the view of an object in the background.

"Operator" means any person who leases, operates, controls, or supervises any equipment affected by these regulations.

"Owner" means any person who has legal or equitable title to any source, facility, or equipment affected by these regulations.

"Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter equal to or less than 100 micrometers.

"Particulate matter emissions" means all particulate matter, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or

alternate method, specified in 40 CFR Part 60 Appendix A or by a test method specified in these regulations or any supplement thereto.

"Person" means any individual or other legal entity or their legal representative or assignee.

"Plan" means the Arkansas Plan of Implementation for Air Pollution Control.

"**$PM_{2.5}$"** means particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers.

"PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50, or by an equivalent method designated in accordance with 40 CFR Part 53 as of December 8, 1984.

"PM_{10} emissions" means PM_{10} emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 51, Appendix M as of December 8, 1984, or by a test method specified in these regulations or any supplement thereto.

"Potential to emit" means the maximum capacity of a stationary source to emit a federally regulated air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a federally regulated air pollutant, including, but not, limited to, air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable to the extent it is regulated by the federal Clean Air Act, 42 U.S.C. §§ 7401 et seq. as of February 15, 1999. Secondary air emissions do not count in determining the potential to emit of a stationary source.

"Responsible official" means one of the following:

(A) For a corporation: a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative or such person if the representative is responsible

for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(1) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 United States dollars); or

(2) The delegation of authority to such representative is approved in advance by the Department;

(B) For partnership or sole proprietorship: a general partner or the proprietor, respectively;

(C) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this regulation, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or

(D) For acid rain sources:

(1) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(2) The designated representative for any other purposes under Part 70.

"Secondary emissions" means those emissions of federally regulated air pollutants which, although associated with a source, are not emitted from the source itself.

"Shutdown" means the cessation of operation of equipment.

"Startup" means the setting in operation of equipment.

"Stationary source" means any building, structure, facility, or installation which emits or may emit any federally regulated air pollutant.

"Title I modification" means any modification as defined under any regulation promulgated pursuant to Title I of the federal Clean Air Act. *De minimis* changes under Regulation 19, changes to state only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications.

"Volatile organic compounds" or **"VOC"** means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions.

(A) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity:

acetone;
methane;
ethane;
methylene chloride (dichloromethane);
1,1,1- trichloroethane (methyl chloroform);
tetrachloroethylene (perchloroethylene);
1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
trichlorofluoromethane (CFC-11);
dichlorodifluoromethane (CFC-12);
chlorodifluoromethane (HCFC-22);
trifluoromethane (HFC-23);
1,2-dichloro 1,1, 2, 2-tetrafluoroethane (CFC-114);
chloropentafluoroethane (CFC-115);
1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
1,1,1,2-tetrafluoroethane (HFC-134a);
1,1-dichloro 1-fluoroethane (HCFC-141b);
1-chloro 1,1-difluoroethane (HCFC-142b);
2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
pentaflurorethane (HFC-125);
1,1,2,2-tetrafluoroethane (HFC-134);
1,1,1-trifluoroethane (HFC-143a);
1,1-difluoroethane (HFC-152a);
parachlorobenzotrifluoride (PCBTF);
cyclic, branched, or linear completely methylated siloxanes;
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
difluoromethane (HFC-32);

ethylfluoride (HFC-161);
1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
1,1,2,2,3-pentafluoropropane (HFC-245ca);
1,1,2,3,3-pentafluoropropane (HFC 245ea);
1,1,1,2,3-pentafluoropropane (HFC-245eb);
1,1,1,3,3-pentafluoropropane (HFC-245fa);
1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
1,1,1,3,3-pentafluorobutane (HFC-365mfc);
chlorofluoromethane (HCFC-31);
1 chloro-1-fluoroethane (HCFC-151a);
1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$ or HFE-7100);
2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane
($(CF_3)_2CFCF_2OCH_3$);
1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OC_2H_5$ or HFE 7200);
2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane
($(CF_3)_2CFCF_2OC_2H_5$);
methyl acetate;
1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$ or HFE-7000);
3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane
(HFE-7500)
1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);
methyl formate ($HCOOCH_3$)
1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
and perfluorocarbon compounds which fall into these classes:

(1) cyclic, branched, or linear, completely fluorinated alkanes;

(2) cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(3) cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(4) sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(B) For purposes of determining compliance with emission limits, VOC will be measured by the test methods in the approved State Implementation Plan (SIP) or 40 CFR Part 60, Appendix A, as of July 1, 1997, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these

negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the Department.

(C) As a precondition to excluding these compounds as VOC or at any time thereafter, the Department may require an owner or operator to provide monitoring or testing results demonstrating, to the satisfaction of the Department, the amount of negligibly-reactive compounds in the source's emissions.

(D) The following compound(s) are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

CHAPTER 9: PREVENTION OF SIGNIFICANT DETERIORATION

Reg. 19.901 Title

The following rules and regulations of the Arkansas Pollution Control and Ecology Commission, adopted in accordance with the provisions of Part II of the Arkansas Water and Air Pollution Control Act at A.C.A §§8-4-101 et seq., shall be known as the Prevention of Significant Deterioration Regulations of the Arkansas Plan of Implementation for Air Pollution Control, hereinafter referred to, respectively, as the "PSD Regulations."

Reg. 19.902 Purposes

Promulgation and enforcement of these PSD Regulations is intended to further the purposes of the Plan and the Regulations of the Plan, including, but not limited to, acceptance of delegation by the EPA of authority for enforcement of regulations governing the prevention of significant deterioration of air quality and regulations governing the protection of visibility in mandatory Class I federal areas.

Reg. 19.903 Definitions

(A) "Advance notification" (of a permit application) means any written communication which establishes the applicant's intention to construct, and which provides the Department with sufficient information to determine that the proposed source may constitute a major new source or major modification, and that such source may affect any mandatory Class I federal area, including, but not limited to, submittal of a draft or partial permit application, a PSD monitoring plan, or a sufficiently detailed letter. "Advance notification" does not include general inquiries about the Department's regulations.

(B) All other terms used herein shall have the same meaning as set forth in Chapter 2 of Regulation 19 or in 40 CFR 52.21(b) [PSD] and 40 CFR 51.301 [Protection of Visibility] as of November 29, 2005, all as in effect upon the latest date of amendment of this supplement, unless manifestly inconsistent with the context in which they are used. Wherever there is a difference between the definitions in Chapter 2 of Regulation 19 and those listed in 40 CFR 52.21(b) and 40 CFR 51.301,

the federal definitions as listed in 40 CFR 52.21(b) and 40 CFR 51.301 as of November 29, 2005, shall apply.

(C) The definition for "routine maintenance, repair and replacement" in 40 CFR 52.21(b)(2)(iii)(a) is not incorporated.

Reg. 19.904 Adoption of Regulations

(A) Except where manifestly inconsistent with the provisions of the Clean Air Act, as amended, or with federal regulations adopted pursuant thereto, and as amended specifically herein by paragraphs (B), (C), (D), (E), and (F) of Reg. 19.904, the Arkansas Department of Environmental Quality shall have those responsibilities and that authority, with reference to the State of Arkansas, granted to the Administrator of the EPA under 40 CFR 52.21 (a)(2) through (bb), as in effect on November 29, 2005, which are hereby incorporated herein by reference, with the exception of 40 CFR 52.21(b)(55-58), 40 CFR 52.21(i) (9), and 40 CFR 52.21(cc), which are not incorporated. In the absence of a specific imposition of responsibility or grant of authority, the Department shall be deemed to have that responsibility and authority necessary to attain the purposes of the Plan, these PSD Regulations, and the applicable federal regulations, as incorporated herein by reference.

(B) Exclusions from the consumption of increments, as provided in 40 CFR 51.166(f)(1)(iii) as of November 29, 2005, shall be effective immediately. Submission of this Plan under the Governor's signature constitutes a request by the Governor for this exclusion.

(C) In addition to the requirements of 40 CFR 52.21(o) as of November 29, 2005, the following requirements [designated as Reg. 19.904(C)(1),(2),(3) and (4)] shall also apply:

(1) Where air quality impact analyses required under this part indicate that the issuance of a permit for any major stationary source or for any major modification would result in the consumption of more than fifty percent (50%) of any available annual increment or eighty percent (80%) of any short term increment, the person applying for such a permit shall submit to the Department an assessment of the following factors:

(a) Effects that the proposed consumption would have upon the industrial and economic development within the area of the proposed source; and

(b) Alternatives to such consumption, including alternative siting of the proposed source or portions thereof.

(2) The assessment required under subparagraph (4) above shall be made part of the application for permit and shall be made available for public inspection as provided in 40 CFR 52.21(q) as of November 29, 2005.

(3) The assessment required under subparagraph (4) above shall be in detail commensurate with the degree of proposed increment consumption, both in terms of the percentage of increment consumed and the area affected.

(4) The assessment required under subparagraph (4) above may be made effective where a proposed source would cause an increment consumption less than that specified in said subparagraph if the Director finds that unusual circumstances exist in the area of the proposed source which warrant such an assessment. The Director shall notify the applicant in writing of those circumstances which warrant said assessment. The Commission may rescind or modify the Director's action, upon a showing by the applicant that the circumstances alleged by the Director either do not exist or do not warrant the aforecited assessment.

(D) In addition to the requirements of 40 CFR 52.21(p)(1) as of November 29, 2005, the following requirements shall also apply:

Impacts on mandatory Class I federal areas include impacts on visibility. The preliminary determination that a source may affect air quality or visibility in a mandatory Class I federal area shall be made by the Department, based on screening criteria agreed upon by the Department and the Federal Land Manager.

(E) In all instances wherein the aforesaid 40 CFR 51.301 and 40 CFR 52.21 refer to the Administrator or the Environmental Protection Agency, the reference, for the purposes of paragraph (A) of Reg. 19.904, shall be deemed to mean the Arkansas

Department of Environmental Quality, unless the context plainly dictates otherwise, except in the following sections:

(1) Exclusion from increment consumption: 40 CFR 52.21(f)(1)(v), (f)(3), and (f)(4)(I);

(2) Redesignation: 40 CFR 52.21(g)(1), (g)(2), (g)(4), (g)(5), and (g)(6);

(3) Air quality models: 40 CFR 52.21 (2).

(F) Redesignation of air quality areas in Arkansas shall comply with Arkansas Code Annotated 1987 Section 8-3-101 et seq.

(G) For the purpose of the regulation of GHGs, only the standards and requirements promulgated by EPA as of June 3, 2010, related to the permitting of GHG emissions shall apply to the requirements of 40 CFR 52.21, as of November 29, 2005, incorporated by reference at Reg.19.904(A). The following definitions and requirements shall also apply:

(1) "Greenhouse gases" (GHGs) means the air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in Reg. 19.904(G)(4) through Reg.19.904(G)(5).

(2) For purposes of Reg. 19.904(G)(3) through Reg.19.904(G)(5):

(a) The term tons per year (tpy) "CO_2 equivalent emissions" (CO_2e) shall represent an amount of GHGs emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions in tpy, for each of the six greenhouse gases in the pollutant GHGs, by each gas's associated global warming potential published at Table A - 1 to subpart A of 40 CFR part 98 - Global Warming Potentials (as of October 30, 2009); and

(ii) Sum the resultant values from Reg. 19.904(G)(2)(a)(i) for each gas to compute a tpy CO_2e.

(b) For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(3) The term "emissions increase" as used in Reg. 19.904(G)(4) through Reg. 19.904(G)(5) shall mean that both a significant emissions increase (as calculated using the procedures in 40 CFR 52.21(a)(2)(iv), as of November 29, 2005), and a significant net emissions increase (as defined in 40 CFR 52.21(b)(3), as of November 29, 2005, and 40 CFR 52.21(b)(23), as of November 29, 2005), occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO_2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO_2e instead of applying the value in 40 CFR 52.21(b)(23)(ii), as of November 29, 2005.

(4) Beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit GHGs at 75,000 tpy CO_2e or more; or

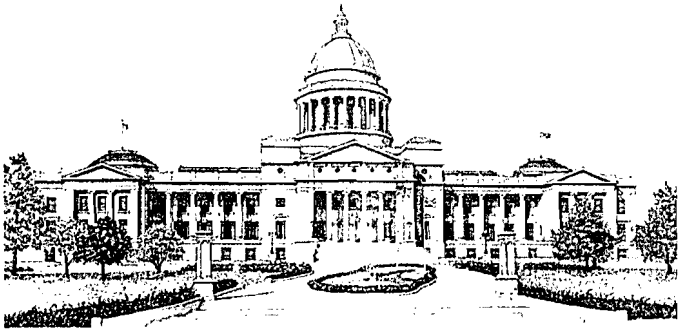
(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant, and an emissions increase of GHGs of 75,000 tpy CO_2e or more.

(5) Beginning July 1, 2011, in addition to the provisions in Reg.19.904(G)(4) of this section, the pollutant GHGs shall also be subject to regulation:

(a) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO_2e or more; or

(b) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO_2e or more, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more.

ARKANSAS REGISTER



Transmittal Sheet

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Secretary of State
Mark Martin
State Capitol, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-3527
www.sos.arkansas.gov

For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Pollution Control & Ecology Commission

Department Arkansas Department of Environmental Quality

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0730

Statutory Authority for Promulgating Rules A.C.A. §8-4-202

Rule Title: Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control; Docket No. 12-006-R; MO #12-45

Intended Effective Date (Check One)

- ☐ Emergency (ACA 25-15-204)
- ☐ 30 Days After Filing (ACA 25-15-204)
- ☐ Other _____ (Must be more than 30 days after filing date.)

Date	
Legal Notice Published	08/01/12
Final Date for Public Comment	08/15/12
Reviewed by Legislatice Council	08/17/12
Adopted by State Agency	10/26/12

Electronic Copy of Rule submitted under ACA 25-15-218 by:

_____ _____ _____
Contact Person E-mail Address Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act (ACA 25-15-201 et. seq.)

Charles E. Moulton
Signature

(501) 682-7890 charles.moulton@arkansasag.org
Phone Number E-mail Address

Administrative Hearing Officer
Title

November 8, 2012
Date

ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION
101 EAST CAPITOL
SUITE 205
LITTLE ROCK, ARKANSAS 72201
PHONE: (501) 682-7890
FAX: (501) 682-7891

November 8, 2012

Ms. Donna Davis
Administrative Rules and Regulations Committee
Room 433, State Capitol Building
Little Rock, Arkansas 72201

RE: Regulation No. 19, Regulations for the Arkansas Plan of Implementation for Air Pollution Control - **FINAL FILING**.

Dear Ms. Davis:

I am enclosing the following for filing with your office:

1. One (1) hard copies of the amendment to Regulation No. 19, Regulations for the Arkansas Plan of Implementation for Air Pollution Control.
2. One (1) copies of Commission Minute Order No. 12-46
3. One (1) copies of the Financial Impact Statement.

Please provide written confirmation of your receipt of these materials by file-marking the enclosed copy of this letter and returning it to me.

Thank you for your assistance in this matter.

Respectfully,

Charles Moulton
Administrative Hearing Officer

Enclosures

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501-682-2326 Phone; 501-682-1532 FAX

For Office Use Only

Effective Date: **Classification Number:**

Name of Agency: Arkansas Department of Environmental Quality

Contact Person: Mike Bates **Telephone:** (501) 682-0730

Statutory Authority for Promulgating Rules: A.C.A. §8-4-202

Title of Rule: Regulation No 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control; Docket No 12-005-R; Minute Order No. 12-46.

Rule Status	Effective Date Status	Effective Date
☐ New Rule/Regulation	☐ Emergency	
☒ Amended Rule/Regulation	☒ 10 Days after filing	November 18, 2012
☐ Repealed Rule/Regulation	☐ Other	
☐ Order	☐ Repealed	
☐ Emergency Rule/Regulation	Adopted by State Agency	

☐ Rule above is proposed and will be replaced by final version

☒ Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature: Chuck Munt Date: November 8, 2012

Title: Administrative Hearing Officer

1/14/99

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

SUBJECT Adoption of Revisions to Regulation 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control

DOCKET NO. 12-005-R

MINUTE ORDER NO. 12 - 40 **PAGE 1 OF 1**

Pursuant to public notice and hearing, and in consideration of comments received, the Arkansas Pollution Control and Ecology Commission hereby adopts changes to Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control.

PROMULGATED THIS 26th DAY OF OCTOBER, 2012, BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: _____
Stan Jorgensen, Chairman

ATTEST: _____
Teresa Marks, Director

COMMISSIONERS

_____ J. Bates	_____ D. Samples
_____ L. Bengal	_____ L. Sickel (Vice Chair)
_____ J. Chamberlin	_____ J. Simpson
_____ J. Fox	_____ W. Thompson
_____ D. Hendrix	_____ B. White
_____ L. Hitchcock	_____ R. Young
_____ S. Jorgensen (Chair)	

_____
S. Jorgensen, Chairman

SUBMITTED BY: Mike Bates **PASSED: 10/26/2012**

EXHIBIT E

Tab G

Procedural Requirements

GHG Tailoring Rule

- Regulation Tracking Sheets
- Arkansas Register Transmittal Sheets
- Arkansas State Library Agency Certification Forms

ADEQ REGULATIONS TRACKING SHEET

Regulation No. 9 **Common Name:** Fee Regulations

1. **Strawman review** of draft regulation by key groups.

	initiated	*completed*	*incorporated*
EPA	12/02/2011	1/31/2012	N/A
ADEQ Legal/Admin.	10/15/2010	4/09/2012	4/09/2012
Industrial/ Environmental Groups	2/15/2010	3/14/2012	N/A

Comments: Revisions to the Fee Regulations were the result of stakeholder meetings and a rigorous public process. No changes were made to the originally proposed revisions as a result of comments received during this process.

2. Proposed regulation presentation to Commission's **Regulations Committee** for approval to proceed to public comment period.

Date: 12/02/2011 *By:* Mike Bates

Comments/Approval: Committee recommended adoption of Petition to initiate rulemaking

3. **Legal notice** of proposed regulation and public hearing.

publication	*dates of publication*
Arkansas Democrat-Gazette	12/07/2011 and 12/08/2011

4. Provide **Legislative Council** with three copies of proposed regulation and the legislative questionnaire at least ten days prior to the first public hearing.

Date Delivered: 11/18/2011

5. Hold **public hearing(s)** on the proposed regulation.

location	*date*	*hearing chairman*
ADEQ Commission Room	1/17/2012	Stan Jorgensen

6. Date of final day of public comment period: 1/31/2012

7. **Final proposed regulation** and **response to comments** prepared by Department.

Date initiated: 3/23/2011 *Date completed:* 3/30/2012

8. Formal presentation to the **Public Health & Welfare Committee** of the Legislative Council.

Date: 5/17/2012 *By:* Teresa Marks

EXHIBIT D

Comments/Approval: Approval received by Committee

9. Formal presentation of proposed final regulation to the **Administrative Rules & Regulations Subcommittee** of the Legislative Council (All Regs).

Date: 6/13/2012 *By:* Teresa Marks

Comments/Approval: Approval received by Committee

10. Presentation of proposed final regulation to Commission's **Regulations Committee**.

Date: 6/22/2012 *By:* Mike Bates

Comments/Approval: Committee recommended adoption of final rulemaking.

11. Provide Commission members with copy of proposed final regulation prior to Commission meeting.

Date Delivered: 6/08/12

12. Present proposed final regulation to the **Commission** for adoption.

Date: 6/22/2012 *By:* Mike Bates

Comments/Approval: Commission approved adoption of final rulemaking.

13. Send two copies of adopted regulation to **Secretary of State** (regulation will become effective July 12, 2012, "effective ten days after filing").

Date mailed: Upon final promulgation of Regulation.

14. Formally submit adopted regulation to **EPA**.

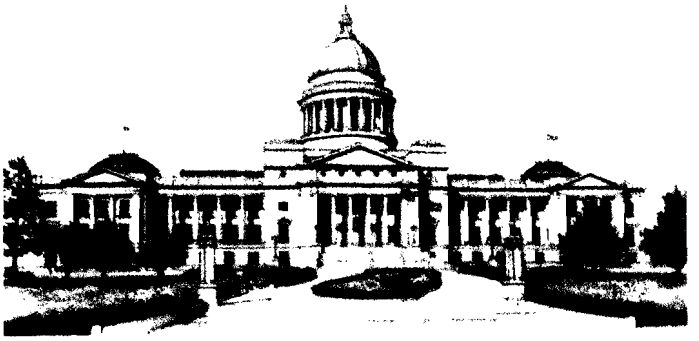
Date mailed: Upon final promulgation of Regulation.

PREPARED BY:
ARKANSAS DEPARTMENT
OF ENVIRONMENTAL QUALITY

By: Mike Bates
Mike Bates

EXHIBIT D

ARKANSAS REGISTER



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Secretary of State
Mark Martin
State Capitol, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-3527
www.sos.arkansas.gov

For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Environmental Quality

Department Arkansas Pollution Control & Ecology Commission

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0750

Statutory Authority for Promulgating Rules A.C.A. §8-4-201, §8-4-202, §8-4-304, & §8-4-311

Rule Title: Reg. No. 9, Permit Fee Regulations; Docket 11-007-R; MO 12-23

Intended Effective Date
(Check One)

- ☐ Emergency (ACA 25-15-204)
- ☐ 30 Days After Filing (ACA 25-15-204)
- ☐ Other _____
  (Must be more than 30 days after filing date.)

Date	
Legal Notice Published	12/07/2012
Final Date for Public Comment	01/31/2012
Reviewed by Legislatice Council	06/13/2012
Adopted by State Agency	06/22/2012

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Mike Bates (Contact Person) bates@adeq.state.ar.us (E-mail Address) 06/29/2012 (Date)

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Signature

(501) 682-7890 charles.moulton@arkansasag.gov
Phone Number E-mail Address

Administrativer Hearing Officer
Title

06/29/2012
Date

FILED
2012 JUN 29 PM 4:15
SECRETARY OF STATE
STATE OF ARKANSAS
REGISTER DIV.

