

ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT ANALYSIS

Rule Number & Title: Regulation Number 26, Regulations of the Arkansas Operating Air Permit Program

Petitioner: Arkansas Department of Environmental Quality

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2A. ECONOMIC IMPACT

1. Who will be affected economically by this proposed rule?

State: a) the specific public and/or private entities affected by this rulemaking, indicating for each category if it is a positive or negative economic effect; and b) provide the estimated number of entities affected by this proposed rule.

- a) *Entities affected by this rulemaking are facilities that emit greenhouse gases (GHGs). Examples of affected entities are fossil-fuel fired power plants, paper mills, and cement kilns.*

Revising the definition of “air contaminant” to remove the exclusion for CO₂ is necessary to implement the Greenhouse Gas (GHG) Tailoring Rule in Arkansas. Removing the exclusion for CO₂ in Regulation Number 26 has no positive or negative economic effects, as the revision serves only to maintain consistency in language between the state air pollution statutes, codified at Ark. Code Ann. §8-4-301 et. seq., and other state air pollution control regulations, and any permitting or compliance requirements that would be necessary under the federal Tailoring Rule.

- i. *The proposed change to the Severability section creates a path for ADEQ and or the Arkansas Pollution Control and Ecology Commission to waive compliance with the GHG provisions of Regulation Number 26 if the federal GHG Tailoring Rule is stayed, invalidated, or otherwise rendered unenforceable, in whole or in part by a federal court of competent jurisdiction. Addition of the “rescission clause” in the Severability section provides for wholesale removal of GHG permitting requirements stemming from this single provision in the Regulation. This proposed revision has no positive or negative economic effects on public or private entities. It is intended to ensure that ADEQ’s implementation of the GHG tailoring rule is carried out in a manner that is no more stringent than the federal program.*
- ii. *There are two proposed revisions to the definition of “existing part 70 source.” The first clarifies the effective date as September 13, 1993, and has no effect other than to make*

regulatory language clear. The second revision makes Arkansas's regulation consistent with the federal GHG Tailoring Rule, and does not result in new requirements for facilities beyond the requirements set forth in the federal GHG Tailoring Rule; therefore, this proposed revision has no positive or negative economic effects on public or private entities.

- iii. *Under the "Minor permit modification applicability" section (Reg.26.1002), the addition of "75,000 tons per year of CO₂e" establishes a threshold which will prevent the need for major permit modification due to smaller increases of GHGs. GHG emissions below this level are not subject to regulation under the federal GHG Tailoring Rule. Without the inclusion of this language, there would be no set threshold for minor increases in GHG emissions and even small emissions increases would trigger a major permit modification. Without this revision, ADEQ estimates a significant rise in the number and scope of major permit modifications, resulting in substantial increases in both private and public workloads. Adopting this change will be economically beneficial to both the State and to the regulated industry.*
- b) *The number of entities affected by this rule will vary, as some facilities that will be affected may not have been constructed at this time.*

Sources and Assumptions: These changes are necessary to obtain EPA approval of a state program permitting GHGs in Arkansas. Federal Tailoring Rule (75 FR 31514, June 3, 2010).

2. What are the economic effects of the proposed rule?

State: a) the estimated increased or decreased cost for an average facility to implement the proposed rule; and b) the estimated total cost to implement the rule.

- a) *From a facility standpoint, there is no cost above what is required by the federal GHG Tailoring Rule to implement the rule changes for which this statement is being prepared. For existing title V facilities, permit modifications for GHG emissions will be included in the annual fee charged for permit renewal, with no additional fee to facilities for this modification. Facilities which become title V sources due to GHG emissions will be charged a minimum initial permit application fee in the amount of \$1000.00, and a \$2265.00 minimum annual fee. ADEQ does not envision any ongoing tracking or reporting associated with this action. As such, associated costs of compliance with any GHG requirements included in a permit will be negligible. Permitting fees for facilities with EPA-issued title V permits are substantially higher than for in-state permitting. For example, for Part 71 programs administered by the EPA, the fee rate (\$/ton) effective during calendar year 2012 is \$47.11. Comparatively, the fee rate (\$/ton) for the same permit under ADEQ is only \$22.65. It should also be noted that fees for EPA permits are based on actual emissions, while fees for ADEQ permits of the same type are calculated for total allowable emissions.*
- b) *See response to 2 a. See also Regulation No. 9, Fee Regulation.*

Sources and Assumptions: Regulation Number 9; Federal Tailoring Rule; EPA's Memorandum: "Calculation of the Annual Part 71 Fee for Calendar Year 2012."

3. List any fee changes imposed by this proposal and justification for each.

There will be no fee changes in this rule (see separate rulemaking for Regulation No. 9).

4. What is the probable cost to ADEQ in manpower and associated resources to implement and enforce this proposed change, and what is the source of revenue supporting this proposed rule?

It is estimated that there will be a minimal cost to implement proposed changes in the form of staff hours spent to make permit modifications.

Sources and Assumptions: *No change to ADEQ resources is anticipated for this rule change at this time.*

5. Is there a known beneficial or adverse