Revised 8/2011 to reflect new legislation passed in 2011.

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For Office Use Only

Effective Date: **Classification Number:**

Name of Agency: Arkansas Department of Environmental Quality

Contact Person: Mike Bates **Telephone:** (501) 682-0750

Statutory Authority for Promulgating Rules: A.C.A. §8-4-201, §8-4-202, §8-4-304, and §8-4-311

Title of Rule: Regulation No 9, Permit Fee Regulations; Docket No 11-007-R; Minute Order No. 12-23.

Rule Status	Effective Date Status	Effective Date
☐ New Rule/Regulation	☐ Emergency	
☒ Amended Rule/Regulation	☒ 10 Days after filing	July 9, 2012
☐ Repealed Rule/Regulation	☐ Other	
☐ Order	☐ Repealed	
☐ Emergency Rule/Regulation	Adopted by State Agency	

☐ Rule above is proposed and will be replaced by final version

☒ Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature: _____ Date: June 29, 2012

Title: Administrative Hearing Officer

1/14/99

ADEQ REGULATIONS TRACKING SHEET

Regulation No. 19 **Common Name:** Regulations of the Arkansas Plan of Implementation for Air Pollution Control

1. **Strawman review** of draft regulation by key groups.

	initiated	*completed*	*incorporated*
EPA	11/30/2010	5/16/2012	5/15/2012
ADEQ Legal/Admin.	10/15/2010	5/14/2012	5/15/2012
Industrial/ Environmental Groups	12/15/2010	5/14/2012	5/15/2012

Comments: Revisions to the Regulations of the Arkansas Plan of Implementation for Air Pollution Control were the result of numerous stakeholder meetings and a rigorous public process. In addition to the public hearing and an extended comment period, stakeholder meetings also occurred on 12/14/2010, 3/11/2011, and 2/29/2012, and additional meetings with Arkansas Environmental Federation representatives occurred on 3/1/2011, 3/9/2012, 5/10/2012, and 5/14/2012. EPA also provided comments to ADEQ on the draft language during the public review process and in the spring of 2012. Several changes were made to the originally proposed revisions as a result of considering comments received during this process.

2. Proposed regulation presentation to Commission's **Regulations Committee** for approval to proceed to public comment period.

Date: 1/28/2011 *By:* Mike Bates

Comments/Approval: Committee recommended adoption of Petition to initiate rulemaking.

3. **Legal notice** of proposed regulation and public hearing.

publication	*dates of publication*
Arkansas Democrat-Gazette	2/02/2011 and 2/03/2011

4. Provide **Legislative Council** with three copies of proposed regulation and the legislative questionnaire at least ten days prior to the first public hearing.

Date Delivered: 1/14/2011

5. Hold **public hearing(s)** on the proposed regulation.

location	*date*	*hearing chairman*
ADEQ Commission Room	3/08/2011	Judge Charles Moulton

6. Date of final day of public comment period: 3/22/2011; extended to 4/11/2011

7. **Final proposed regulation** and **response to comments** prepared by Department.

Date initiated: 3/23/2011 *Date completed:* 5/16/2012

EXHIBIT D

8. Formal presentation to the **Public Health & Welfare Committee** of the Legislative Council.

Date: 5/17/2012 *By:* Teresa Marks

Comments/Approval: Approval received by Committee

9. Formal presentation of proposed final regulation to the **Administrative Rules & Regulations Subcommittee** of the Legislative Council (all Regs).

Date: 6/13/2012 *By:* Teresa Marks

Comments/Approval: Approval received by Committee

10. Presentation of proposed final regulation to Commission's **Regulations Committee**.

Date: 6/22/2012 *By:* Mike Bates

Comments/Approval: Committee recommended adoption of final rulemaking.

11. Provide Commission members with copy of proposed final regulation prior to Commission meeting.

Date Delivered: 6/08/2012

12. Present proposed final regulation to the **Commission** for adoption.

Date: 6/22/2012 *By:* Mike Bates

Comments/Approval: Commission approved adoption of final rulemaking.

13. Send two copies of adopted regulation to **Secretary of State** (regulation will become effective July 12, 2012, "ten days after filing").

Date mailed: Upon final promulgation of Regulation.

14. Formally submit adopted regulation to **EPA**.

Date mailed: Upon final promulgation of Regulation.

PREPARED BY:
ARKANSAS DEPARTMENT
OF ENVIRONMENTAL QUALITY

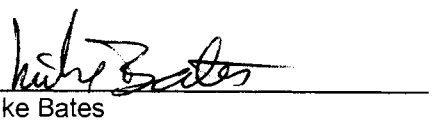
By: 
Mike Bates

EXHIBIT D

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Transmittal Sheet

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Secretary of State
Mark Martin
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Little Rock, Arkansas 72201-1094
(501) 682-3527
www.sos.arkansas.gov

For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Environmental Quality

Department Arkansas Pollution Control & Ecology Commission

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0750

Statutory Authority for Promulgating Rules A.C.A. §8-4-201, §8-4-202, and §8-4-311

Rule Title: Reg No. 19, Regulations of the AR Plan of Implementation for Air Pollution Control; Docket No. 11-002-R; Minute Order No. 12-21

Intended Effective Date (Check One)		**Date**
☐ Emergency (ACA 25-15-204)	Legal Notice Published	02/02/2011
☐ 30 Days After Filing (ACA 25-15-204)	Final Date for Public Comment	04/11/2011
☐ Other _____ (Must be more than 30 days after filing date.)	Reviewed by Legislatice Council	06/13/2012
	Adopted by State Agency	06/22/2012

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Mike Bates (Contact Person) bates@adeq.state.ar.us (E-mail Address) 06/29/2012 (Date)

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Charles Moulton
Signature

(501) 682-7890 charles.moulton@arkansasag.gov
Phone Number E-mail Address

Administrativer Hearing Officer
Title

06/29/2012
Date

FILED
2012 JUN 29 PM 4:16
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ARKANSAS
REGISTER DIV.

Revised 8/2011 to reflect new legislation passed in 2011.

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Effective Date: **Classification Number:**

Name of Agency: Arkansas Department of Environmental Quality

Contact Person: Mike Bates **Telephone:** (501) 682-0750

Statutory Authority for Promulgating Rules: A.C.A. §8-4-201, §8-4-202, and §8-4-311

Title of Rule: Regulation No 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control; Docket No 11-002-R; Minute Order No. 12-21.

Rule Status	Effective Date Status	Effective Date
☐ New Rule/Regulation	☐ Emergency	
☒ Amended Rule/Regulation	☒ 10 Days after filing	July 9, 2012
☐ Repealed Rule/Regulation	☐ Other	
☐ Order	☐ Repealed	
☐ Emergency Rule/Regulation	Adopted by State Agency	

☐ Rule above is proposed and will be replaced by final version

☒ Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature: Charles Moore Date: June 29, 2012

Title: Administrative Hearing Officer

1/14/99

ADEQ REGULATIONS TRACKING SHEET

Regulation No. 26 **Common Name:** Regulations of the Arkansas Operating Air Permit Program

1. **Strawman review** of draft regulation by key groups.

	initiated	*completed*	*incorporated*
EPA	11/30/2010	5/16/2012	5/15/2012
ADEQ Legal/Admin.	10/15/2010	5/14/2012	5/15/2012
Industrial/ Environmental Groups	12/15/2010	5/14/2012	5/15/2012

Comments: Revisions to the Arkansas Operating Air Permit Program were the result of numerous stakeholder meetings and a rigorous public process. In addition to the public hearing and an extended public comment period, stakeholder meetings also occurred on 12/14/2010, 3/11/2011, and 2/29/2012, and additional meetings with Arkansas Environmental Federation representatives occurred on 3/1/2011, 3/9/2012, 5/10/2012, and 5/14/2012. EPA also provided comments to ADEQ on the draft language during the public review process and in the spring of 2012. Several changes were made to the originally proposed revisions as a result of considering comments received during this process.

2. Proposed regulation presentation to Commission's **Regulations Committee** for approval to proceed to public comment period.

Date: 1/28/2011 *By:* Mike Bates

Comments/Approval: Committee recommended adoption of Petition to initiate rulemaking.

3. **Legal notice** of proposed regulation and public hearing.

publication	*dates of publication*
Arkansas Democrat-Gazette	2/02/2011 and 2/03/2011

4. Provide **Legislative Council** with three copies of proposed regulation and the legislative questionnaire at least ten days prior to the first public hearing.

Date Delivered: 1/14/2011

5. Hold **public hearing(s)** on the proposed regulation.

location	*date*	*hearing chairman*
ADEQ Commission Room	3/8/2011	Judge Charles Moulton

6. Date of final day of public comment period: 3/22/2011; extended to 4/11/2011

7. **Final proposed regulation** and **response to comments** prepared by Department.

Date initiated: 3/23/2011 *Date completed:* 5/16/2012

8. Formal presentation to the **Public Health & Welfare Committee** of the Legislative Council.

Date: 5/17/2012 *By:* Teresa Marks

EXHIBIT D

Comments/Approval: Approval received by Committee

9. Formal presentation of proposed final regulation to the **Administrative Rules & Regulations Subcommittee** of the Legislative Council (All Regs).

Date: 6/13/2012 *By:* Teresa Marks

Comments/Approval: Approval received by Committee

10. Presentation of proposed final regulation to Commission's **Regulations Committee**.

Date: 6/22/2012 *By:* Mike Bates

Comments/Approval: Committee recommended adoption of final rulemaking.

11. Provide Commission members with copy of proposed final regulation prior to Commission meeting.

Date Delivered: 6/08/2012

12. Present proposed final regulation to the **Commission** for adoption.

Date: 6/22/2012 *By:* Mike Bates

Comments/Approval: Commission approved adoption of final rulemaking.

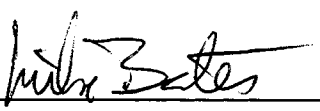
13. Send two copies of adopted regulation to **Secretary of State** (regulation will become effective July 12, 2012, "ten days after filing").

Date mailed: Upon final promulgation of Regulation.

14. Formally submit adopted regulation to **EPA**.

Date mailed: Upon final promulgation of Regulation.

PREPARED BY:
ARKANSAS DEPARTMENT
OF ENVIRONMENTAL QUALITY

By: 

Mike Bates

EXHIBIT D

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State Capitol, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-3527
www.sos.arkansas.gov

For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Department of Environmental Quality

Department Arkansas Pollution Control & Ecology Commission

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0750

Statutory Authority for Promulgating Rules A.C.A. §8-4-201, §8-4-202, and §8-4-311

Rule Title: Reg No. 26, Regulations of the Arkansas Operating Air Permit Program; Docket No. 11-003-R; Minute Order No. 12-22

Intended Effective Date (Check One)

- ☐ Emergency (ACA 25-15-204)
- ☐ 30 Days After Filing (ACA 25-15-204)
- ☐ Other _____ (Must be more than 30 days after filing date.)

Date

Legal Notice Published	02/02/2011
Final Date for Public Comment	04/11/2011
Reviewed by Legislatice Council	06/13/2012
Adopted by State Agency	06/22/2012

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Mike Bates (Contact Person) bates@adeq.state.ar.us (E-mail Address) 06/29/2012 (Date)

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Charles Moulton
Signature

(501) 682-7890 charles.moulton@arkansasag.gov
Phone Number E-mail Address

Administrativer Hearing Officer
Title

06/29/2012
Date

BY: _____
FILED
STATE OF ARKANSAS
2012 JUN 29 P 4:16
SECRETARY OF STATE
ADMIN. RULES DIV.

Revised 8/2011 to reflect new legislation passed in 2011.

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For Office Use Only

Effective Date: **Classification Number:**

Name of Agency: Arkansas Department of Environmental Quality

Contact Person: Mike Bates **Telephone:** (501) 682-0750

Statutory Authority for Promulgating Rules: A.C.A. §8-4-201, §8-4-202, and §8-4-311

Title of Rule: Regulation No 26, Regulations of the Arkansas Operating Air Permit Program; Docket No 11-003-R; Minute Order No. 12-22.

Rule Status	Effective Date Status	Effective Date
☐ New Rule/Regulation	☐ Emergency	
☒ Amended Rule/Regulation	☒ 10 Days after filing	July 9, 2012
☐ Repealed Rule/Regulation	☐ Other	
☐ Order	☐ Repealed	
☐ Emergency Rule/Regulation	Adopted by State Agency	

☐ Rule above is proposed and will be replaced by final version

☒ Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature: Chuck Munt Date: June 29, 2012

Title: Administrative Hearing Officer

1/14/99

Biomass Deferral Rule

- Regulation Tracking Sheets
- Arkansas Register Transmittal Sheets
- Arkansas State Library Agency Certification Forms

ADEQ REGULATIONS TRACKING SHEET

Regulation No. 19 **Common Name:** Regulations of the Arkansas Plan of Implementation for Air Pollution Control

1. **Strawman review** of draft regulation by key groups.

	initiated	*completed*	*incorporated*
EPA	June 28, 2012	August 17, 2012	N/A
ADEQ Legal/Admin.	May 29, 2012	June 7, 2012	N/A
Industrial/ Environmental Groups	June 22, 2012	August 17, 2012	N/A

Comments: Revisions to the Regulations of the Arkansas Plan of Implementation for Air Pollution Control were made in order to traditionally incorporate changes which were adopted under Emergency rulemaking procedures by the Commission on June 22, 2012.

2. Proposed regulation presentation to Commission's **Regulations Committee** for approval to proceed to public comment period.

Date: June 22, 2012 *By:* Mike Bates

Comments/Approval: Committee recommended adoption of Petition to Initiate Rulemaking

3. **Legal notice** of proposed regulation and public hearing.

publication	*dates of publication*
Arkansas Democrat-Gazette	June 27 – June 28, 2012

4. Provide **Legislative Council** with three copies of proposed regulation and the legislative questionnaire at least ten days prior to the first public hearing.

Date Delivered: 8/17/2012

5. Hold **public hearing(s)** on the proposed regulation.

location	*date*	*hearing chairman*
ADEQ Commission Room	8/1/2012	Loren Hitchcock

6. Date of final day of public comment period: 8/15/2012

7. **Final proposed regulation** and **response to comments** prepared by Department.

Date initiated: 8/16/2012 *Date completed:* 8/17/2012

EXHIBIT D

8. Formal presentation to the **Public Health & Welfare Committee** of the Legislative Council.

Date: 9/13/2012 *By:* Teresa Marks

Comments/Approval: Approval received by Committee

9. Formal presentation of proposed final regulation to the **Administrative Rules & Regulations Subcommittee** of the Legislative Council (all Regs).

Date: 10/15/2012 *By:* Teresa Marks

Comments/Approval: Approval received by Committee

10. Presentation of proposed final regulation to Commission's **Regulations Committee**.

Date: 10/26/2012 *By:* Mike Bates

Comments/Approval: Committee recommended adoption of final rulemaking.

11. Provide Commission members with copy of proposed final regulation prior to Commission meeting.

Date Delivered: 10/12/2012

12. Present proposed final regulation to the **Commission** for adoption.

Date: 10/26/2012 *By:* Mike Bates

Comments/Approval: Commission approved adoption of final rulemaking.

13. Send two copies of adopted regulation to **Secretary of State.**

Date mailed: Upon final promulgation of Regulation.

14. Formally submit adopted regulation to **EPA**.

Date mailed: Upon final promulgation of Regulation.

PREPARED BY:
ARKANSAS DEPARTMENT
OF ENVIRONMENTAL QUALITY

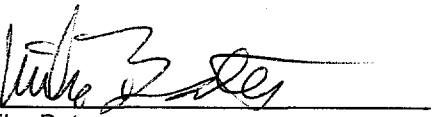
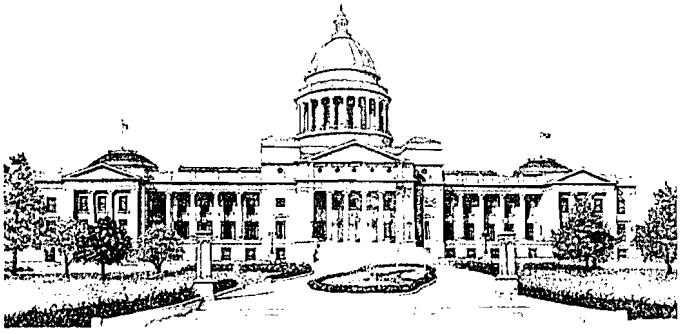
By: 
Mike Bates

EXHIBIT D

ARKANSAS REGISTER



Transmittal Sheet

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Secretary of State
Mark Martin
State Capitol, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-3527
www.sos.arkansas.gov

For Office Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Pollution Control & Ecology Commission

Department Arkansas Department of Environmental Quality

Contact Mike Bates E-mail bates@adeq.state.ar.us Phone (501) 682-0730

Statutory Authority for Promulgating Rules A.C.A. §8-4-202

Rule Title: Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control; Docket No. 12-006-R; MO #12-45

Intended Effective Date (Check One)

- ☐ Emergency (ACA 25-15-204)
- ☐ 30 Days After Filing (ACA 25-15-204)
- ☐ Other _____ (Must be more than 30 days after filing date.)

Date	
Legal Notice Published	08/01/12
Final Date for Public Comment	08/15/12
Reviewed by Legislatice Council	08/17/12
Adopted by State Agency	10/26/12

Electronic Copy of Rule submitted under ACA 25-15-218 by:

_____ _____ _____
Contact Person E-mail Address Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act (ACA 25-15-201 et. seq.)

Charles E. Moulton
Signature

(501) 682-7890 charles.moulton@arkansasag.org
Phone Number E-mail Address

Administrative Hearing Officer
Title

November 8, 2012
Date

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Effective Date: **Classification Number:**

Name of Agency: Arkansas Department of Environmental Quality

Contact Person: Mike Bates **Telephone:** (501) 682-0730

Statutory Authority for Promulgating Rules: A.C.A. §8-4-202

Title of Rule: Regulation No 26, Regulations of the Arkansas Operating Air Permit Program; Docket No 12-006-R; Minute Order No. 12-47.

Rule Status	Effective Date Status	Effective Date
☐ New Rule/Regulation	☐ Emergency	
☒ Amended Rule/Regulation	☒ 10 Days after filing	November 18, 2012
☐ Repealed Rule/Regulation	☐ Other	
☐ Order	☐ Repealed	
☐ Emergency Rule/Regulation	Adopted by State Agency	

☐ Rule above is proposed and will be replaced by final version

☒ Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature: Clark Mundt Date: November 8, 2012

Title: Administrative Hearing Officer

Tab H

Public Participation

GHG Tailoring Rule: Regulations 9, 19, and 26

- Public Notice Information

- Public Hearing Sign-in Sheets

- Public Comments and Responsiveness Summaries

NOTICE OF PUBLIC HEARING FOR REGULATION CHANGES

The Arkansas Pollution Control and Ecology Commission (APC&EC) will hold a public hearing at North Little Rock January 17, 2012, to receive comments on proposed changes to Commission Regulation 9, which governs the permit fee program for the Arkansas Department of Environmental Quality (ADEQ). The hearing will begin at 2:00 p.m. in the ADEQ Commission Room at the agency headquarters building, 5301 Northshore Drive, North Little Rock.

The deadline for submitting written comments on the proposed changes is 4:30 p.m. January 31, 2012.

APC&EC authority to amend Regulation 9 is found in Arkansas Code Annotated Sections 8-4-201, 8-4-202, 8-4-304, and 8-4-311.

In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearing. If the hearing is postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period.

The only substantive proposed change to Regulation 9 is in Chapter 5, which deals with fees for permits issued by the ADEQ Air Division, and would exclude carbon dioxide and methane from being chargeable emissions under air permit fee formulas.

Other proposed revisions to the regulation involve corrections of typographical errors and formatting changes.

Copies of the proposed changes to Regulation 9 are available for public inspection during normal business hours at the ADEQ Public Outreach and Assistance Division on the second floor of the headquarters building, or at ADEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Russellville, Pocahontas, Searcy, Stuttgart, Texarkana, and West Memphis; in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway; and in the Arkansas State Library, 900 W. Capitol, Suite 100, Little Rock. In addition, a copy of the proposed changes, along with related support documents, is available for viewing or downloading at the ADEQ's Internet web site at www.adeq.state.ar.us.

Oral and written comments will be accepted at the hearing, but written comments are preferred in the interest of accuracy. In addition, written or electronic mail comments will be accepted if submitted no later than 4:30 p.m. January 31, 2012. Written comments should be sent to Doug Szenher, Public Outreach and Assistance Division, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118. Electronic mail comments should be sent to reg-comment@adeq.state.ar.us.

Published December 7 and 8, 2011,

Teresa Marks, Director,
Arkansas Department of Environmental Quality

Arkansas Democrat Gazette
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FOR REGULATION CHANGES

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Published December 7 and 8, 2011.

Teresa Marks, Director,
Arkansas Department of Environmental Quality
707600311

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Department of Environmental Quality

ARKANSAS DEPARTMENT OF POLLUTION CONTROL & ECOLOGY

HEARING/MEETING REGISTRATION

Name *Please Print Legibly*	Address *Street* *City* *State* *Zip*	Organization Represented
Mary Cameron	AR Legis Council	
Stan Jorgensen	PC&E Hearing office	

Public hearing/meeting on: Reg 9 **Date:** 1/17/12

Location: ADEQ – NLR **Page** 1 **Of** 1

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 9, PERMIT FEE REGULATIONS) DOCKET NO. 11-007-R

RESPONSIVE SUMMARY FOR REGULATION NO. 9, PERMIT FEE REGULATIONS

Pursuant to Ark. Code Ann. § 8-4-202(d)(4)(C) and Regulation No. 8.815, a responsive summary groups public comments into similar categories and explains why the Arkansas Pollution Control and Ecology Commission ("Commission") accepts or rejects the rationale for each category.

On November 18, 2011, the Arkansas Department of Environmental Quality ("ADEQ" or "Department") filed a Petition to Initiate Rulemaking to Amend Regulation No. 9, Permit Fee Regulations. Commissioner Stan Jorgensen conducted a public hearing on January 17, 2012, and the public comment period ended January 31, 2012. One comment was received. The following is a summary of the comment regarding the proposed amendments to Regulation No. 9 along with the Commission's response.

Comment 1: Title 42, Chapter 85, Subchapter V, Section 7661(b)(3)(A), requires that the owner or operator of "all sources" subject to the requirement to obtain a permit pay an annual fee. Also, in 7661(b)(3)(B)(i), states must demonstrate the permitting program will result in the collection from "all sources" and from "each regulated pollutant" in order for the program to be approved. The only exceptions seem to be for a permit fee which is less than $25 per ton. By exempting two of the greenhouse gas pollutants from paying a permit fee, it appears that the cost of the permitting program is falling on the remaining greenhouse gas pollutants and is out of compliance with federal law.

Response: ADEQ disagrees that the proposed changes are in violation of federal law. The Clean Air Act requires that the state permit fees be sufficient to cover all reasonable costs to develop and administer the (title V) permit program. 42 U.S.C. § 7661a(b)(3)(A). Additionally, The Clean Air Act states that the total amount of fees collected shall conform to the following:

EXHIBIT B

(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than $25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program. 42 U.S.C. § 7661a(b)(3)(B)(i).

Further, EPA promulgated regulations to implement the statutory requirements and provide directions for State Program approval at 40 CFR 70. In this regulation, EPA established the elements that State programs must satisfy in order for the state program to be approved by EPA, including the establishment of a permitting fee system. 40 CFR §70.4 (7) & (8) and 40 CFR 70.9. Specifically, EPA states at 40 CFR §70.9 (b)(3):

"The State program's fee schedule may include emission fees, application fees, service-based fees or other types of fees, or any combination thereof, to meet the requirements of paragraph (b)(1) or (b)(2) of this section. *Nothing in the provisions of this section shall require a permitting authority to calculate fees on any particular basis or in the same manner for all part 70 sources, all classes or categories of part 70 sources, or all regulated air pollutants, provided the permitting authority collects a total amount of fees sufficient to meet the program support requirements of paragraph (b)(1) of this section*." (Emphasis added.)

The federal Clean Air Act and the implementing regulations, as noted above, provide significant discretionary authority for a State to craft its permitting fee system to the specific needs of the individual State.

EPA's Tailoring Rule (Tailoring Rule) did not require States to change permit fee requirements to address greenhouse gases nor did it require States to submit a new permit fee demonstration under 40 CFR §70.9 for state program revisions related to permitting greenhouse gases. 75 FR 31584, June 3, 2010. The Tailoring Rule allows States to use their discretion related to fees for

greenhouse gases, so long as fee collections are adequate for the administration of the title V program. EPA has previously determined that the Arkansas permit fee system is adequate and satisfies the federal requirements. 66 FR 51314, October 9, 2001. ADEQ believes that the fees currently collected for air permits, which do not include fees for carbon dioxide or methane emissions, are sufficient to fund the program at this time. ADEQ does not anticipate that permitting carbon dioxide or methane emissions will substantially increase costs incurred by the Department. In the event that permitting carbon dioxide or methane emissions increases costs to the agency such that the permit fees collected are inadequate to fund the program, then the Department will consider charging for carbon dioxide and methane emissions, as was stated in our petition to initiate this rulemaking and as allowed in the Tailoring Rule.

No change to the proposed rule is necessary due to this comment.

Arkansas Department of
Environmental Quality

By: _____

Mike Bates, Chief, Air Division

EXHIBIT B

NOTICE OF PROPOSED CHANGES TO THREE AIR QUALITY REGULATIONS

The Arkansas Pollution Control and Ecology Commission (APC&EC) will hold three public hearings at North Little Rock March 8, 2011, to receive public comments on proposed changes to three APC&EC air pollution control regulations. The series of hearings will begin at 1:00 p.m. in the Commission Room at the Arkansas Department of Environmental Quality headquarters building, 5301 Northshore Drive, North Little Rock, AR 72118.

The deadline for submitting written comments on the proposed changes is 4:30 p.m. March 22, 2011.

In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearings. If the hearings are postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period.

Separate hearings for APC&EC Regulation 18 (Arkansas Air Code), Regulation 19 (State Implementation Plan [SIP] for Air Pollution Control), and Regulation 26 (Arkansas Operating Air permit program) will be held, beginning with Regulation 18 at 1:00 p.m. After the Regulation 18 hearing has concluded, the Regulation 19 hearing will begin, and once it has ended, the Regulation 26 hearing will start.

APC&EC authority to revise Regulations 18, 19, and 26 is found in Arkansas Code, Annotated (A.C.A.), Section 8-4-301, et seq.

The proposed changes to all three regulations are in response to recent actions by the U.S. Environmental Protection Agency (EPA) involving new regulations for greenhouse gas (GHG) emissions; commonly referred to as the "GHG Tailoring Rule." GHGs involved in the rule are carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

In general, the proposed changes to Regulations 18, 19, and 26 involve the addition of carbon dioxide (CO2) as an air contaminant or air pollutant under Arkansas regulations, making certain CO2 emission sources subject to regulation by the ADEQ and requiring emission permits in some cases. Under the proposed changes, sources emitting less than 75,000 tons per year of CO2 equivalent emissions would be exempt from permitting requirements. The CO2 equivalent emissions for each source will be calculated by a formula involving the combined emissions of the six GHGs from the source. Amendments to Regulation 19 will be submitted to the EPA for inclusion into Arkansas' State Implementation Plan, and amendments to Regulation 26 will be submitted to the EPA for inclusion into Arkansas' Title V and Part 70 State Program.

Copies of the three proposed regulation changes are available for public inspection during normal business hours at the Public Outreach and Assistance (POA) Division in the ADEQ's headquarters building in North Little Rock, and in ADEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy, Stuttgart, Texarkana, and West Memphis; in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway; and in the Arkansas State Library, 900 W. Capitol, Suite 100, Little Rock. In addition, copies of the draft regulations showing the proposed changes, along with related support documents, are available for viewing or downloading on the draft regulations page of the ADEQ's Internet web site at www.adeq.state.ar.us.

Oral and written statements will be accepted at the hearings, but written comments are preferred in the interest of accuracy. In addition, written and electronic mail comments will be accepted if received no later than 4:30 p.m. March 22, 2011. Written comments should be mailed to Doug Szenher, POA Division, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118. Electronic mail comments should be sent to:
reg-comment@adeq.state.ar.us.

Published February 2 and 3, 2011,

Teresa Marks, Director,
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Published February 2 and 3, 2011,
Teresa Marks, Director,
Arkansas Department of Environmental Quality
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2/28/11	Pay				473.75CR
2/03/11	cha				417.50
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AGING				21 AMOUNT
JANUARY	DECEMBER	NOVEMBER	OVER 3 MONTHS	1,246.25
0.00	0.00	0.00	0.00	25 PLEASE PAY TOTAL AMOUNT DUE: 1,246.25

PAYMENT HAS ALREADY BEEN MADE FROM LEGAL AFFIDAVIT;
EASE DISREGARD THIS STATEMENT.

.O. Box 2221
JSINESS OFFICE - LEGALS
TTLE ROCK, AR 72203

27 BILLED ACCOUNT NAME

ADEQ

26 BILLED ACCOUNT NO.	4 BILLING DATE	3 INVOICE NO.	25 TOTAL AMOUNT DUE
L844316	02/28/11		1,246.25

E PROPER CREDIT, PLEASE DETACH AND RETU

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

HEARING/MEETING REGISTRATION

Name *Please Print Legibly*	Address *Street*	*City*	*State*	*Zip*	Organization Represented
Chuck Buttry	6704 Waverly Dr	LR	AR	72207	Trinity Consultants
Wendell Smith	5429 LBJ Fwy	Dallas	TX	75240	US lime & Mineral
Jeremy Spann					ADEQ
Mark Allison					
Ann Fairtz					
Kendra Jones	Ag's offc				
Jessica Sutton	ALC				
Mike Baker	ADEQ				
Mike Porta					
Elizabeth Sartain					
Tom Rheaume					
Jeremy Spann					
Toby Chu					
Rebecca McDaniel					
Gerald Hunter					
Doug Szenher					
Charles Moulton	Hearing officer				

Public hearing/meeting on: Regs 18-19-26 **Date:** 3-8-11

Location: ADEQ NLR **Page** 1 of 1

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO REGULATION NO. 19, REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR POLLUTION CONTROL	**)** **)** **)** **)**	**DOCKET NO. 11-002-R**

RESPONSIVE SUMMARY FOR REGULATION NO. 19, REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR POLLUTION CONTROL

Pursuant to Ark. Code Ann. § 8-4-202(d)(4)(C) and Regulation No. 8.815, a responsive summary groups public comments into similar categories and explains why the Arkansas Pollution Control and Ecology Commission ("Commission") accepts or rejects the rationale for each category.

On January 14, 2011, the Arkansas Department of Environmental Quality ("ADEQ" or "Department") filed a Petition to Initiate Rulemaking to Amend Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control. The Commission's Acting Administrative Hearing Officer, Charles Moulton, conducted a public hearing on March 8, 2011, and the public comment period ended April 11, 2011. The following is a summary of the comments regarding the proposed amendments to Regulation No. 19 along with the Commission's response.

Regulation No. 19 is applicable to any stationary source which has the potential to emit any federally regulated air pollutant. The revisions to Regulation No. 19 addressed in this rulemaking are made with the intention of implementing EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule: Final Rule" ("enabling federal law"). Minor adjustments to provisions of Regulation No. 19 not specifically addressed in the enabling federal law are included in this rulemaking. These minor adjustments are necessary in order to either integrate the enabling federal law's provisions into the affected Arkansas regulations as seamlessly as possible or to clarify the implementation of the greenhouse gas ("GHG") provisions within the existing regulatory framework. Every effort has been made to keep these ancillary revisions to a minimum without making wholesale revisions to the existing permitting infrastructure contained within the present regulations. The intent of this rulemaking is to amend the Arkansas regulations to be consistent with and no more stringent than the federal

EXHIBIT B

requirements in application and effect with regard to the regulation and permitting of GHGs in Arkansas (within the overall structure of the existing permitting program) and to reach the same goal as would be accomplished by EPA through the Federal Implementation Plan (FIP) that is presently in place. Further, the intent of these revisions is to attain EPA's approval of the Arkansas State Implementation Plan ("SIP") for GHGs and the withdrawal of the FIP. Unless and until the proposed revisions are adopted and approved by EPA in a State Implementation Plan, ADEQ will not have the requisite authority to issue permits regarding GHGs. Facilities that emit such pollutants at levels addressed in the federal GHG Tailoring Rule will be required to obtain the necessary federally required permits before commencing construction or operation. Until Arkansas adopts GHG Tailoring Rule requirements, any PSD/NSR permits involving significant GHG emission increases will require EPA issuance of the GHG portions. This, in turn, will require the permit application to be submitted to EPA, EPA review of the application, and EPA drafting the permits. While ADEQ will seek to expedite any such permit and possibly enter into an agreement with EPA on permit issuance, it is not certain that EPA will issue any such permits or how quickly.

The effect on the operating permit program of not adopting the rules will leave ADEQ and facilities without title V permits that meet federal requirements. What action EPA will pursue in such an instance is unknown. ADEQ is continuing to work with EPA at the Regional and Headquarter levels to minimize any disruption of the Operating Permit (title V) program during the pendency of the rulemaking for Regulation Number 19 and Number 26.

In addition to the GHG regulatory requirements, Regulation No. 19 also contains a clause that places a stay on applicable GHG provisions if any change in federal law or federal court decision renders EPA's regulation of GHGs invalid or unenforceable. The stay will remain in effect until the Commission makes a final decision on whether to lift the stay or amend Regulation No. 19. Any changes in Regulation No. 19 would have to be adopted through formal rulemaking. The Department would seek to initiate rulemaking in order to modify the GHG provisions in Regulation No. 19 in accordance with program requirements set out by EPA in response to the court decision or change in federal law. It is important to note that if the federal law is successfully challenged or changed, the Department will rely on EPA guidance for implementing interim measures (pending rulemaking and a subsequent SIP and Title V program

approval) to conform to federal requirements and to ensure that ADEQ is not enforcing the GHG provisions in a manner more stringent than federal law.

Comment 1: One commenter stated that they are not opposed to the Commission's efforts to incorporate the Tailoring Rule into Arkansas's air regulation.

Response: ADEQ acknowledges and appreciates this comment.

No changes to the final rule are necessary due to this comment.

Comment 2: Commenters stated they are generally unopposed to streamlining the federally enforceable state regulations and support the State's continued administration of the federal air permitting programs in Arkansas. However, commenters believe revisions to Regulation 19 should not be made unless the change is required by law in order for ADEQ to obtain approval to administer the Tailoring Rule, and changes made in order to obtain such approval should be the absolute minimum necessary to obtain approval.

Response: ADEQ believes that each of the proposed regulation revisions are required by law and include the minimum changes necessary to incorporate EPA's Greenhouse Gas ("GHG") Tailoring Rule and obtain the necessary state regulatory authority for GHG source permitting in Arkansas.

No changes to the final rule are necessary due to this comment.

Comment 3: To the extent ADEQ believes that each of the proposed revisions to Regulation 19 are required by the Tailoring Rule, ADEQ should justify each revision by reference to the specific corresponding federal requirement (*see* Regulation 8.815(A)(1)(i) and (ii)); and to the extent the revision may be more stringent than or is not identical to federal requirements, then ADEQ must provide the necessary justification and supporting documentation mandated by Ark. Code Ann. § 8-4-311(b)(1)(B), § 8-4-201(b)(1)(B), and Regulations 8.815 and 8.812.

Response: The proposed addition of definitions for "CO_2 equivalent emissions" and "greenhouse gases" and the proposed changes in Reg. 19.904(G)(1) through (5) are excerpted from the Code of Federal Regulations ("CFR") with only minor additions made for clarity. The proposed changes in Chapter 4 and changes in Appendix A, although not identical to EPA's GHG Tailoring Rule, are consistent with and necessary to implement the GHG Tailoring Rule in the existing Regulation No. 19. These revisions meet the Economic Impact and Environmental Benefit Analysis exemption provisions of Regulation 8.812 by incorporating the GHG Tailoring Rule without substantive change. As a result of comments received during the public comment period, two revisions to Regulation No. 19 are proposed. These revisions include the

modification to the definition of "federally regulated air pollutant" and the rescission clause at Reg. 19.904(G)(6). The rescission clause was modified to provide for a stay of applicable GHG provisions in Regulation No. 19 which correspond to any regulatory provisions of GHGs on the federal level that are determined to be invalid or unenforceable by a federal court or changed through federal legislation. These two proposed changes to Regulation No. 19 are not identical to the GHG Tailoring Rule and, accordingly, an Economic Impact and Environmental Benefit Analysis has been prepared.

The technical amendments to Regulation No. 19 are the minimum necessary to modify ADEQ's PSD permitting program to maintain consistency between federal air pollution control programs and the Commission's regulations. The demonstration that these revisions are scientifically sound can be satisfied by incorporating by reference the justification contained in the federal GHG Tailoring Rule published June 3, 2010, in the Federal Register at 75 FR 31514, the finding of substantial inadequacy and SIP call to ensure authority to issue permits under the PSD program to GHG sources published in the Federal Register on December 13, 2010, at 75 FR 77698 and the Endangerment Finding published in the Federal Register on December 15, 2009, at 74 FR 66496.

Comment 4: To the extent that the proposed revisions to Regulation 19 result in regulations that go beyond the Tailoring Rule and thus, are more stringent than federal requirements, the Commission has not undertaken a proper benefit analysis, in contravention of Arkansas law.

Response: Arkansas law requires that an economic impact and environmental benefit analysis be conducted for any regulations or change in regulation that is *more stringent* that federal requirements. With the exception of two changes made as a result of public comments, the proposed revisions are not more stringent than federal requirements and, in most instances, adopt or incorporate identical requirements as set forth in the federal rule. Certain minor changes to the state rules were necessary either to clarify the requirements proposed or as logically necessary to enact the federal requirements in the existing state rules. The proposed revisions to Regulation No. 19 are designed to incorporate the minimum changes necessary to maintain consistency between EPA's GHG Tailoring Rule and the Commission's regulations so that ADEQ will have the authority necessary to permit regulated GHG sources in Arkansas. With the two exceptions previously noted, ADEQ believes that the proposed revisions are not more stringent than the requirements of the GHG Tailoring Rule and are exempt from the requirement to prepare an Economic Impact and Environmental Impact Analysis under Regulation 8.812(A)(1) because "the proposed rule incorporates or adopts the language of a federal statute or regulation without substantive change." For the two changes made as a result of public comments, which are not identical to EPA's GHG Tailoring Rule, the Department has prepared an Economic Impact/Environmental Benefit Analysis. The two changes addressed in the

Analysis include the proposed amendment to the definition of "federally regulated air pollutant" and the addition of the clause providing for a stay found at Reg. 19.904(G)(6).

Comment 5: ADEQ should include its scientific and technical rationale for each change to the regulation. Arkansas law also requires that in the event proposed regulations are not identical to those promulgated by the EPA, then the Commission must provide a written explanation of the **necessity** of the regulation and make a demonstration in the Commission's Statement of Basis and Purpose upon adopting the proposed regulations that:

> "any technical regulation or standard is based upon generally accepted scientific knowledge or engineering practices, with appropriate references to technical literature or written studies conducted by the ADEQ."

Thus, ADEQ should provide its explanation of the need for each and every revision with reference to the requirement in the Tailoring Rule as well as the necessary scientific or engineering basis for such revision to the extent the revisions are not identical to the Tailoring Rule.

Response: The commenter failed to quote the remainder of the statutory section which provides:

> For any standard or regulation that is identical to a regulation promulgated by the United States Environmental Protection Agency, this portion of the record may be satisfied by reference to the Code of Federal Regulations.
> In all other cases, [ADEQ] must provide its own justification with appropriate reference to the scientific and engineering literature or written studies conducted by the department. (Ark. Code Ann. § 8-4-202(d)(4)(A)(ii)).

Further, the commenter failed to identify the proposed changes to the technical standards which were not identical to the Tailoring Rule. The proposed changes in the definitions of "greenhouse gases" and "CO_2 equivalent emissions" and changes in Reg. 19, 904(G)(1) through (5) are excerpted from EPA's GHG Tailoring Rule with only minor additions made for clarity of language. The proposed changes in Chapter 4 and changes in Appendix A, although not identical to EPA's GHG Tailoring Rule, are consistent with and are the minimum revisions necessary to modify ADEQ's PSD permitting program to match EPA's GHG Tailoring Rule. The proposed change to the definition of "federally regulated air pollutant" is not identical to the GHG Tailoring Rule, but it is intended to ensure consistency between the federal permitting requirements for GHGs and the Commission's regulations. The justification for these revisions to Regulation 19 include reference to the federal GHG Tailoring Rule, published in the Federal Register on June 3, 2010, at 75 FR 31514, incorporating by reference the justification for the GHG Tailoring Rule contained therein, the finding of substantial inadequacy and SIP call to ensure authority to issue permits under the PSD program to GHG sources, published in the Federal Register on December 13, 2010, at 75 FR 77698, and the Endangerment Finding,

published in the Federal Register on December 15, 2009, at 74 FR 66496. Without these revisions, facilities currently subject to the PSD permitting program will not be able to receive permits from ADEQ for GHG emissions. Without these revisions, PSD, and eventually title V GHG permits, would be issued by EPA instead of by the ADEQ. However, at this point, it is unclear whether EPA has the authority to issue a title V permit in an approved state such as Arkansas.

No changes to the final rule are necessary due to this comment.

Comment 6: Explanation is needed regarding the effect of the amendments on existing Part 70 sources. Based upon the proposed revisions to Regulation 19, it is not clear that should a facility's permit include GHG emissions, what the associated permit condition or provision will be if the source is required to address GHG emissions in its permit as well as a description of what evidence or other information, including calculations, sources subject to permitting would be required to provide to show applicability or inapplicability of the requirements in the proposed regulation.

Response: Applicants for permits or permit modifications under Regulation Number 19 are required to submit certain information to ADEQ as part of the existing application process (see Regulation 19.404). These requirements are unaffected by the proposed revisions in all regards except that the proposed revisions add GHGs as a new pollutant that must be addressed. Permit application forms (as addressed in the currently effective Regulation 19.404) will be revised to include the additional information that will be necessary after enactment of the regulatory revisions; those forms will be made available to the regulated community and the public.

As a point of reference and information in response to the questions raised in this comment, interested parties are directed to the document PSD AND TITLE V PERMITTING GUIDANCE FOR GREENHOUSE GASES, Environmental Protection Agency, United States Office of Air and Radiation, dated March 2011, which outlines these requirements. Specifically, on page 53:

> Under both Steps 1 and 2 of the Tailoring Rule, sources will need to include in their title V permit applications, among other things: citation and descriptions of any applicable requirements for GHGs (e.g., GHG BACT requirements resulting from a PSD review process), information pertaining to any associated monitoring and other compliance activities, and any other information considered necessary to determine the applicability of, and impose, any applicable requirements for GHGs. This is the same application information required under title V for applicable requirements pertaining to conventional pollutants.

> As a general matter, all title V permits issued by permitting authorities must contain, among other things, emissions limitations and standards necessary to assure compliance with all applicable requirements for GHGs, all monitoring and testing required by applicable requirements for GHGs, and additional compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with GHG-related terms and conditions of the permit. Permitting authorities will also need to request from sources any information deemed necessary to determine or impose GHG applicable requirements.
>
> It is possible that some sources will need to address GHG-related information in their applications even if they will ultimately not have any GHG-specific applicable requirements (such as a PSD-related BACT requirement for GHGs) included in their permit. This is because, as noted above, permitting authorities would need to request information related to identifying GHG emission sources and other information if they determine such information is necessary to determine applicable requirements.

No changes to the final rule are necessary based on this comment.

Comment 7: Commenters request ADEQ to provide further explanation regarding the effect of the Tailoring Rule on its pre-construction review program and its operating permit program in the event the revisions to Regulation 19 are not adopted by July 1, 2011.

Response: Unless and until the proposed revisions are adopted and approved by EPA in a State Implementation Plan, ADEQ will not have the requisite authority to issue permits regarding GHGs. Facilities that emit such pollutants at levels addressed in the federal GHG Tailoring Rule will be required to comply and obtain the necessary federally required permits before commencing construction or operation. Until Arkansas adopts GHG Tailoring Rule requirements, any PSD/NSR permits involving significant GHG emission increases will require EPA issuance of the GHG portions. This will require application submittal, EPA review of the application, and EPA's drafting of permits. While ADEQ will seek to expedite any such permit and possibly enter into an agreement with EPA on permit issuance, it is not certain that EPA will issue any such permits or how quickly.

The effect on the operating permit program of not adopting the rules will leave ADEQ and facilities without title V permits that meet federal requirements. What action EPA will pursue in such an instance is unknown. ADEQ is continuing to work with EPA at the Regional and Headquarter levels to minimize any disruption of the Operating Permit (title V) program during the pendency of the rulemaking for Regulation Numbers 19 and Number 26.

No changes to the final rule are necessary due to this comment.

Comment 8: Commenters stated that only the following revisions are necessary to comply with the Tailoring Rule.

1. Addition of an adequately comprehensive rescission clause;
2. The definitions for "CO_2 equivalent emissions (CO_2e)" and "Greenhouse Gases (GHGs)" in Regulation 19, Chapter 9;
3. Incorporation of the Tailoring Rule at Regulation 19.904.

Response: ADEQ appreciates the commenters' suggested list of revisions to incorporate EPA's GHG Tailoring Rule into Regulation Number 19; however, the Department believes that the most cohesive and complete implementation of the Tailoring Rule in existing regulations is through the revisions that have been proposed (allowing for any revisions in response to comments). Commenters did not address the need for the newly proposed definitions to be placed in the Definitions chapter of Regulation Number 19 (Chapter 2, Definitions), the *De Minimis* threshold value of 75,000 tpy that is necessary for CO_2e to reduce the number of sources that would require major permit modifications for CO_2e, or the revisions to Appendix A, Insignificant Activities List, Group A, which are necessary to avoid specified emissions of CO_2 from triggering the need for permits.

ADEQ responds to each item on the list as follows:

1. See Response to Comment 22.
2. The definitions for "CO_2 equivalent emissions (CO_2e)" and "Greenhouse Gases (GHGs)" are already proposed in Regulation Number 19, Chapter 9, at Regulation 19.904(G)(1) and Regulation 19.904(G)(2), as well as in Chapter 2 of Regulation Number 19.
3. The majority of the GHG Tailoring Rule's requirements are proposed as revisions to Regulation 19.904.

No changes to the final rule are necessary due to this comment.

Comment 9: ADEQ must address the effect that permitting GHGs as "air contaminants" will have on the permit fees required by permit holders. Permitting fees for GHGs should be exempt. The Commission should require ADEQ to either exclude GHG emissions from permit fees (as is done with carbon monoxide) or directly address this issue in the revisions to Regulations 18, 19 and 26 or separately in a rulemaking for Regulation 9.

Response: Revisions to permit fees were not part of this rulemaking. Permitting GHGs will result in additional costs for the permitting program. However, the issues associated with GHG permitting will be addressed in a separate rulemaking proposal for revisions to APC&EC Regulation Number 9, which proposes to exclude CO_2 and methane from being chargeable emissions within air permit fees.

No changes to the final rule are necessary due to this comment.

Comment 10: The proposed definition of the term "CO_2 equivalent emissions" in Chapter 2 of Regulation 19 is unnecessarily confusing. Specifically, the language used to identify "each of the six greenhouse gases in the pollutant [greenhouse gases]" lacks clarity. If the definition is not omitted entirely, the definition of "CO_2 equivalent emissions" in Chapter 2 of Regulation 19 should be revised to match that appearing at Regulation 19.904(G)(2).

Response: See Responses to Comment 12 and 13.

Comment 11: Insofar as implementation of the Tailoring Rule necessitates defining "CO_2 equivalent emissions," the definition at proposed Regulation 19.904(G)(2), with modification to include the "escape clause" found in Regulation 19.904(G)(6), is sufficient for that purpose.

Response: ADEQ disagrees with the comment. ADEQ does not believe an "escape clause" is needed in the "CO_2 equivalent emissions" definition found in Regulation 19.904(G)(2).

No changes to the final rule are necessary due to this comment.

Comment 12: The definitions for "CO_2 equivalent emissions" and "Greenhouse gases" should be the same as those in Regulation 19.904. The definitions of "CO_2 equivalent emissions (CO_2e)" and "Greenhouse gases" in all three proposed Regulations should be made identical to the definitions provided in Regulation 19.904 for purposes of consistency and clarity. ADEQ should be required to explain why these two definitions in the drafts of the Regulation are not identical to the definitions of these terms provided in Regulation 19.904.

Response: The definitions of "CO_2 equivalent emissions" and "Greenhouse gases" proposed in Chapter 2 and Chapter 9 of Regulation Number 19 are nearly identical to each other as well as to the GHG Tailoring Rule's definitions of the terms. For additional clarity, the definitions of "CO_2 equivalent emissions" and "Greenhouse gases" proposed in Chapter 2 of Regulation Number 19 will be modified to match the GHG Tailoring Rule's definitions of the terms, with the exception of the internal citations to 40 CFR § 86.1818-12-(a) being deleted and an incorporation by reference date of October 30, 2009, to Table A-1 to subpart A of 40 CFR Part 98 being added.

No change to the language of Regulation 19.904(G) is necessary as a result of this comment.

Comment 13: The addition of "Greenhouse Gases (GHGs)" definition in Chapter 2 is unnecessary and should not be adopted. The proposed addition of the definition of the term "Greenhouse Gases" in Chapter 2 of Regulation 19 is unnecessary, may lead to unintended

regulatory consequences, will cause confusion among the regulated community, and should be omitted.

Response: The definition is placed in Chapter 2 of Regulation Number 19 to increase readability and will be changed to match the GHG Tailoring Rule's definition as described in the Responses to Comments 10 and 12. ADEQ believes that matching the definition found in Chapter 2 to the GHG Tailoring Rule's definition will eliminate any potential confusion among the regulated community, as well as the potential for unintended regulatory consequences.

Comment 14: The definition of "greenhouse gases" at Regulation 19, Chapter 2, must be revised to remove the reference to measuring in CO_2e because CO_2e is one of two steps used in conjunction with major source mass thresholds to determine whether a source is subject to regulation for its GHG emissions. The commenter suggests the following revision to this definition:

> "Greenhouse gases" (GHGs) is the air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride… ~~and shall be measured as CO_2e.~~

Response: The definitions of "Greenhouse gases" proposed in Regulation Number 19 will be modified to match the GHG Tailoring Rule's definitions of the terms with the exception of the internal citations to 40 CFR Part 86.1818-12-(a) being deleted. This change will delete the language, "and shall be measured as CO_2e."

Comment 15: The *De Minimis* changes section should refer to the definition of CO_2e in Regulation 19.904. Provided that the definition of "CO_2 equivalent emissions" in Chapter 2 of Regulation 19 is omitted, the proposed addition under *De Minimis* Changes in Regulation 19.407(C)(2)(a)(vi) should be revised to state "Seventy-five thousand (75,000) tons per year of CO_2e, as defined in Regulation 19.904(G)(2)." The combination of these changes will avoid ambiguity.

Response: The existing regulation formatting provides the definition of a term prior to the term's use in the text of the Regulation. Therefore, ADEQ believes that the definition of "CO_2 equivalent emissions" should remain in Chapter 2 of Regulation Number 19. See also Responses to Comments 12 and 25.

Comment 16: The proposed addition at Regulation 19.904(G) is incomplete. The language found at Regulation 19.904(G) should be revised by substituting the words "Greenhouse Gases (GHGs), as defined below," after the words "[f]or the purpose of the regulation of" and before the word "only."

Response: ADEQ believes that the regulation revision found at Regulation 19.904(G) could only be construed as incomplete if the correlated comment that aims to remove the definition of GHGs from Chapter 2 of Regulation Number 19 were to be accepted. ADEQ intends to keep the definition of GHGs in Chapter 2 of Regulation Number 19 because the existing regulation formatting provides the definition of a term prior to the term's use in the text of the Regulation. By previously defining GHG in Chapter 2 of Regulation Number 19, the regulation revision found at Regulation 19.904(G) is not incomplete.

No changes to the final rule are necessary due to this comment.

Comment 17: Internal references in Regulation 19.904 should be revised to include the rescission clause. The proposed definition of "Greenhouse Gases" in Regulation 19.904(G)(1) is inadequate and fails to incorporate the proposed rescission clause at 904(G)(6), which may have unintended regulatory consequences. Specifically, the exception clause should be revised to incorporate the rescission clause by substituting the words "Reg. 19.904(G)(6)" for the words "Reg. 19.904(G)(5)."

Response: ADEQ disagrees with this comment. See the Response to Comment 22 regarding the change to the proposed rescission clause.

Comment 18: A Reference to Regulation 19.407(c) should be added to proposed Regulation 19.904(G)(2). Provided that the definition of "CO_2 equivalent emissions" in Chapter 2 of Regulation 19 is omitted, the proposed definition of "CO_2 equivalent emissions" in Regulation 19.904(G)(2) is incomplete. It should also reference the *De Minimis* Change provision at Regulation 19.407(c).

Response: ADEQ does not support the addition of the reference to Regulation 19.407(C) within the regulation revisions found at Regulation 19.904(G), because such a reference is not necessary if the related comments concerning the placement of definitions and citations are not accepted. Because ADEQ does not intend to make changes based on the previous comments that are the foundation for this comment, action on this comment is not needed. Commenters' request differs significantly from the language found in Regulation 19.904(G)(2), which matches the GHG Tailoring Rule language, with the exception of citations within the definition which had to be changed to the corresponding Regulation Number 19 citations for consistency purposes and minor additions for clarity of language.

No changes to the final rule are necessary due to this comment.

Comment 19: The following language should be substituted before the words "the term tons per year": "For purposes of Reg. 19.407(C) and Reg. 19.904(G)(3) through Reg. 19.904(G)(6), . . .".

Response: ADEQ does not support the revision described in this comment. This revision is not necessary if the related comments concerning the placement of definitions and citations are not accepted. Because ADEQ does not intend to make changes based on the previous associated comments, action on this comment is not needed.

No changes to the final rule are necessary due to this comment.

Comment 20: Proposed Regulations 19.904(G)(3) and (4) and in Regulation 19.904 and (G)(4)(a) and (b) should not reference "Regulated NSR Pollutant," which is an undefined term in Regulation 19. While GHGs are a pollutant "subject to regulation" under the Clean Air Act and, thus, are a "regulated NSR pollutant" after January 2, 2011, the term "regulated NSR pollutant" is not defined in Regulation 19 and is not otherwise a term used in the Regulation. Instead of using the term "regulated NSR pollutant," ADEQ should consider replacing it with the term "GHGs subject to regulation to the extent provided in this Regulation." The proposed revisions to Regulation 19.904(G)(3), include a provision that an emissions increase for GHGs shall be calculated "assuming the pollutant GHGs is a regulated NSR pollutant." This assumption is potentially confusing and unnecessary.

Response: The proposed revisions to Regulations 19.904(G)(3) and (4) have been inserted largely verbatim from the GHG Tailoring Rule, which relies on the term "Regulated NSR Pollutant" as defined in relation to federal PSD. The federal definition of "Regulated NSR Pollutant," as promulgated at 40 CFR 52.21(b)(50), has been adopted by reference at Regulation 19.904, making it a currently defined term within Regulation Number 19. This proposed revision also includes the verbatim language found in Regulation 19.904(G)(3), stating GHGs shall be calculated "assuming the pollutant GHGs is a regulated NSR pollutant." This phrase is not used to indicate a "guess" or "conjecture," but states the intention that GHGs are to be calculated as a regulated NSR pollutant. It is also noted that the referenced language is adopted from the federal regulation.

No changes to the final rule are necessary due to this comment.

Comment 21: The Department should be required to include language in the regulations that makes it clear that GHGs are not subject to regulation or regulated air pollutants under Regulation 18, 19 or 26 except as specifically provided therein. The regulations should also state that nothing therein is intended to be or shall be interpreted to be an " emission limitation" or "emission standard" within the meaning of section 302(k) of the Clean Air Act, or a "control

requirement" within the meaning of section 193 of the Clean Air Act. ADEQ should consider the following provision:

> "GHGs shall not be deemed to be subject to regulation or regulated air pollutants under this regulation, except as provided herein. Nothing herein is intended to be or shall be interpreted to be an "emission limitation" or "emission standard" within the meaning of section 302(k) of the Clean Air Act, or a "control requirement" within the meaning of section 193 of the Clean Air Act."

Response: The proposed and existing regulatory language adequately addresses the commenters' concerns. Specifically, section 302(k) is not relevant because nowhere is the term "emission limitation" or "emission standard" used in the ADEQ regulation in relation to GHGs. Section 193 only pertains to nonattainment rules and required controls in place before November 15, 1990. Implementation of the GHG Tailoring Rule does not require inclusion of the language or such a statement as that suggested by the commenters.

Section 193 of the CAA reads in part:

> No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any area which is a nonattainment area for any air pollutant may be modified after such enactment in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

Since any control requirements resulting from this proposed revision will occur after the date of enactment of the CAA and since there are no nonattainment areas for GHGs, any disclaimer with respect to §193 is unnecessary.

Regarding section 302(k), it reads:

> The terms 'emission limitation' and 'emission standard' mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operation standard promulgated under this Act.

The rule as proposed does not establish any limits on "the quantity, rate, or concentration of" GHGs nor does it promulgate "any design, equipment, work practice or operation standard." However, one of the stated reasons for this rulemaking is to allow the Department to issue PSD permits to GHG sources. One of the requirements of the PSD program is for the source to use BACT on the pollutants subject to PSD. BACT for GHG, as for other pollutants, will be

determined on a facility by facility basis and may include "emission limitations … a design, equipment, work practice, operation standard, or combination thereof …."

The language suggested by the commenter would unnecessarily state that the rule does not intend to or should be interpreted to be an "emission limitation" or "emission standard" for GHG emissions and it could potentially mislead the reader into thinking it somehow restricts the Department's ability to establish BACT limits.

However, it should be noted as the result of other comments, language has been added to Regulation 19.405(B)(1)(b) and (c) which states that permitted emission rates, emission limitations or other enforceable conditions for GHG emissions will not be included in permits unless a BACT determination is required under Regulation Number 19, Chapter 9 or is requested by a facility. See also Response to Comment 25.

Comment 22: Commenters stated that the proposed rescission clause is too narrow and should be broadened to accommodate all the possible mechanisms through which the Tailoring Rule is no longer binding in whole or in part. A rescission clause that limits the scope and burdensomeness of GHG permitting in Arkansas, including the termination of the effectiveness of these regulations simultaneously with any federal legislative, judicial, or executive suspension, postponement, or nullification of the federal GHG permitting requirements are needed and appropriate to protect Arkansas citizens and businesses from more adverse federal regulatory consequences. Changes to the scope, thresholds, and authority to implement the permitting requirements are possible based on a wide variety of potential actions including successful court challenge of the federal regulations, action by Congress deferring or eliminating EPA authority to regulate Greenhouse Gases, alternate legislation that replaces the current Tailoring Rule, or alternate regulation by EPA that results in Greenhouse Gases not being subject to federal permitting requirements. As such, the following rescission clause should be substituted for proposed Regulation 19.904(G)(6): The provisions of this Regulation and any terms or conditions of preconstruction permits regarding Greenhouse Gases, as herein defined, shall cease to be effective if any of the following occurs:

1) Enactment of federal legislation depriving the Administrator of authority, limiting the Administrator's authority, or requiring the Administrator to delay the exercise of authority, to regulate Greenhouse Gases under the New Source Review Prevention of Significant Deterioration provisions of the Clean Air Act; or
2) The issuance of any opinion, ruling, judgment, order or decree by a federal court depriving the Administrator of authority, limiting the Administrator's authority, or requiring the Administrator to delay the exercise of authority, to regulate Greenhouse Gases under the New Source Review Prevention of Significant Deterioration provisions of the Clean Air Act, or finding any such

action, in whole or in part, to be arbitrary, capricious, or otherwise not in accordance with law; or

3) Action by the President of the United States or the President's authorized agent, including the Administrator, to repeal, withdraw, suspend, postpone, or stay the amendment to 40 CFR Section 51.166 promulgated on June 3, 2010, as set forth at 75 FR 31606, or to otherwise limit or delay the Administrator's exercise of authority to require preconstruction permits for sources of Greenhouse Gas emissions.
4) U.S. EPA final regulation resulting in Greenhouse Gases not being subject to regulation under the New Source Review Prevention of Significant Deterioration provisions of the Clean Air Act.

Response: In 1995, the Arkansas Attorney General issued an opinion which specifically addresses adopting future legislation, rules, regulations or amendments by reference. The opinion states that doing so would run afoul of the constitutional separation of powers doctrine. Ark. Const. art. 4, §§ 1 and 2. The Attorney General opined:

> It is generally stated, pursuant to this doctrine, that the legislature may confer discretion in the administration of the law. It may not, however, delegate the exercise of its discretion as to what the law shall be. 16 C.J.S. Constitutional Law § 137 (1984). The latter form of delegation constitutes an unlawful delegation of legislative authority, and has been held to preclude legislative attempts to adopt by reference future legislation, rules, regulations or amendments to existing regulations.[1] See generally *Cheney v. St. Louis Southwestern Railway Co.*, 239 Ark. 870, 394 S.W.2d 731 (1965) (rejecting as unconstitutional that part of the Income Tax Law of 1929 under which certain corporate tax liability was to be based upon a formula subject to prospective federal legislation or administrative rules); *City of Warren v. State Construction Code Commission*, 66 Mich. App. 493, 239 N.W.2d 640 (1976) (stating that while the legislature clearly may incorporate by reference existing statutes, it cannot adopt by reference future legislation, rules, or regulations which are subsequently enacted or promulgated by another sovereign authority).

The Attorney General's opinion clearly prohibits incorporating by reference future legislation, rules, regulations, or amendments. Because the prohibition against prospective rulemaking

[1] The desire for uniformity of federal-state regulation has led to states' adoption in some instances of existing federal legislative policies and prospective administrative determinations thereunder. See *State v. Hotel Bar Foods, Inc.*, 18 N.J. 115, 112 A.2d 726, 732 (1955) (stating that "there are reasoned decisions which tend to support the view ... that a state legislature, in dealing with [a matter that is] properly subject to extensive federal regulation, may constitutionally provide that its administrator's regulations shall be brought into conformity with pertinent federal regulations as they are duly promulgated and amended from time to time.")

articulated in the Attorney General's opinion does not specifically address judicial review, the rescission clause as proposed was limited to voiding the changes in Regulation No. 19 based on judicial review of EPA's regulation of GHGs by a federal court. However, the comments received indicate that the proposed rescission clause was inadequate to address potential changes and decisions at the federal level. The Department believes that, if modified, EPA's regulation of GHGs will most likely be addressed through federal legislation or a federal court decision. In order to accommodate the needed flexibility for responding on the state level to GHG regulatory changes at the federal level without violating the Attorney General's opinion setting forth the prohibition on prospective rulemaking, the Department revised Reg. 19.904(G)(6) to provide for a stay of the GHG provisions, rather than rendering the provisions null and void. The rescission clause has been revised to respond to comments received so that any applicable Regulation No. 19 GHG provisions will be temporarily stayed if any federal legislation or federal court decision invalidates or renders EPA's regulation of GHGs unenforceable. Once stayed, the Commission will then make a final decision on whether to lift the stay without revising Regulation No. 19 or initiate formal rulemaking to amend Regulation No. 19 in order to maintain consistency with the federal requirements.

Comment 23: Appendix A insignificant activities list should reference CO_2e, not CO_2. The reference to "carbon dioxide" in the Insignificant Activities List at Appendix A, Group A, paragraphs 1 and 13 should be changed to "CO_2e." Regulation 9, Chapter 9, Appendix A, Insignificant Activities List, Group A, Sections 1 and 13 states that certain activities less than 75,000 tpy CO_2 are considered insignificant. Commenters note that CO_2 is only one of six pollutants analyzed in the aggregate to determine GHG emissions. Additionally, the insignificant activity list exclusions need to be based both on the same major source 100/250 tpy thresholds and the CO_2e thresholds used to determine whether a source is subject to regulation for PSD permitting.

Response: GHG pollutants other than CO_2 are still regulated as air contaminants and cannot be considered exempt at such levels. The statement about having the same major source 100/250 tpy thresholds in the Appendix A insignificant activities list would only be applicable if the intention was to reference CO_2e, not CO_2. This is not the case.

Additionally, the introductory paragraph to Appendix A includes a statement that "Any activity for which a state or federal applicable requirement applies (such as NSPS, National Emission Standards for Hazardous Air Pollutants [NESHAP], or Maximum Achievable Control Technology [MACT]) is not insignificant, even if this activity meets the criteria below." This statement means that if any federal applicable requirement, including PSD for GHG, is triggered as a result of a particular activity at a source, the emissions are subject to permitting and are not considered to be insignificant.

No changes to the final rule are necessary due to this comment.

Comment 24: Appendix A Insignificant Activities List Group A, paragraph 13 should be slightly revised. The proposed additional language in the Insignificant Activities List at Appendix A, Group A, paragraph 13 should be revised by inserting the word "other" after the words "or 5 tpy of any" and before "air pollutant regulated under this regulation" so as to be consistent with the rest of Appendix A and the Insignificant Activities Lists in Regulation 18.

Response: ADEQ agrees with the comment and will make the described change.

Comment 25: The language or provisions used in these rules to obtain approval to administer the Tailoring Rule should not result in unintended consequences, should not impose or permit the imposition of unduly burdensome, costly, or needless regulatory requirements, and should not lead to absurd results (such as a requirement to apply for and obtain a permit with no regulatory conditions).

Response: ADEQ has made every effort to incorporate the necessary provisions of the GHG Tailoring Rule in order to maintain consistency with the federal program and obtain the necessary federal approvals for the state program while maintaining maximum state authority over its permitting programs. ADEQ expects that EPA will grant approval for ADEQ to administer the GHG provisions of the programs, which will be implemented in a fashion to maximize program efficiency and minimize the burden to the regulated community to the extent possible.

Revisions have been incorporated, based on this Comment, to Regulation 19.405(B)(1)(b) and (c) and to the definition of "federally regulated air pollutant" to clarify that the intent of the GHG provisions added to the state regulations shall not expand the permitting scope in Regulation 19 beyond that addressed in the Federal GHG Tailoring Rule and to alleviate concerns regarding unintended consequences.

Comment 26: Revisions to Regulation 19.904(G)(5) should not include the term "potential to emit' in these provisions because it is a defined term which refers to a stationary source's emissions of a "federally regulated air pollutant." The term "stationary source" is also defined in terms of a source that emits a "federally regulated air pollutant."

Response: The revisions to Regulation 19.904(G) incorporate the necessary provisions of the GHG Tailoring Rule largely verbatim, including the term "potential to emit." Inclusion of the terms "potential to emit" and "stationary source" are necessary to avoid confusion or problems with federal approval of the state programs which may result if these terms were to be redefined within the provisions incorporating the GHG Tailoring Rule into Regulation Number 19.

No changes to the final rule are necessary due to this comment.

Comment 27: Adoption of ADEQ's proposed revisions at section 19.904(G)(5)(a) and (b) regarding "potential to emit" is not necessary to comply with the Tailoring Rule and to do so could render Regulation 19 more stringent than federal law. In addition, commenters suggest the following alternative language:

> (a) At a new source that will emit or has the maximum capacity under its physical and operation design to emit 100,000 tons per year of CO_2e, or
> (b) At an existing source that emits or has the maximum capacity under its physical and operation design to emit 100,000 tons per year of CO_2e, including any physical or operational limitation on the source's capacity to emit CO_2e if such limitation is enforceable by the by the Administrator, when such source undertakes a physical change or change in the method of operation that will result in an emission increase of 75,000 tpy CO_2e or more.

Response: The revisions to Regulation 19.904(G)(5)(a) and (b) incorporate the provisions of the GHG Tailoring Rule largely verbatim. Inclusion of the GHG Tailoring Rule's term "potential to emit" is necessary to avoid confusion or problems with federal approval of the state programs which may result if these terms were to be redefined within the provisions incorporating the GHG Tailoring Rule into Regulation Number 19. ADEQ thanks the commenter for the suggested definition of the term, but does not believe this change is warranted and believes it may have unintended regulatory consequences.

No changes to the final rule are necessary due to this comment.

Comment 28: EPA does not support the proposed revisions to Regulation 19, section 19.407(C)(2)(a)(vi). While an emission source with a potential to emit (PTE) less than the 75,000 tpy CO_2e will in practical effect be excluded from regulatory consideration in a way that may equate to the treatment of *De Minimis* emission levels, the significance levels established in the Tailoring Rule are not by nature considered *De Minimis* by EPA. See 75 FR at 31560. EPA approaches GHG applicability in two steps. First, EPA uses the phased-in GHG permitting thresholds to determine if the source's GHG emissions are subject to regulation. Then, EPA determines whether the source has a PTE that is at or above the Clean Air Act major source thresholds for GHGs.

Response: The purpose and intent of the proposed revisions at Regulation 19.407(C)(2) was to ensure that increases of GHG emissions below the level that requires a permitting action under the federal Tailoring Rule can be accomplished within the framework of the Arkansas regulations and with the least burden to Arkansas industry and the Department. The GHG levels

addressed at proposed revisions in Regulation 19.407(C)(2)(a)(vi) are below that regulated by EPA at the current time. There are no regulatory requirements for such changes at a facility at the federal level. However, in the Arkansas regulations, any increase in permitted emission rates are subject to permit modification procedures. Therefore, it has been determined that a permit modification process at the state level is required (by the existing regulations / approved SIP) and that it is reasonable and appropriate to address such permit modifications with the least administrative process requirements. It is not the Department's intent to establish a (PSD) significance level for GHG – rather, the proposed revision is meant to establish a *De Minimis* permit modification procedure for emission increases that are below federal permitting action levels.

It should be noted that if a GHG emission increase triggers PSD review, then the provisions of (existing) Regulation 19.407(C)(3) disqualify the project as a *De Minimis* permit modification. In consideration of the comments and to prevent the assumption that the state regulation establishes a significance level for GHG; the *De Minimis* modification trigger language has been moved to Regulation 19.407(C)(3) and the existing 19.407(C)(3)-(6) renumbered accordingly. Regulation 19.407(C)(3) will read as follows: "A proposed change will be considered *De Minimis* if the increases are less than 75,000 tpy of CO_2e and other pollutant emission increases otherwise qualify as *De Minimis* under this section." If the federal Tailoring Rule is modified with respect to permitting thresholds, Regulation Number 19 will need to be changed and ADEQ will take the appropriate action to reflect EPA's change.

Comment 29: Regulation 19, Section 19.904(G)(3) also includes the following typo: "a significant emissions increase (as calculated using the procedures in 40 CFR 52.21 (a)(2)(iv), as of November 29, 2005), and a significant net emissions increase (as defined in 40 CFR 52.21 (b)(3), as of November 29, 2005, and 40 CFR 52.21 (b)(**23**), as of November 29, 2005), occur."

Response: ADEQ agrees with the comment and will make the described change.

Comment 30: Commenters note that the definition of "CO_2 Equivalent Emissions" at Regulation 19, Chapter 2 and that the definition of "CO_2e Equivalent Emissions" at Regulation 19, Section 19.904(G)(2), includes the incorporation date of October 30, 2009, and that it will be ADEQ's responsibility to monitor Table A-I to subpart A of 40 CFR Part 98 for updates and to initiate rulemaking accordingly pursuant to all applicable state implementation plan (SIP) revision requirements. Additionally, Regulation 19.904(G) also includes the incorporation dates of November 29, 2005, and June 3, 2010. Commenters note that it will be ADEQ's responsibility to monitor the referenced provisions of 40 CFR 52.21 for updates and initiate rulemaking accordingly pursuant to all applicable SIP revision requirements.

Response: ADEQ acknowledges the comment.

No changes to the final rule are necessary due to this comment.

Comment 31: Regulation 19.904(G) refers to the permitting of CO_2e emissions. The commenter notes that the PSD program does not permit CO_2e emissions, but instead permits GHG emissions that are subject to regulation. CO_2e is not in itself a pollutant subject to regulation under PSD; CO_2e is one of two steps used to determine if a source's GHG emissions are subject to PSD permitting.

Response: The commenter stated this comment was in error and requested the comment be rescinded.

No changes to the final rule are necessary due to this comment.

Comment 32: In Reg.19.405(B)(2), the language of these paragraphs should be clarified to note that air pollutant emissions **emitted in greater than *De Minimis* amounts** should be addressed in permits. Otherwise, it could be mistakenly assumed that even trivial amounts of air pollutants must be permitted, which is not current ADEQ practice.

Response: The proposed changes to Regulation Number 19 did not include revisions to Regulation 19.405(B)(2); however Regulation 19.405(B)(1)(b) and (c) have been modified to state that permitted emission rates, emission limitations or other enforceable conditions for GHG emissions will not be included in permits unless a BACT determination is required under Regulation Number 19, Chapter 9, or is requested by a facility. ADEQ does not intend to alter its present practice in regard to the manner in which trivial amounts of air pollutants are addressed during the permitting process. The *De Minimis* change levels do not relate to any threshold for addressing GHG in permits. See Responses to Comments 21 and 25.

Comment 33: The Department should consider simply incorporating the pertinent provisions of the federal Tailoring Rule in Regulations 19 and 26. ADEQ has the authority to do so pursuant to Regulation 8.817. This would prevent argument as to whether the Department's proposed modifications of Regulations 18, 19, and 26 are unnecessary, inconsistent, and more stringent than the equivalent federal rule.

Response: ADEQ considered incorporating the GHG Tailoring Rule by reference into Regulation Number 19, but ADEQ believes doing so might violate the prohibition on prospective rulemaking due to the manner in which EPA crafted the federal rule. ADEQ believes the proposed revisions will allow regulation of Arkansas sources in a responsible manner which is desirable for all state entities and preserves the public right for notice and commenting on changes to state regulations.

No changes to the final rule are necessary due to this comment.

Comment 34: The general transition clause in Regulation #19 may (or may not) indicate that permittees have 180 days after the effective date of the regulation to submit permit applications addressing GHGs. This language seems in need of updating since it refers to "facilities which are now subject to this regulation which were not previously." It should also refer to facilities that are subject to new provisions of this regulation. If these existing generic transition clauses are not intended for the GHG permitting implementation then the regulation should clarify such.

Response: It is ADEQ's interpretation of Regulation 19.409 that any facility that is subject to the current (pre-GHG revisions) permitting requirements of Regulation Number 19 and will be required to modify the existing permit to add GHG requirements due to these revisions must do so and be in full compliance (including requisite permit modification) within 180 days of the effective date of the GHG revisions. Facilities that are not now subject to the permitting requirements of Regulation Number 19 (pre-GHG revisions) but will become subject to permitting under Regulation Number 19 due to these revisions must submit the appropriate permit application within 180 days of the effective date of the GHG revisions. It is also noted that the Director may grant extensions (up to one year total compliance time) to these time frames on a case-by-case basis.

No changes to the final rule are necessary due to this comment.

Comment 35: If the Department's proposed rules impose additional costs on a utility, those costs will automatically be passed through to the utility's residential, small business, and other customers. However, the Department's Economic Impact Statement says nothing about such impact and instead indicates that the changes will have no impact on small businesses. These changes would appear to impose a Best Available Control Technology ("BACT") Standard. These facts are not addressed in the Department's Economic Impact Statement, and they should be, because, implementation of BACT standard GHG controls is likely to be very expensive.

Response: The rules are implementing a Federal requirement. Permitting thresholds in the GHG Tailoring Rule and related provisions proposed by ADEQ are set so that only the largest emitters of GHG will be required to address GHG emissions. Without these rules, even more sources would be subject to GHG rules and permitting. Likewise, BACT determinations and implementations will be imposed on the largest emitters of GHG. BACT determinations and implementations could vary depending on conditions at the sources. The entities that ADEQ believes to be directly affected by the proposed rule are large businesses, not small businesses as indicated on the Economic Impact Statement.

While it is possible that additional costs utilities spend complying with this rule will be passed on to their customers, these costs, whatever they may be, will exist regardless of the outcome of this rulemaking. The purpose of this rulemaking is to codify into state law changes to air regulations which have already been made at the federal level. If the APC&E Commission declines to adopt these changes, the underlying requirements, and any costs associated with meeting these requirements, will still exist.

To date, BACT has not required controls which would impact ratepayers.

No changes to the final rule are necessary due to this comment.

Comment 36: If ADEQ makes changes to language in any of the three regulations, Regulation 18, 19, or 26, ADEQ should consider whether the equivalent changes should be made to Regulations 18, 19, or 26 for consistency.

Response: ADEQ has made efforts to ensure consistency across all of the regulations as changes are made due to comments received.

Prepared by:
Arkansas Department of
Environmental Quality

By: _____
Mike Bates, Chief, Air Division

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO REGULATION NO. 26, REGULATIONS OF THE ARKANSAS OPERATING AIR PERMIT PROGRAM	**)** **)** **)**	**DOCKET NO. 11-003-R**

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

Pursuant to Ark. Code Ann. § 8-4-202(d)(4)(C) and Regulation No. 8.815, a responsive summary groups public comments into similar categories and explains why the Arkansas Pollution Control and Ecology Commission ("Commission") accepts or rejects the rationale for each category.

On January 14, 2011, the Arkansas Department of Environmental Quality ("ADEQ" or "Department") filed a Petition to Initiate Rulemaking to Amend Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program. The Commission's Acting Administrative Hearing Officer, Charles Moulton, conducted a public hearing on March 8, 2011, and the public comment period ended April 11, 2011. The following is a summary of the comments regarding the proposed amendments to Regulation No. 26 along with the Commission's response.

The revisions to Regulation No. 26 addressed in this rulemaking are made with the intention of implementing EPA's "Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule: Final Rule" ("enabling federal law"). Minor adjustments to provisions of Regulation No. 26 not specifically addressed in the enabling federal law are included in this rulemaking. These minor adjustments are necessary in order to either integrate the enabling federal law's provisions into the affected Arkansas regulations as seamlessly as possible or to clarify the implementation of the greenhouse gas ("GHG") provisions within the existing regulatory framework. Every effort has been made to keep these ancillary revisions to a minimum without making wholesale changes to the existing permitting infrastructure contained within the present regulations.

The intent of this rulemaking is to amend the Arkansas regulations to be consistent with and no more stringent than federal law in application and effect with regard to the regulation and permitting of GHGs in Arkansas (within the overall structure of the existing permitting program). Further, the intent of these revisions is to attain EPA's approval of amendments to the Arkansas Operating Permit Program (Title V Permit Program). Unless and until the proposed revisions are adopted and approved by EPA in a State Implementation Plan ("SIP") and Operating Permit ("title V") Program, ADEQ will not have the requisite authority to issue permits regarding GHGs that are recognized as federal permits. Facilities that emit such pollutants at levels addressed in the federal GHG Tailoring Rule will be required to comply and obtain the necessary federally required permits before commencing construction or operation. Until Arkansas adopts GHG Tailoring Rule requirements, any Prevention of Significant Deterioration/New Source Review ("PSD/NSR") permits involving significant GHG emission

increases will require EPA approval for the GHG portions. This will require application submittal to EPA, EPA review of the application, and drafting of permits by EPA. While ADEQ will seek to expedite any such permit and possibly enter into an agreement with EPA on permit issuance, it is not certain that EPA will issue any such permits or how quickly.

The effect on the Operating Permit Program of not adopting the rules will leave ADEQ and facilities without title V permits that meet federal requirements. What action EPA will pursue in such an instance is unknown. ADEQ is continuing to work with EPA at the Regional and Headquarter levels to minimize any disruption of the Operating Permit program during the pendency of the rulemaking for Regulations No. 19 and No. 26.

In addition to the GHG regulatory requirements, Regulation No. 26 also contains a clause that places a stay on applicable GHG provisions if any change in federal law or federal court decision renders EPA's regulation of GHGs invalid or unenforceable. The stay will remain in effect until the Commission makes a final decision on whether or not to lift the stay or amend Regulation No. 26. Any changes in Regulation No. 26 would have to be adopted through formal rulemaking. The Department would seek to initiate rulemaking in order to modify the GHG provisions in Regulation No. 26 in accordance with program requirements set out by EPA in response to the court decision or change in federal law.

It is important to note that if the federal law is successfully challenged or changed, the Department will rely on EPA guidance for implementing interim measures (pending rulemaking and a subsequent SIP and Title V program approval) to conform to federal requirements and to ensure that ADEQ is not enforcing the GHG provisions in a manner more stringent than federal law.

Comment 1: Regulation 26 should only be revised as required to comply with the Greenhouse Gas ("GHG") Tailoring Rule, and no change should be made unless the change is required by law in order for ADEQ to obtain approval to administer the Tailoring Rule. Changes made in order to obtain such approval should be the absolute minimum necessary to obtain approval. ADEQ should assure the public that its modifications are identical to the Tailoring Rule and are not inconsistent with or more stringent than the Tailoring Rule. As to the extent that the proposed revisions to Regulation 26 exceed those that are necessary for ADEQ to implement the operating air permit program in accordance with applicable federal regulations or are more stringent than federal requirements, such revisions are unnecessary and potentially an unlawful expansion of the Commission's authority. Moreover, going beyond what is strictly required for compliance with the Tailoring Rule may lead to unnecessary compliance costs, unintended regulatory consequences, and confusion in the regulated community.

Response: ADEQ believes that each of the proposed regulation revisions are required by law and are the minimum changes necessary to incorporate EPA's GHG Tailoring Rule and to obtain the necessary state regulatory authority for GHG source permitting in Arkansas. While some regulation revisions are not identical to the GHG Tailoring Rule, all revisions are necessary to

implement the GHG Tailoring Rule and are not inconsistent with or more stringent than the GHG Tailoring Rule.

Moreover, ADEQ does not agree with the commenters' assertion that any revisions or regulatory provisions that go beyond federal requirements would be an unlawful expansion of the Commission's authority. Arkansas law provides broad authority to the Commission to promulgate environmental protection regulations. While state law prescribes certain procedures that must be followed if regulatory provisions are proposed that are more stringent than federal requirements, the law does not prohibit or restrict the Commission's authority in the manner suggested by the commenter.

No changes to the final rule are necessary due to this comment.

Comment 2: To the extent ADEQ believes that each of the proposed revisions to Regulation 26 are required by the Tailoring Rule, ADEQ should justify each revision by reference to the specific corresponding federal requirement (*see* Regulation 8.815(A)(1)(i) and (ii)). To the extent the revision may be more stringent than or is not identical to federal requirements, then ADEQ must provide the necessary justification and supporting documentation mandated by Ark. Code Ann. § 8-4-311(b)(1)(B), § 8-4-201(b)(1)(B), and Regulations 8.815 and 8.812.

Response: The demonstration that these proposed regulation revisions are scientifically sound is satisfied by incorporating by reference the justification contained in the federal GHG Tailoring Rule published in the Federal Register, on June 3, 2010, at 75 FR 31514, the finding of substantial inadequacy and SIP call to ensure authority to issue permits under the PSD program to GHG sources published in the Federal Register on December 13, 2010, at 75 FR 77698 and the Endangerment Finding published in the Federal Register on December 15, 2009, at 74 FR 66496.

The proposed revisions are the minimum changes necessary to modify ADEQ's title V permitting program to match EPA's GHG Tailoring Rule. The proposed removal of carbon dioxide from the definition of "Air contaminant" is consistent with and necessary to implement the GHG Tailoring Rule. The proposed changes to the definition of "Applicable requirement" and "Major source" are withdrawn. The proposed changes to the definition of "Regulated air pollutant" will be revised as follows: "…(F) GHGs, except that GHGs shall not be a Regulated Air Pollutant unless the GHG emissions are from a part 70 source (1) emitting or having a potential to emit 100,000 tpy CO_2e or more; and (2) emitting or having a potential to emit amounts that equal or exceed 100 tpy calculated as the sum of the six (6) well-mixed GHGs on a mass basis." ADEQ believes these changes are consistent with and required to allow permitting consistent with the GHG Tailoring Rule. The proposed definitions of "CO_2 equivalent emissions" and "Greenhouse gases" are required to implement the GHG Tailoring Rule; the

proposed changes to the definition of "Existing part 70 source" are required to ensure that sources that currently exist, but that may not be regulated under part 70 are not treated as new due to the new permitting requirements under the Tailoring Rule. The proposed change to add Regulation 26.302(G) and the deletion of "recognized" from Regulation 26.305 will not be finalized in this rulemaking. (See Responses to Comments 10, 24, and 25.) The proposed language added to Regulation 26.305 is meant to track that of the GHG Tailoring Rule and to align with the proposed changes to Chapter 9 of Regulation No. 19. Proposed changes at Regulation 26.401 are required to implement the GHG Tailoring Rule and make the section applicable to GHG sources and emissions. Proposed changes to Regulation 26.403 are required to implement the GHG Tailoring Rule because the changes clarify that permit applications are required from existing part 70 sources, rather than from sources existing on the effective date of the regulation. Finally, proposed changes at Regulation 26.1002(A)(8) are consistent with the GHG Tailoring Rule because the Rule does not require permitting of emissions less than 75,000 tpy CO_2e; however, Regulation No. 26 currently provides that any increases in permitted emission rates are "modifications" and as such are required to be permitted prior to implementation of the changes (physical or operational) that would cause such increases. The revision at Regulation 26.1002(A)(8) allows permit modifications of this nature to be made under expedited procedures as minor modifications. Making the proposed revisions will maintain consistency between federal air pollution control programs and the Commission's regulations. This will ensure that facilities currently subject to the PSD/title V permitting requirements will be able to receive permits from ADEQ for greenhouse gas emissions, as is explained in the Statement of Basis. (See also Response to Comment 6.)

Also, as the result of comments received during the public comment period, the proposed rescission clause was revised and added to the Severability section of Regulation No. 26. The revised clause stays applicable GHG provisions which correspond to the EPA regulation of GHGs that are determined by a federal court to be invalid or unenforceable or changed through federal legislation. The stay will remain in effect until the Commission makes a final decision on whether to lift the stay or to amend Regulation 26. Any changes in Regulation 26 would have to be adopted through formal rulemaking.

Ark. Code Ann. § 8-4-311(b)(1)(B) and § 8-4-201(b)(1)(B) require that any proposed rule or change to any existing rule that is more stringent than federal requirements be accompanied by an analysis of the economic impact and environmental benefit of the proposed rule. By strict application of the statutory requirement, an economic impact and environmental benefit analysis is not required; however, the Commission adopted implementing regulations pursuant to Ark. Code Ann. § 8-4-311(b)(1)(C) and § 8-4-201(b)(1)(C) at Regulation 8.812 that requires a broader application of the requirement for an economic impact and environmental benefit analysis. Although the revisions proposed do not all involve incorporating or adopting federal regulation without substantial change, they are necessary in order to implement the federal rule

changes with minimal burden to the regulated community and the Department within the existing regulatory and permitting structure or Regulation No. 26 and are not inconsistent with the federal GHG Tailoring Rule. Based on comments received, an Economic Impact/Environmental Benefit Analysis pursuant to Regulation 8.812 has been prepared.

Changes to the final rule have been made in the proposed definitions of "Applicable requirement," "Major source," and "Regulated air pollutant," and the language and placement of the clause placing a stay on applicable GHG provisions if any change in federal law or federal court decision renders EPA's regulation of GHGs invalid or unenforceable, as described above.

Comment 3: Explanation is needed regarding the effect of the amendments on existing Part 70 sources. Based upon the proposed revisions to Regulation 26, it is not clear when and if an existing Part 70 source, which is not undertaking a modification of the source, will be required to address GHG emissions in its permit. It is also unclear what the associated permit condition or provision will be if the source is required to address GHG emissions in its permit.

Response: Regulation 26.403 and the revisions to "Existing Part 70 Source" definition govern when an application will be required from an existing source without a current title V permit, i.e. 12 months after becoming subject to regulation under Regulation No. 26 or sooner if the ADEQ notifies the source.

ADEQ's administration of GHG provisions for current Part 70 permit holders would be governed by Regulation 26.1011(A)(1), which provides that an application will be required not later than 18 months of a new requirement being promulgated for permits with a remaining term of three (3) years or greater, or upon renewal. The Department would need to reopen the permits in accordance with Regulation 26.1011(C). The document PSD AND TITLE V PERMITTING GUIDANCE FOR GREENHOUSE GASES, Environmental Protection Agency, United States Office of Air and Radiation, dated March of 2011, outlines possible requirements. Specifically, on page 53:

> Under both Steps 1 and 2 of the Tailoring Rule, sources will need to include in their title V permit applications, among other things: citation and descriptions of any applicable requirements for GHGs (*e.g.*, GHG BACT requirements resulting from a PSD review process), information pertaining to any associated monitoring and other compliance activities, and any other information considered necessary to determine the applicability of, and impose, any applicable requirements for GHGs. This is the same application information required under title V for applicable requirements pertaining to conventional pollutants.

> As a general matter, all title V permits issued by permitting authorities must contain, among other things, emissions limitations and standards necessary to assure compliance with all applicable requirements for GHGs, all monitoring and testing required by applicable requirements for GHGs, and additional compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with GHG-related terms and conditions of the permit. Permitting authorities will also need to request from sources any information deemed necessary to determine or impose GHG applicable requirements.
>
> It is possible that some sources will need to address GHG-related information in their applications even if they will ultimately not have any GHG-specific applicable requirements (such as a PSD-related BACT requirement for GHGs) included in their permit. This is because, as noted above, permitting authorities would need to request information related to identifying GHG emission sources and other information if they determine such information is necessary to determine applicable requirements.

No changes to the final rule are necessary due to this comment.

Comment 4: Commenter states that it is unclear that should a facility's permit include GHG emissions, what the permit condition or provision would be or what legal basis justifies any substantive permit provision.

Response: Any GHG requirements derived from a PSD/ NSR permit will have specific emission limits and standards in the title V permit, based on the (Best Available Control Technology ("BACT") determination.

Other title V facilities without GHG requirements derived from a PSD/NSR permit will have the minimum conditions or requirements to quantify GHG emissions, including source descriptions and emission types, but not necessarily mass emission rates and limits, unless necessary for other reasons, i.e. possible limits requested by a facility to avoid NSR review, etc.

See also Response to Comment 3 for additional information.

No changes to the final rule are necessary due to this comment.

Comment 5: Commenters request an explanation from ADEQ about permit conditions and provisions as well as what supporting documentation and evidence, or other information, including calculations, that sources subject to permitting will be required to provide to demonstrate whether the requirements in the proposed regulation apply.

Response: Applicants for permits or permit modifications under Regulation No. 26 are required to submit certain information to ADEQ as part of the existing application process (see Regulation 26.402). These requirements are unaffected by the proposed revisions in all regards except that the proposed revisions add GHGs as a new pollutant that must be addressed in the permit application. Permit application forms (as addressed in the currently effective Regulation 26.402) will be revised to include the additional information that will be necessary after enactment of the proposed regulatory revisions and made available to the regulated community and the public. ADEQ would require sufficient information to determine applicability and monitoring as necessary. It is not the ADEQ's intent to establish any GHG limits unless there are underlying requirements for such a limit, such as PSD/NSR.

See Response to Comment 3 for additional information.

No changes to the final rule are necessary due to this comment.

Comment 6: Commenters request that ADEQ provide further explanation regarding the effect of the Tailoring Rule on its operating permit program, if any, in the event the revisions to Regulation 19 are not adopted by July 1, 2011.

Response: Unless and until the proposed revisions are adopted and approved by EPA in a State Implementation Plan and Operating Permit (title V) Program, ADEQ will not have the requisite authority to issue permits regarding GHGs that are recognized as federal permits. Facilities that emit such pollutants at levels addressed in the federal GHG Tailoring Rule will be required to comply and obtain the necessary federally required permits before commencing construction or operation. Until Arkansas adopts GHG Tailoring Rule requirements, any PSD/NSR permits involving significant GHG emission increases will require EPA approval for the GHG portions. This will require application submittal to EPA, EPA review of the application, and drafting of permits by EPA. While ADEQ will seek to expedite any such permit and possibly enter into an agreement with EPA on permit issuance, it is not certain that EPA will issue any such permits or how quickly.

The effect on the Operating Permit Program of not adopting the rules will leave ADEQ and facilities without title V permits that meet federal requirements. What action EPA will pursue in such an instance is unknown. ADEQ is continuing to work with EPA at the Regional and Headquarter levels to minimize any disruption of the Operating Permit (title V) program during the pendency of the rulemaking for Regulations No. 19 and No. 26.

No changes to the final rule are necessary due to this comment.

Comment 7: Commenters stated that only the following revisions are necessary to comply with

the Tailoring Rule. Making revisions beyond those listed below (such as revising definitions that do not need revising) is unnecessary and will have unintended regulatory consequences when an unnecessary change in one part of the regulation then implicates the application of other parts. The only revisions necessary are as follows:

1. Addition of an adequately comprehensive rescission clause;

2. Addition of definitions for "CO_2 equivalent emissions (CO_2e)" and "Greenhouse Gases (GHGs)";

3. Addition of the following to Regulation 26.302 Sources Subject to Permitting: "(G) any building, structure, facility, or installation that emits or has the maximum capacity under its physical and operation design to emit 100,000 tons per year of CO_2e, including any physical or operational limitation on the source's capacity to emit CO_2e if such limitation is enforceable by the Administrator.";

4. Revision of Regulation 26.305 Emissions Subject to Permitting so it reads as follows:

   > All regulated air pollutant emissions, GHG emissions and recognized air contaminant emissions from a part 70 source shall be included in a part 70 permit except that GHG emissions less than 100,000 tpy CO_2e shall not be included in a part 70 permit unless permitting is triggered by a permit modification allowing an increase in emissions of CO_2e of greater than 75,000 tpy CO_2e, in which event the part 70 permit shall not include GHG emissions less than 75,000 tpy CO_2e. Only regulated air pollutants and GHG emissions subject to regulation may trigger the need for a part 70 permit or a part 70 permit modification process. However, no Title V permit shall be required due to GHG emissions from any stationary source under this regulation, and GHGs shall not be deemed to be subject to regulation or Regulated Air Pollutants under this regulation, except as provided herein. Nothing herein is intended to be or shall be interpreted to be an "emission limitation" or "emission standard" within the meaning of section 302(k) of the Clean Air Act, or a "control requirement" within the meaning of section 193 of the Clean Air Act. A permit modification involving . . . [continue with remainder of existing regulation].

5. Regulation 26.403 should be revised to clarify that no existing part 70 source not seeking a modification that would increase emissions by at least 75,000 tpy CO_2e is required to submit a new Title V application for GHG emissions until such time as its existing Title V is modified or renewed. See 75 Fed. Reg. 31523 (June 3, 2010) ("Sources with Title V permits must address GHG requirements when they apply for, renew, or revise their permits.")

Response: ADEQ appreciates the Commenters' proposed list of revisions to incorporate EPA's GHG Tailoring Rule into Regulation No. 26, but ADEQ believes that the most cohesive and complete implementation of the GHG Tailoring Rule in the existing regulation is through the revisions that have been proposed (allowing for any revisions specified in this document). ADEQ has, however, modified the proposed language and placement of the rescission clause as a result of comments received. Regarding the "rescission clause," please see Responses to Comments 11, 31, and 32. Commenters did not address the need for the newly proposed definitions to be placed in the Definitions chapter of Regulation No. 26 (Chapter 2), the changes needed for Regulation 26.401 Duty to Apply, or Regulation 26.403, "Initial applications from existing part 70 sources," which specifies the GHG Tailoring Rule's permit timing requirements.

ADEQ responds to each item on the list as follows:

1. ADEQ believes the "rescission clause" should be revised. Based on other comments, the proposed revisions to the definitions of "applicable requirement" and "major source" are withdrawn and the proposed rescission clause has been revised to place a stay on applicable GHG provisions if any change in federal law or federal court decision renders EPA's regulation of GHGs invalid or unenforceable. The stay will remain in effect until the Commission makes a final decision on whether to lift the stay or to amend Regulation 26. Any changes in Regulation 26 would have to be adopted through formal rulemaking. This clause has been moved to the Severability section found at 26.103. See Responses to Comments 11, 31, and 32.

2. The definitions for "CO_2 equivalent emissions (CO_2e)" and "Greenhouse Gases (GHGs)" are proposed in Regulation No. 26, Chapter 2.

3. The proposed addition of Regulation 26.302(G) is withdrawn. See Response to Comment 10.

4. The proposed and existing regulatory language adequately addresses the Commenters' concerns since it neither limits emissions nor creates any specific emission standard for GHG other than that required by federal rules.

5. Proposed changes to the definition of "Existing part 70 source," when combined with permit timing requirements found in Regulation 26.401 and Regulation 26.403 already state that no existing part 70 source that is not seeking a modification which increases GHG emissions by at least 75,000 tpy CO_2e is required to submit a new title V application for GHG emissions until such time as its existing title V is modified or renewed.

Comment 8: ADEQ must address the effect that permitting GHGs as "air contaminants" will have on the permit fees required to be paid by permit holders. Permitting fees for GHGs should be exempt, and the Commission should require ADEQ to either exclude GHG emissions from permit fees (as is done with carbon monoxide) or directly address this issue in the revisions to Regulations 18, 19 and 26 or separately in a rulemaking for Regulation 9.

Response: Revisions to permit fees are not part of this rulemaking. Permitting GHGs will result in additional costs for the permitting program. However, the issues associated with GHG permitting have been addressed in a separate rulemaking proposal for revisions to Regulation No. 9, which proposes to exclude CO_2 and methane from being chargeable emissions within air permit fees.

No changes to the final rule are necessary due to this comment.

Comment 9: Addition of "or air pollutant" should not be adopted. Addition of the words "or 'air pollutant'" to the definition of "air contaminant" is unnecessary. Compliance with the Tailoring Rule arguably requires that the words "carbon dioxide (CO_2)" be removed from the definition of air contaminant, which ADEQ has proposed, and nothing more. There is no mandate in the federal regulations requiring ADEQ to define "air pollutant," and there is no indication that ADEQ requires this change in order to administer the air operating permit program efficiently and effectively.

Response: ADEQ agrees that even though there is no federal mandate to modify the definition of "air contaminant," removal of the exclusion for CO_2 is necessary to implement the GHG Tailoring Rule. While making this change, the addition of the words "or air pollutant" to the definition of "air contaminant" will reduce the ambiguity arising from the Regulation's synonymous use of these two terms.

No changes to the final rule are necessary due to this comment.

Comment 10: It is not necessary or appropriate to revise the definition of "Applicable Requirement." The addition of the language at (M) under the definition of "Applicable Requirement" should be removed as it is not necessary and may lead to unintended regulatory consequences and cause confusion among the regulated community. The language proposed to be inserted at (M) would have the effect of making requirements found in the Tailoring Rule an "Applicable Requirement" for all part 70 sources, be they new, modified, or existing. At this time, there are no "Applicable Requirements" for existing part 70 sources not seeking a modification.

In Chapter 2 of Regulation 26, ADEQ has modified the definition of "air contaminant" and added definitions for CO_2e equivalent emissions and GHGs which provide for regulation of GHGs. ADEQ also modified Regulation 26.302 to include stationary sources emitting or having the potential to emit 100,000 tpy CO_2e and other sections for permit modification to be in compliance with the Tailoring Rule. These modifications to Regulation 26 should be sufficient without modifying the definition of "applicable requirement."

EPA believes the addition of new subsection M under the definition of "applicable requirement" at Regulation 26, Chapter 2, would be better situated under the new subsection of GHGs under the definition of "regulated air pollutant." The definition of "applicable requirement" already appears to cover GHG permitting under subsections A and B as Title I requirements.

Response: The intent of the proposed changes to Regulation No. 26 was to prevent the wholesale inclusion of all recent revisions to EPA's PSD/NSR and title V rules, while still incorporating the necessary elements of the GHG Tailoring Rule. ADEQ disagrees that the proposed revisions to the definition of "applicable requirement" at Regulation No. 26, Chapter 2, would have the effect of making requirements found in the Tailoring Rule an "Applicable Requirement" for all part 70 sources. ADEQ also disagrees that this change modifies the intent of the GHG Tailoring Rule or the permitting requirements under Regulation No. 26. However, the proposed change to the definition of "applicable requirement" is withdrawn and the rescission clause has been moved to the Severability section found at 26.103.

See also Response to Comment 11.

ADEQ agrees that proposed changes to Regulation 26.302 to include stationary sources emitting or having the potential to emit 100,000 tpy CO_2e and other sections for permit modification to be in compliance with the GHG Tailoring Rule are redundant. ADEQ will remove the language proposed at Regulation 26.302(G) from the final rule.

ADEQ disagrees that the proposed subsection M, under the definition of "applicable requirement" at Regulation No. 26, Chapter 2, would be better situated under the definition of "Regulated air pollutant" as a new subsection under the proposed addition of GHG. However, based on comments received, proposed changes to the definition of "applicable requirement" have been withdrawn and the rescission clause has been revised and moved to the Severability section found at Regulation 26.103.

See also Response to Comment 11.

Comment 11: This definition of "Applicable Requirement" also includes ADEQ's proposed Regulation 26 "escape clause." However, the clause should be more properly placed in a

separate part of the Regulation, such as the Severability provision (Regulation 26.103), and should include more encompassing language for any provision "affected" by an overturn of the federal enabling law by the legislature in addition to a court order for the modifications to be deemed void and of no effect.

Response: In 1995, the Arkansas Attorney General issued an opinion which specifically addresses adopting future legislation, rules, regulations or amendments by reference. The opinion states that doing so would run afoul of the constitutional separation of powers doctrine. Ark. Const. art. 4, §§ 1 and 2. The Attorney General opined:

> It is generally stated, pursuant to this doctrine, that the legislature may confer discretion in the administration of the law. It may not, however, delegate the exercise of its discretion as to what the law shall be. 16 C.J.S. Constitutional Law § 137 (1984). The latter form of delegation constitutes an unlawful delegation of legislative authority, and has been held to preclude legislative attempts to adopt by reference future legislation, rules, regulations or amendments to existing regulations. See generally *Cheney v. St. Louis Southwestern Railway Co.*, 239 Ark. 870, 394 S.W.2d 731 (1965) (rejecting as unconstitutional that part of the Income Tax Law of 1929 under which certain corporate tax liability was to be based upon a formula subject to prospective federal legislation or administrative rules); *City of Warren v. State Construction Code Commission*, 66 Mich. App. 493, 239 N.W.2d 640 (1976) (stating that while the legislature clearly may incorporate by reference existing statutes, it cannot adopt by reference future legislation, rules, or regulations which are subsequently enacted or promulgated by another sovereign authority).

The Attorney General's opinion clearly prohibits incorporating by reference future legislation, rules, regulations, or amendments. Because the prohibition against prospective rulemaking articulated in the Attorney General's opinion does not specifically address judicial review, the rescission clause as proposed was limited to voiding the changes in Regulation No. 26 based on judicial review of EPA's regulation of GHGs by a federal court.

The comments received indicate that the proposed rescission clause was inadequate to address the potential changes and decisions at the federal level. The Department believes that, if modified, EPA's regulation of GHGs will most likely be addressed through federal legislation or a federal court decision. In order to accommodate the needed flexibility for responding on the state level to GHG regulatory changes at the federal level without violating the Attorney General's opinion prohibiting prospective rulemaking, the Department revised Reg. 26.103 to provide for a stay of the GHG provisions, rather than rendering the provisions null and void. Therefore, the rescission clause has been revised to respond to comments received so that any applicable Regulation No. 26 GHG provisions will be temporarily stayed if any federal

legislation or federal court decision invalidates or renders EPA's regulation of GHGs unenforceable. Once stayed, the Commission will then make a final decision on whether to lift the stay without revising Regulation No. 26 or initiate formal rulemaking to amend Regulation No. 26 in order to maintain consistency with the federal requirements. Additionally, in response to comments receive, the revised clause has been added to the Severability section of Regulation No. 26.

See also Responses to Comments 31 and 32.

Comment 12: Chapter 2 definitions for "CO_2 equivalent emissions" and "greenhouse gases" are unnecessarily confusing and should be the same as those in Regulation 19.904. The definition of "greenhouse gases" at Regulation 26, Chapter 2, should be revised to mirror the definition of "greenhouse gases" in Regulation 19.904 for purposes of consistency and clarity. We suggest the following revisions to this definition: "Greenhouse gases" (GHGs) is the air pollutant defined as the aggregate group of six greenhouse gases: carbon dioxide, nitrous oxide, methane, hydro-fluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Response: The definitions of "CO_2 equivalent emissions" and "Greenhouse gases" proposed in Chapter 2 of Regulation Nos. 19 and 26 are nearly identical to each other as well as the GHG Tailoring Rule's definitions of the terms. For additional clarity, the definitions of "CO_2 equivalent emissions" and "Greenhouse gases" proposed in Chapter 2 of Regulation Nos. 19 and 26 will be modified to match the GHG Tailoring Rule's definitions of the terms, with the exception of the internal citations to 40 CFR Part 86.1818-12-(a) being deleted and an incorporation by reference date of October 30, 2009, to Table A-1 to subpart A of 40 CFR Part 98 being added.

Comment 13: Comments were received stating that the proposed addition of subpart (B) to the "existing part 70 source" definition is superfluous, unnecessary and may lead to unintended regulatory consequences and cause confusion among the regulated community. Additionally, the proposed revision to the first half of Regulation 26's definition of "Existing part 70 source" states that it means "a part 70 source that was in operation as of September 13, 1993 . . . " A "part 70 source" currently is defined in Regulation 26 as "any source subject to the permitting requirements of this regulation." Therefore, there is no need to add the additional language proposed as subsection (b) of the definition of "Existing part 70 source."

Response: Absent these revisions, the current regulation could be read to mean that a facility that is not currently subject to title V (part 70) permit requirements but becomes a major source solely due to the amount of GHG emissions and new regulations would be out of compliance immediately as of the effective date of the GHG revisions to Regulation No. 26 since it would

not have an appropriate title V permit. This outcome was not the intent of the GHG Tailoring Rule or this rulemaking.

No changes to the final rule are necessary due to this comment.

Comment 14: It is not clear that EPA required that the definition of "existing part 70 source" be modified for Title V programs as part of the Tailoring Rule. It is unnecessary to revise this Definition with any reference to GHGs, as sources subject to permitting due to their GHG emissions would be considered existing part 70 sources by way of the current definition of that term and the proposed revisions to Regulation 26.302.

Response: While the proposed revisions to the definition of "Existing part 70 source" are not identical to the implementing provisions found in the GHG Tailoring Rule, the proposed revisions are necessary to enact the GHG Tailoring Rule in the existing Regulation No. 26. These revisions are designed to incorporate only the essential elements of EPA's GHG Tailoring Rule. The proposed revision to add 26.302(G) is withdrawn as addressed above. See also Responses to Comments 3, 10, and 13.

Comment 15: The definition of "Greenhouse Gases" differs from that proposed for Regulation 19. For clarity and consistency, the definition of "Greenhouse Gases" in Regulation 26 should correspond exactly to the definition of "Greenhouse Gases" in proposed Regulation 19.904(G)(1).

Response: The manner in which the terms "Greenhouse gases" and "CO_2 equivalent emissions" are used in Regulation 19.904(G) requires additional qualifying language that is not contained in the GHG Tailoring Rule's definitions of the terms in order to implement the GHG Tailoring Rule in the existing Regulation No. 19. The language added to the definition of the terms found in Regulation 19.904(G) is taken directly from the GHG Tailoring Rule's definition of "Subject to Regulation," and has been placed at Regulation 19.904(G) for implementation of the GHG Tailoring Rule in Regulation No. 19 and is necessary for implementation of the GHG Tailoring Rule in Regulation No. 26.

See Response to Comment 12 for additional information.

No changes to the final rule are necessary due to this comment.

Comment 16: No revision to the definition of "Major Source" should be adopted. The addition of the language at (B) under the definition of "major source" is unnecessary. It is not clear that EPA has required that this definition under title V be modified for purposes of the Tailoring Rule.

Response: The EPA's GHG Tailoring Rule revised the federal definition of "major source" by codifying its interpretation that applicability for a major stationary source was triggered by sources of pollutants "subject to regulation" (and adding "subject to regulation" to the definition of major source) and added a definition of "subject to regulation." Consideration was given to adopting the federal rule by reference; however, it was believed that doing so may violate the prohibition against prospective rulemaking, due to the manner in which EPA crafted the federal rule. However, based on other comments received, the proposed revision to the definition of "major source" is withdrawn.

See also Response to Comment 18.

Comment 17: If "GHGs" are added to the definition of "regulated air pollutant" then, according to the proposed additions to the definition of "major source," any major stationary source that directly emits or has the potential to emit 100 tpy or more of GHG will be a major source as defined by Regulation 26. This outcome would controvert the stated purpose of the Tailoring Rule, which is to tailor the applicability criteria for sources subject to greenhouse gas permitting requirements under Title V so as to avoid imposing undue costs.

Response: ADEQ will revise the proposed definition of subsection (F) of "Regulated air pollutant" in Chapter 2 as follows: "…GHGs, except that GHGs shall not be a Regulated Air Pollutant unless the GHG emissions are from a part 70 source (1) emitting or having a potential to emit 100,000 tpy CO_2e or more; and (2) emitting or having a potential to emit amounts that equal or exceed 100 tpy calculated as the sum of the six (6) well-mixed GHGs on a mass basis." See also Response to Comment 19.

Comment 18: The revised definition of "major source" at Regulation 26, Chapter 2 appears to limit major source applicability under title V to a source that has both 100,000 tpy CO_2e and 100 tpy of any regulated pollutant; essentially this means a source is only major for title V if it can be considered major for GHG emissions. Commenters believe that the clearest option for resolving this concern is to revise the definition of "major source" pursuant to the revisions at 40 CFR 70.2 to include the phrase "any regulated air pollutant *subject to regulation*," then the definition of "subject to regulation" could be added to the Regulation 26 definitions.

Response: ADEQ disagrees that the Commission's Regulations should adopt the phrase "subject to regulation" since doing so may result in prospective rulemaking, in violation of Arkansas law. Additionally, the proposed revisions to the definition of "major source" will be withdrawn.

See also Responses to Comments 2 and 11.

The federal GHG Tailoring Rule establishes a "dual threshold" applicability test in regard to GHG emissions – the traditional 100 tpy of a pollutant *plus* the "tailored" threshold by applying the global warming potential to each of the component gases that make up the pollutant GHG. Our initial proposal was an attempt to address the dual threshold within the major source definition; however, after consideration of comments received, we have determined that a slightly different approach is more appropriate. Therefore, the proposed revision to the definition of "Major source" is withdrawn. This will retain the "mass" threshold (100 tpy) to remain applicable to GHGs, in keeping with the federal Tailoring Rule and the second threshold test (mass multiplied by the global warming potential) for the purpose of defining the permitting threshold will be addressed by applying the changes proposed to the definition of "Regulated air pollutant."

See also Response to Comment 19.

Comment 19: GHGs should not be added to the definition of "Regulated Air Pollutant." The addition of the word "GHGs" at (F) under the definition of "Regulated Air Pollutant" is not required by the Tailoring Rule and could have unintended regulatory consequences. While GHGs is a regulated NSR pollutant at the federal level, that term is independently defined in state Regulation 26 with a meaning that is separate and distinct from that in the federal program. The Tailoring Rule does not appear to directly modify the definition of "regulated air pollutant," as currently defined in Regulation 26, nor does it require the State to do so to implement the Tailoring Rule. Adding GHGs to the definition of "Regulated Air Pollutant" will subject GHG sources to additional requirements not envisioned by the Tailoring Rule and make Regulation 26 stricter than federal law.

Response: While the proposed regulation revisions to the definition of "Regulated air pollutant" are not found in the Tailoring Rule, these proposed regulation revisions are necessary to implement the Tailoring Rule in the existing Regulation No. 26. Because ADEQ is not proposing that Regulation No. 26 adopt the federal definition of "subject to regulation," it becomes necessary to include GHG in the Regulation No. 26 definition of "Regulated air pollutant." ADEQ believes such use does not change the meaning or intent of the federal Tailoring Rule nor does this revision broaden the scope of the requirements for GHGs or make Regulation No. 26 more stringent than the federal regulation. Revisions have been made in response to comments received to clarify the intent and application of inclusion of GHGs to the definition of "Regulated air pollutant." The definition of "Regulated air pollutant" will be revised as follows: "…GHGs, except that GHGs shall not be a Regulated Air Pollutant unless the GHG emissions are from a part 70 source (1) emitting or having a potential to emit 100,000 tpy CO_2e or more; and (2) emitting or having a potential to emit amounts that equal or exceed 100 tpy calculated as the sum of the six (6) well-mixed GHGs on a mass basis." This revision,

combined with other revisions within this rulemaking, incorporates the essential elements established in the federal Tailoring Rule without the attendant problems of incorporating the federal definitions as promulgated by EPA.

Comment 20: Commenters urge the Commission to adopt a provision in Regulation 26 that clarifies that nothing in Regulation 26 is intended or should be interpreted to deem GHGs a Regulated Air Pollutant for the purposes of Regulation 26.

Response: See Response to Comment 19 for an explanation of why ADEQ has proposed to add GHG to the definition of "Regulated air pollutant."

No changes to the final rule are necessary due to this comment.

Comment 21: The revision to Regulation 26.302 should not reference "Stationary Sources" or "Potential To Emit." ADEQ proposes to add to Regulation 26.302 a new subpart (G) relating to GHG sources. So as to deem those sources "subject to permitting," ADEQ should delete the word "stationary" before "source" and not reference "potential to emit." The terms "stationary sources" or "potential to emit" are defined terms in Regulation 26 that reference a source's emissions of regulated air pollutants. ADEQ's use of "stationary source" and "potential to emit" in Regulation 26.302(G) is unnecessary for implementation of the Tailoring Rule and, given ADEQ's other proposed revisions in Regulation 26, could render Regulation 26 to be more stringent than federal law. In the event ADEQ decides to include the terms "stationary source" and "potential to emit" in this section, it should explain its rationale for doing so, cite to the provisions of the Tailoring Rule which refer to a source of GHGs as a stationary source emitting regulated air pollutants and explain the reasons why it believes the inclusion of that term is required to adopt the Tailoring Rule.

Response: ADEQ believes that the term "major source" in Regulation No. 26 is defined to include GHG sources. Additionally, with the incorporation of the changes discussed above in relation to "regulated air pollutant," subsection (G) of Reg. 26.302 is unnecessary and will be deleted.

See also Responses to Comments 18 and 19.

Comment 22: Commenters suggest the following language as a proposed revision to section 26.302 instead: "(G) any building, structure, facility, or installation that (1) emits 100,000 tons per year or more of CO2e; or (2) has the maximum capacity under its physical and operational design to emit 100,000 tons per year or more of CO2e, including any physical or operational limitation on the source's capacity to emit CO2e if such limitation is enforceable by the Administrator."

Response: See Responses to Comments 10 and 21.

Comment 23: The revisions to Regulation 26, Section 26.302, do not adequately address the two step approach used to determine whether a source is subject to title V permitting. In addition to emitting at or above the 100,000 tpy CO_2e threshold, a source must also be a major title V source with 100 tpy of GHG emissions. Commenters noted that if the ADEQ chooses to correct the definition of "major source" as discussed above by adding the phrase "subject to regulation" it is likely that Section 26.302 will not need to be revised.

Response: ADEQ acknowledges the two step approach used to determine whether a source is subject to title V permitting and will rely on the proposed regulation revisions incorporated from the GHG Tailoring Rule to address title V permitting. ADEQ also acknowledges the possibility that a GHG emitting source can theoretically emit over 100,000 tpy CO_2e without emitting over 100 tpy of regulated air pollutants, an issue EPA addressed in the preamble to the GHG Tailoring Rule. If such a permitting issue arises in Arkansas, ADEQ will likewise follow EPA's intentions described in the preamble to the GHG Tailoring Rule by applying the two step approach to determine whether a source is subject to title V permitting. For the purpose of determining whether a GHG emission source, resulting from either new construction or a physical or operational change at an existing source, is considered a major source under PSD, ADEQ will require the following conditions to be met:

(1) 100 tpy calculated as the sum-of-six well-mixed GHGs on a mass basis (no Global Warming Potential values applied); and
(2) An existing or newly constructed source emits or has the potential to emit GHG in amounts that equal or exceed 100,000 tpy CO_2e basis.

See also Responses to Comments 10, 11, 18, and 19.

Comment 24: "Recognized" before "Air Contaminant Emissions" in Regulation 26.305 should not be deleted. ADEQ should not delete the word "recognized" before "air contaminant emissions" and should provide that GHG emissions are subject to be included in a part 70 permit pursuant to the provisions of Regulation 26, and change the threshold for not including GHG emissions in a title V permit as 100,000 tpy CO2e rather than 75,000 tpy CO2e unless triggered by a minor permit modification. However, this word should not be deleted since the term "recognized air contaminant" is specifically defined in Regulation 26 and sets out the criteria for air contaminants to be included in a Title V air permit, including those which present a harm to the public health and the environment. By deleting this word, a source is subject to including all air contaminant emissions in its title V permit, which is a much stricter application than federal law and more burdensome for the permittee and for ADEQ. It is not necessary to change this term for purposes of the Tailoring Rule. It is important that the word "recognized" not be

deleted; or ADEQ should provide its scientific and technical rationale for deleting "recognized," and conduct an evaluation including consideration of the economic impact and environmental benefit of such modification to the regulation.

Response: The deletion of the word "recognized" will not be finalized as part of this regulation revision.

Comment 25: Deletion of the word "recognized" will require a source to include all air contaminant emissions in its title V permit instead of only those air contaminant emissions which may be "reasonably assumed to be present according to mass balance calculations or applicable published literature," or which may "cause or present a threat of harm to human health or the environment" (*see* Regulation 26 definition of Recognized air contaminant emissions).

Response: A facility's obligation to include emissions in its permit application is not limited by "mass balance" or "published information." "Recognized air contaminant emissions" is defined in the Regulation, but it is not the only criteria for including emissions which are to be included in a title V air permit. It is noted that Regulation 26.305 requires that "all regulated air pollutant emissions" as well as "recognized air contaminant emissions" be included in a part 70 source's permit.

The deletion of the word "recognized" will not be finalized as part of this regulation revision.

Comment 26: Because deleting the word "recognized" is not required by the Tailoring Rule, and doing so will result in regulation which is stricter than that required by federal law, should the Commission adopt such a revision then the Commission must undertake a benefit analysis to consider the economic impact and environmental benefit of the amendment. Furthermore, because the proposed deletion is not required by or consistent with federal law, the Commission also must provide a written scientific and technical rationale explaining the necessity of the amended regulation.

Response: See Responses to Comments 24 and 25.

Comment 27: The proposed language referencing the thresholds for emissions subject to permitting in Regulation 26.305 should be adjusted. ADEQ proposes to add language to the "emissions subject to permitting" section stating "that GHG emissions less than 75,000 tpy CO_2e shall not be included in a part 70 permit." However, after July 1, 2011, only facilities that emit at least 100,000 tpy CO_2e will be subject to title V permitting requirements under the Tailoring Rule unless there is a modification that involves emissions increases of greater than 75,000 tpy CO_2e. Because only those facilities which emit at least 100,000 tpy CO_2e, without a triggering modification, are subject to title V permitting requirements, the proposed language should be

revised to reflect that GHG emissions less than 100,000 tpy shall not be included in a part 70 permit, except in the case of a triggering modification, as defined. Commenters are concerned about the revisions to Regulation 26, Section 26.305. Commenters interpret the purpose of this revision to exclude from inclusion in the title V permit emissions of GHG that are not major for PSD. If that is the case, the revision needs to reference both the CO_2e threshold to determine a source is subject to regulation and the *100/250* tpy major source threshold for determining whether the source is major for PSD permitting. Additionally, we have concerns that this provision will preclude a source from taking synthetic minor limits to avoid major source applicability.

Response: ADEQ agrees with this comment. The proposed language referencing the thresholds for emissions subject to permitting in Regulation 26.305 will be adjusted in the following way "…GHG emissions less than 100,000 tpy CO_2e shall not be included in a part 70 permit unless the part 70 source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO_2e or more."

Comment 28: Should ADEQ adjust its proposed revision Reg. 26.305 upward to the 100,000 tpy CO_2e threshold, then the provision should also address those sources subject to permitting due to a permit modification of greater than 75,000 tpy CO_2e pursuant to the proposed revision to section 26.1002(A). ADEQ should clarify the threshold to 100,000 tpy CO_2e rather than 75,000 tpy CO_2e since that is the threshold for a minor permit modification. Commenters suggest the following replacement language: "All regulated air pollutant emissions, recognized air contaminant emissions, and GHGs emissions subject to regulation shall be included in a part 70 permit, except that GHG emissions less than 100,000 tpy CO_2e shall not be included in a part 70 permit unless triggered by a minor permit modification regarding an emission increase of CO_2e as required by this regulation; and only regulated air pollutants and GHGs emissions subject to regulation may trigger the need for a part 70 permit or a part 70 modification process . . ." ADEQ should explain why the threshold for non-application of GHGs in a Title V permit is 75,000 tpy CO_2e rather than 100,000 CO_2e as set out in the Tailoring Rule, and conduct an evaluation including consideration of the economic impact and environmental benefit of such modification to the regulation, and provide a written scientific and technical rationale explaining the necessity of the amended regulation.

Response: It is agreed that the 75,000 tpy is in error and Regulation 26.305 will be corrected in the final rule as follows: "All regulated air pollutants and recognized air contaminant emissions from a part 70 source shall be included in a part 70 permit, except that GHG emissions less than 100,000 tpy CO_2e shall not be included in a part 70 permit…" See also Response to Comment 27.

Comment 29: It should be clarified that GHG emissions in addition to regulated air pollutants

can trigger permitting in Regulation 26.305. The second sentence of Regulation 26.305 should also be revised to add a reference to GHG emissions after the language "only regulated air pollutants." Additionally, the language of these paragraphs should be clarified to note that air pollutant emissions emitted in greater than De Minimis amounts should be addressed in permits. Otherwise, it could be mistakenly assumed that even trivial amounts of air pollutants must be permitted, which is not current ADEQ practice.

Response: The definition of "Regulated air pollutant" in Regulation No. 26 as revised will include GHGs. ADEQ has, in practice, developed procedures to not include some lesser emissions; however, there is no definition of De Minimis amounts in the GHG Tailoring Rule; therefore, it cannot be referenced in Regulation No. 26. The revisions to this rule do include a threshold for minor permit modifications (Regulation 26.1002(A)(8)) in regards to GHG emission changes of less than 75,000 tpy.

No changes to the final rule are necessary due to this comment.

Comment 30: Regulation 26.403 should be clarified. The proposed change to Regulation 26.403 requires that existing part 70 sources submit an application to ADEQ for its GHG emissions within 1 year from July 1, 2011, which is the date that a source becomes subject to title V for purposes of the Tailoring Rule.

Response: The purpose for the proposed revisions to Regulation 26.403 (and the revision to the definition of "existing part 70 source" in Chapter 2) was to clarify when a facility must submit an application if it becomes subject to the part 70 permit requirements due to the GHG regulations. The wording of Regulation 26.403, as requested in comments, is revised for clarity as follows: "A timely application for an initial part 70 permit for an existing part 70 source is one that is submitted within 12 months after the source becomes subject to the permit program, or on or before such earlier date as the Department may establish. The earliest that the Department may require an initial application from such an existing part 70 source is 6 months after the Department notifies the source in writing of its duty to apply for an initial part 70 permit."

Comment 31: Each regulation should contain its own provision that clearly, comprehensively and effectively rescinds changes made during these rule-makings, a so-called "escape clause," in the event that the Tailoring Rule or EPA's authority to regulate carbon dioxide or other GHG emissions as a climate change mitigation strategy is reversed, terminated, effectively limited through judicial, regulatory, legislative action, or any of the other wide variety of potential actions including successful court challenge of the federal regulations, action by Congress deferring or eliminating EPA authority to regulate Greenhouse Gases, alternate legislation that replaces the current Tailoring Rule, or alternate regulation by EPA that results in Greenhouse Gases not being subject to federal permitting requirements. These provisions should operate

both prospectively and retroactively and should be broad enough to apply to related GHG provisions in permits issued pursuant to these regulatory changes. The proposed clause is unduly narrow and, in the event all or part of the Tailoring Rule is invalidated by anything other than a court decision, could lead to a requirement for an Arkansas operating permit for GHG emissions when none exists in federal law.

Response: In 1995, the Arkansas Attorney General issued an opinion which specifically addresses adopting future legislation, rules, regulations or amendments by reference. The opinion states that doing so would run afoul of the constitutional separation of powers doctrine. Ark. Const. art. 4, §§ 1 and 2. The Attorney General opined:

> It is generally stated, pursuant to this doctrine, that the legislature may confer discretion in the administration of the law. It may not, however, delegate the exercise of its discretion as to what the law shall be. 16 C.J.S. Constitutional Law § 137 (1984). The latter form of delegation constitutes an unlawful delegation of legislative authority, and has been held to preclude legislative attempts to adopt by reference future legislation, rules, regulations or amendments to existing regulations. See generally *Cheney v. St. Louis Southwestern Railway Co.*, 239 Ark. 870, 394 S.W.2d 731 (1965) (rejecting as unconstitutional that part of the Income Tax Law of 1929 under which certain corporate tax liability was to be based upon a formula subject to prospective federal legislation or administrative rules); *City of Warren v. State Construction Code Commission*, 66 Mich. App. 493, 239 N.W.2d 640 (1976) (stating that while the legislature clearly may incorporate by reference existing statutes, it cannot adopt by reference future legislation, rules, or regulations which are subsequently enacted or promulgated by another sovereign authority).

The Attorney General's opinion clearly prohibits incorporating by reference future legislation, rules, regulations, or amendments. Because the prohibition against prospective rulemaking articulated in the Attorney General's opinion does not specifically address judicial review, the rescission clause as proposed was limited to voiding the changes in Regulation No. 26 based on judicial review of EPA's regulation of GHGs by a federal court

However, the comments received indicate that the proposed rescission clause was inadequate to address the potential changes and decisions at the federal level. The Department believes that, if modified, EPA's regulation of GHGs will most likely be addressed through federal legislation or a federal court decision. In order to accommodate the needed flexibility for responding on the state level to GHG regulatory changes at the federal level without violating the Attorney General's opinion prohibiting prospective rulemaking, the Department revised Reg. 26.103 to provide for a stay of the GHG provisions, rather than rendering the provisions null and void. The rescission clause has been revised to respond to comments received so that any applicable

Regulation No. 26 GHG provisions will be temporarily stayed if any federal legislation or federal court decision invalidates or renders EPA's regulation of GHGs unenforceable. Once stayed, the Commission will then make a final decision on whether to lift the stay without revising Regulation No. 26 or initiate formal rulemaking to amend Regulation No. 26 in order to maintain consistency with the federal requirements.

See also Responses to Comments 11 and 32.

Comment 32: The definition of "Applicable Requirement" is not the appropriate location for a rescission clause. To better convey that the rescission clause is applicable to all GHG requirements in Regulation 26, the rescission clause should be included under the "severability" section of Chapter 1. To address these concerns, commenters propose the following rescission clause be included in Regulation 26.103:

> The provisions of this Regulation and any terms or conditions of operating air permits regarding Greenhouse Gases, as herein defined, shall cease to be effective if any of the following occurs:
>
> 1) Enactment of federal legislation depriving the Administrator of authority, limiting the Administrator's authority, or requiring the Administrator to delay the exercise of authority, to regulate Greenhouse Gases under Title V of the Clean Air Act; or
> 2) The issuance of any opinion, ruling, judgment, order or decree by a federal court depriving the Administrator of authority, limiting the Administrator's authority, or requiring the Administrator to delay the exercise of authority, to regulate Greenhouse Gases under Title V of the Clean Air Act, or finding any such action, in whole or in part, to be arbitrary, capricious, or otherwise not in accordance with law; or
> 3) Action by the President of the United States or the President's authorized agent, including the Administrator, to repeal, withdraw, suspend, postpone, or stay the amendment to 40 CFR Section 51.166 promulgated on June 3, 2010, as set forth at 75 Fed. Reg. 31606, or to otherwise limit or delay the Administrator's exercise of authority to require operating air permits for sources of Greenhouse Gas emissions.
> 4) U.S. EPA final regulation resulting in Greenhouse Gases not being subject to regulation under Title V of the Clean Air Act.

Response: The proposed rescission clause has been revised so that it is more closely aligned with the Commenter's suggested changes and has been moved to the Severability section at Regulation 26.103.

See also Responses to Comments 11 and 31.

Comment 33: The language or provisions used in these rules to obtain approval to administer the Tailoring Rule should not result in unintended consequences, should not impose or permit the imposition of unduly burdensome, costly, or needless regulatory requirements, and should not lead to absurd results (such as a requirement to apply for and obtain a permit with no regulatory conditions).

Response: ADEQ has made every effort to incorporate the necessary provisions of the GHG Tailoring Rule in order to maintain consistency with the federal program and obtain the necessary federal approvals for the state program while maintaining maximum state authority over its permitting programs. ADEQ expects that EPA will grant approval for ADEQ to administer the GHG provisions of the programs, which will be implemented in a fashion to maximize program efficiency and minimize the burden to the regulated community to the extent possible.

No changes to the final rule are necessary due to this comment.

Comment 34: ADEQ should separately list that GHG emissions as required by Regulation 26 shall be included in a part 70 permit rather than referring to GHG emissions as "regulated air pollutant emissions."

Response: It appears that this is a preference by the commenter; no reason is given why it is inappropriate as proposed by ADEQ. We disagree that the suggested approach is better or more appropriate and retain the opinion that the revised rule revision to the definition of "regulated air pollutant" is the most comprehensive and efficient manner to address this matter.

See also Response to Comment 19.

Comment 35: In Regulation 26.403 (initial applications from existing part 70 sources), ADEQ should provide that existing title V sources are not required to submit a new Title V application for purposes of the Tailoring Rule until such time as its title V permit is modified or renewed. ADEQ's proposed change to this section can be interpreted to mean that any existing title V source must submit a new Title V application for purposes of the Tailoring Rule by July 1, 2012 (one year from July 1, 2011, the date a source becomes subject to title V for purposes of the Tailoring Rule). However, EPA has not made such a requirement for existing title V sources in the Tailoring Rule. ADEQ should modify this section to clarify the requirements of existing title V permittees with regard to compliance with permitting under the Tailoring Rule.

Response: Through modifications made to Regulation 26.403 (initial applications from existing part 70 sources), and the definition of "existing part 70 sources," ADEQ has made it clear that

existing title V sources not previously subject to the permitting requirements of Regulation No. 26 would be required to submit an application within 12 months of becoming classified as a major source due to their GHG emissions. Regulation 26.403 addresses **Initial** application submittal time frames. The deadline for submission of an initial application for sources already subject to Regulation No. 26 permitting (major sources without GHG emissions) has long since passed and those facilities should already have a part 70 (title V) permit. Such facilities are not required to submit a new title V application to address their GHG emissions until such time as their title V permit is modified or renewed.

It should be noted that facilities not previously subject to permitting as a major source but that will become a major source solely due to its GHG emissions will have an obligation under federal regulations to submit a title V permit application within 12 months of becoming subject to such requirements imposed by federal law, regardless of the status of the revisions of Regulation 26.

See also Response to Comment 30.

Comment 36: Commenters believe that the inclusion of the "subject to regulation" language at 40 CFR 70.2 would greatly improve clarity of the Arkansas regulations. Commenters think that ADEQ could either add this as a separate Regulation 26 definition or include this under the new subsection for GHGs under the definition of "regulated air pollutant."

Response: ADEQ considered incorporating the federal definition of "subject to regulation" into Regulation No. 26, but believed doing so could be considered prospective rulemaking due to the manner in which EPA crafted the federal GHG Tailoring Rule. ADEQ believes the proposed revisions limit EPA's role in the regulation of Arkansas sources in a responsible manner which is desirable for all state entities and preserves the public right for notice and commenting on changes to state regulations.

See also Response to Comment 19.

Comment 37: Commenters interpret the revisions to the minor permit modification procedures at Regulation 26, Section 26.1002 to apply to sources that are minor for PSD permitting requirements. If that is the correct interpretation, this provision must be revised to reflect the usage of CO2e to determine if the source is subject to regulation and then the *100/250* tpy major source thresholds to determine if the source is major for PSD.

Response: The only test needed is if the emissions changes are below the PSD significance level. It is irrelevant whether or not the facility is a current major PSD source. In any event,

modifications that are subject to PSD review are prohibited under 26.1002(G) to be processed as minor permit modification.

No changes to the final rule are necessary due to this comment.

Comment 38: The definition of "CO2 Equivalent Emissions" at Regulation 26, Chapter 2 includes the incorporation date of October 30, 2009. We note that it will be ADEQ's responsibility to monitor Table A-I to subpart A of 40 CFR Part 98 for updates and to initiate rulemaking accordingly pursuant to all applicable title V revision requirements.

Response: ADEQ acknowledges this comment.

Comment 39: The Department should consider simply incorporating the pertinent provisions of the federal Tailoring Rule in Regulations 19 and 26. The Department should be required to consider simply incorporating the Tailoring Rule by reference in Regulations 18, 19 and 26. ADEQ has the authority to do so pursuant to Regulation 8.817. This would prevent argument as to whether the Department's proposed modifications of Regulations 18, 19, and 26 are unnecessary, inconsistent, and more stringent than the equivalent federal rule.

Response: ADEQ considered incorporating the GHG Tailoring Rule by reference into Regulation No. 26, but believed doing so could run afoul of the prohibition on prospective rulemaking due to the manner in which EPA crafted the federal rule. ADEQ believes the proposed regulation revisions limit EPA's role in the regulation of affected Arkansas sources in a responsible manner which is desirable for all state entities and preserves the public right for notice and commenting on changes to state regulations.

See also Response to Comment 19.

Comment 40: Currently, ADEQ lists all pollutants (emitted in above De Minimis amounts) from each individual source, regardless of whether facility-wide thresholds have been exceeded. (Example: Permitting SO2 emissions from natural-gas combustion sources as an "also emitted" pollutant.) Will this practice continue with GHGs, or will GHGs not be listed as pollutants at all in the permits until after the facility-wide GHG permitting thresholds are reached?

Response: Normally permits will not contain GHG emissions until the permitting thresholds are reached. A facility may wish to assume a GHG limit for certain purposes, such as restriction to a minor source when there are no other methods to limit GHG (such as a fuel use limit).

No changes to the final rule are necessary due to this comment.

Comment 41: Regulation 26 does not appear to currently have any general transition clauses such as those found in Regulations #18 and #19 which may (or may not) indicate that permittees have 180 days after the effective date of the regulation to submit permit applications addressing GHGs. This language seems in need of updating since it refers to "facilities which are now subject to this regulation which were not previously." It should also refer to facilities that are subject to new provisions of this regulation.
If these existing generic transition clauses are not intended for the GHG permitting implementation then the regulation should clarify such.
Also, Regulation 26 does not appear to currently have any such transition clauses. Such may need to be inserted for clarity.

Response: The general transition clauses are found in Regulation 26.403 and Regulation 26.404. The definition of an "Existing part 70 source" was modified to account for existing GHG sources. See also Response to Comment 35.

No changes to the final rule are necessary due to this comment.

Comment 42: The definition of "Major source" found in Chapter 2 of Regulation 26 should include the following changes:
The phrase "or more" should be added to the first line of the definition of "major source" paragraph (B) so that the marked-up language reads as such, 100,000 tpy CO_2e or more…

Response: The proposed change to the definition of "Major source" is withdrawn.
See Response to Comment 18.

Comment 43: If ADEQ makes changes to language in any of the three regulations, Regulation 18, 19, or 26, ADEQ should consider whether the equivalent changes should be made to Regulations 18, 19, or 26 for consistency.

Response: ADEQ has made efforts to ensure consistency across all of the regulations as changes are made due to comments received.

No changes to the final rule are necessary due to this comment.

Prepared by:
Arkansas Department of
Environmental Quality

By: _____

Mike Bates, Chief, Air Division

Biomass Deferral Rule: Regulations 19 and 26

- Public Notice Information

- Public Hearing Sign-in Sheets

- Public Comments and Responsiveness Summaries

NOTICE OF EMERGENCY AND TRADITIONAL RULEMAKINGS AND NOTICE OF PUBLIC HEARINGS AND COMMENT PERIOD

Notice is hereby given that the Arkansas Pollution Control and Ecology Commission (APC&EC) made formal findings on June 22, 2012, that emergency and traditional rulemaking actions are necessary regarding Commission Regulation No. 19 (Arkansas Plan of Implementation for Air Pollution Control) and Commission Regulation No. 26 (Arkansas Operating Air Permit Program). As a result, changes to both regulations have been promulgated on an emergency basis for up to 180 days, and permanent rulemaking has been initiated. Additionally, public hearings have been scheduled for August 1, 2012, for both proposed regulations changes. Written comments on both proposals will be accepted until August 15, 2012.

The Regulation No. 19 hearing will begin at 2:00 p.m. in the Arkansas Department of Environmental Quality (ADEQ) Commission Room, located at the Arkansas Department of Environmental Quality headquarters building, 5301 Northshore Drive, North Little Rock, AR, 72118. The Regulation No. 26 hearing will be held at the same location, beginning immediately after the Regulation No. 19 hearing has concluded. In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearings. If the hearings are postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period.

The changes to Regulation Nos. 19 and 26 are being proposed in response to the United States Environmental Protection Agency's (EPA) Deferral for CO_2 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 CO_2 emissions from bioenergy and other biogenic stationary sources until July 21, 2014. An additional change is proposed for Regulation No. 19 to move (without revision) the existing "stay" provision from Reg.19.904(G)(6) to the Severability section at Reg.19.1006. APC&EC authority to revise Regulation Nos. 19 and 26 is found in Arkansas Code Annotated, Section 8-4-301, *et seq*.

Amendments to Regulation No. 19 will be submitted to the EPA for inclusion into Arkansas's State Implementation Plan, and amendments to Regulation No. 26 will be submitted to the EPA for inclusion into Arkansas's Title V and Part 70 State Program.

Copies of the two proposed regulation changes are available for public inspection during normal business hours at the Public Outreach and Assistance (POA) Division in the ADEQ's headquarters building in North Little Rock, and in ADEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy, Stuttgart, Texarkana, and West Memphis; in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway; and in the Arkansas State Library, 900 W.

Capitol, Suite 100, Little Rock. In addition, copies of the draft regulations showing the proposed changes, along with related support documents, are available for viewing or downloading on the draft regulations page of the ADEQ's Internet website at www.adeq.state.ar.us. Oral and written statements will be accepted at the hearings, but written comments are preferred in the interest of accuracy. In addition, written and electronic mail comments will be accepted if received no later than 4:30 p.m. August 15, 2012. Written comments should be mailed to Doug Szenher, POA Division, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118. Electronic mail comments should be sent to: reg-comment@adeq.state.ar.us.

Published June 27 and 28, 2012.

Teresa Marks, Director,

Arkansas Department of Environmental Quality

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The Regulation No. 19 hearing will begin at 2:00 p.m. in the Arkansas Department of Environmental Quality (ADEQ) Commission Room, located at the Arkansas Department of Environmental Quality headquarters building, 5301 Northshore Drive, North Little Rock, AR, 72118. The Regulation No. 26 hearing will be held at the same location, beginning immediately after the Regulation No. 19 hearing has concluded. In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearings. If the hearings are postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period.

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Published June 27 and 28, 2012.

Teresa Marks, Director,
Arkansas Department of Environmental Quality
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Arkansas Democrat Gazette

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Arkansas Department of Pollution Control & Ecology

Hearing/Meeting Registration

Name (Please Print Legibly)	Address (Street, City, State, Zip)	Organization Represented
Nicholas Stehle	McGeorge Construction	
Stuart Spencer	ADEQ	
Mick Ponta	"	
Elizabeth Santana	"	
Erica Droke	"	
Elaine Jacobs	"	
Mark Fusilier	"	
Doug Szenher	"	
Loren Hitchcock	- PCFE - H.O.	

Public hearing/meeting on: Regs 19 & 26 Biomass Deferral Rule **Date:** 8-1-12

Location: ADEQ - NLR **Page** 1 **Of** 1

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO REGULATION NO. 19, REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR POLLUTION CONTROL	))))	**DOCKET NO. 12-005-R**

RESPONSIVE SUMMARY FOR REGULATION NO. 19, REGULATIONS OF THE ARKANSAS PLAN OF IMPLEMENTATION FOR AIR POLLUTION CONTROL

Pursuant to Ark. Code Ann. § 8-4-202(d)(4)(C) and Regulation No. 8.815, a responsive summary groups public comments into similar categories and explains why the Arkansas Pollution Control and Ecology Commission ("Commission") accepts or rejects the rationale for each category.

On June 22, 2012, the Arkansas Department of Environmental Quality ("ADEQ" or "Department") filed a Petition to Initiate Rulemaking to Amend Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control. The Commission's Acting Administrative Hearing Officer, Loren Hitchcock, conducted a public hearing on August 1, 2012, and the public comment period ended August 15, 2012. ADEQ received one non-substantive comment to improve readability of the Regulation, as is summarized below with the Commission's response.

Comment 1: One commenter suggested that Regulation No. 19.904(G)(2) be renumbered by changing "(2)" to "(2)(a)," and changing "(a)" to "(i)," "(b)" to "(ii)," and "(c)" to "(b)."

Response: ADEQ will make the suggested changes to Regulation No. 19.

Prepared by:
Arkansas Department of
Environmental Quality

By: Mike Bates
Mike Bates, Chief, Air Division

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO REGULATION NO. 26, REGULATIONS OF THE ARKANSAS OPERATING AIR PERMIT PROGRAM	)))	**DOCKET NO. 12-006-R**

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

Pursuant to Ark. Code Ann. § 8-4-202(d)(4)(C) and Regulation No. 8.815, a responsive summary groups public comments into similar categories and explains why the Arkansas Pollution Control and Ecology Commission ("Commission") accepts or rejects the rationale for each category.

On June 22, 2012, the Arkansas Department of Environmental Quality ("ADEQ" or "Department") filed a Petition to Initiate Rulemaking to Amend Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program. The Commission's Acting Administrative Hearing Officer, Loren Hitchcock, conducted a public hearing on August 1, 2012, and the public comment period ended August 15, 2012. ADEQ received no comments regarding proposed revisions to Regulation No. 26 during the public comment period.

Conclusion:

No written or oral comments were submitted regarding the proposed revisions to Regulation No. 26

Prepared by:
Arkansas Department of
Environmental Quality

By: 

Mike Bates, Chief, Air Division

Arkansas's State Implementation Plan Revision

- Public Notice Information

- Public Hearing Sign-in Sheets

- Affidavit: Public Participation Process

Arkansas Department of Environmental Quality
Public Notice

The Arkansas Department of Environmental Quality (ADEQ) is publishing this Public Notice to provide interested persons the opportunity to comment on ADEQ's proposed State Implementation Plan (SIP) revision that will be submitted in response to the U. S. Environmental Protection Agency's (EPA) Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas (GHG) Tailoring Rule: Final Rule (Tailoring Rule) published in the Federal Register (June 3, 2010, 75 FR 31514), which required states to address GHG emissions in their Title V and PSD permitting programs beginning January 2, 2011, and in their operating permits for facilities beginning July 1, 2011.

EPA published the Finding of Substantial Inadequacy and SIP Call on December 13, 2010 (75 FR 77698), which included Arkansas among states listed as having deficiencies related to GHGs in the SIP. At that time, regulations of the Arkansas Pollution Control and Ecology Commission (Commission) did not address GHG permitting requirements in the PSD regulations and the State became subject to a Federal Implementation Plan (FIP) for GHG-related permitting (75 FR 82246, December 30, 2010), which will remain in place until the State submits and EPA approves a SIP revision that addresses GHGs. At this time, Arkansas has addressed the Tailoring Rule in the Commission's regulations governing air pollution in Arkansas, Regulation Numbers 9, 19 and 26 and, via this proposed SIP revision, is requesting that EPA rescind the FIP and return to the State the authority to permit all PSD sources. ADEQ is also requesting that EPA review the decision of proposed partial disapproval of the Arkansas SIP for the 1997 8-hour ozone and the 1997 and 2006 fine particulate matter national ambient air quality standards at 110(a)(2) for portions (C), (D)(ii) and (J) (77 FR 6711, February 9, 2012), as program deficiencies related to GHGs which were identified in the February 2012, notice have been corrected.

Arkansas could not incorporate EPA's Deferral for CO_2 Emissions from Bioenergy and Other Biogenic Sources under the PSD and Title V Programs (Biomass Deferral) (76 FR 43490, July 20, 2011) during the Tailoring Rule rulemaking process because rulemaking had been initiated and the public hearing and comment period had already expired before EPA finalized the rule. To include the Biomass Deferral in the State regulations, ADEQ submitted an emergency rulemaking petition to the Commission and, concurrently, requested initiation of traditional rulemaking to address the Biomass Deferral. The Commission approved both emergency rulemaking on the Biomass Deferral and initiation of traditional rulemaking on June 22, 2012. Traditional rulemaking for Biomass Deferral included a period for public review and comment. Upon the adoption of the traditional Biomass Deferral rulemaking, Arkansas will submit to EPA the required documentation for final approval and incorporation into the SIP. ADEQ is requesting that EPA consider parallel processing of the Biomass Deferral at this time.

ADEQ is providing the public with the opportunity to comment on this proposed SIP revision in two ways. ADEQ will hold a public hearing on this issue at 2:00 p.m. September 13, 2012. The public hearing will be held at ADEQ headquarters located at 5301 Northshore Drive, North Little Rock, Arkansas. Oral and written statements will be accepted at the hearing, but written comments are preferred in the interest of accuracy. In lieu of commenting at the public hearing, written and electronic mail comments will be accepted. To be considered, written and electronic mail comments must be received no later than 4:30 p.m. on September 27, 2012. Written comments should be mailed to Mike Bates, Air Division, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118. Electronic mail comments should be sent to: bates@adeq.state.ar.us.

In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearing. If the hearing is postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period.

Pending any comments received, Arkansas will submit this SIP revision to the EPA in order to detail how Arkansas complies with the Tailoring Rule.

Copies of Arkansas's proposed SIP revision are available for public inspection during normal business hours at the Public Outreach and Assistance (POA) Division in the ADEQ headquarters building in North Little Rock and in ADEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy, Stuttgart, Texarkana, and West Memphis; in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway; and in the Arkansas State Library, 900 W. Capitol, Suite 100, Little Rock, AR. In addition, an electronic copy of the Arkansas's proposed SIP revision is available for viewing or downloading on ADEQ's Internet web site at http://www.adeq.state.ar.us/air/ghg_sip_pn.htm.

Published August 12, 2012,

Teresa Marks, Director,
Arkansas Department of Environmental Quality

Arkansas Democrat Gazette
STATEMENT OF LEGAL ADVERTISING
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Teresa Marks, Director
Arkansas Department of Environmental Quality
7145452

Arkansas Democrat Gazette

STATEMENT OF LEGAL ADVERTISING

AUG 15 2012

ADEQ
5301 NORTHSHORE DR
NORTH LITTLE ROCK AR 72118

ATTN: Fiscal Office

REMIT TO:
ARKANSAS DEMOCRAT-GAZETTE, INC.
P.O. BOX 2221
LITTLE ROCK, AR 72203

DATE : 08/12/12 INVOICE #: 2770326
ACCT #: L844316 P.O. #:

BILLING QUESTIONS CALL 378-3812

AD COPY

STATE OF ARKANSAS, }
COUNTY OF PULASKI, } ss.

I, Elizabeth Myers do solemnly swear that I am the Legal Billing Clerk of the Arkansas Democrat - Gazette, a daily newspaper printed and published in said County, State of Arkansas; that I was so related to this publication at and during the publication of the annexed legal advertisement in the matter of:

public notice

pending in the Court, in said County, and at the dates of the several publications of said advertisement stated below, and that during said periods and at said dates, said newspaper was printed and had a bona fide circulation in said County; that said newspaper had been regularly printed and published in said County, and had a bona fide circulation therein for the period of one month before the date of the first publication of said advertisement; and that said advertisement was published in the regular daily issues of said newspaper as stated below.

DATE	DAY	LINAGE	RATE	DATE	DAY	LINAGE	RATE
08/12	Sun	229	1.45				

TOTAL COST ---------- 332.05
Billing Ad #: 71454352

OFFICIAL SEAL - # 12381
PAMMIE J. FULLER
NOTARY PUBLIC - ARKANSAS
PULASKI COUNTY
MY COMMISSION EXPIRES: 3-21-2021

Subscribed and sworn to me this 13
day of Aug 20 12

Notary Public

Arkansas Department of Pollution Control & Ecology

Hearing/Meeting Registration

Name (Please Print Legibly)	Address (Street / City / State / Zip)	Organization Represented
Courtney Garland	1602 Innsbrook Harrison AR 72601	Trinity Consultants
Erika Drake	ADEQ	
Flavia Jacobs	ADEQ	
Mike Bates	ADEQ - Hearing officer	
Doug Szenher	ADEQ	

Public hearing/meeting on: SIP Update - GHGs **Date:** 9-13-12

Location: ADEQ - NLR

Revisions to the Arkansas State Implementation Plan

Page 1 **Of** ____

Affidavit: Public Hearing and Comment Period for Revisions to Arkansas's State Implementation Plan (SIP)

Before me, the undersigned authority, personally appeared Mike Bates, who, being by me duly sworn, deposed as follows:

My name is Mike Bates, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am the Division Chief for the Air Division of the Arkansas Department of Environmental Quality (ADEQ) in its regular course of business, and I am familiar with the public participation process for revisions to Arkansas's SIP.

I attest that a Public Hearing regarding greenhouse gas and biomass deferral revisions to Arkansas's SIP was publicly noticed August 12, 2012, and was held at the ADEQ Headquarters at 2:00 pm on September 13, 2012. No comments were received at the Hearing or at any time during the public comment period, which ended September 27, at 4:30 pm.

Mike Bates

Affiant
Mike Bates, Air Division Chief
Arkansas Department of Environmental Quality

Francine Smith — Notary Public, State of Arkansas

Pulaski — County

Francine Smith — Notary's Printed Name

My commission expires on the 4th day of February 2019.

SWORN AND SUBSCRIBED before me on the 26th day of November 2012.

FRANCINE SMITH
PULASKI COUNTY
NOTARY PUBLIC - ARKANSAS
My Commission Expires February 04, 2019
Commission No. 12369502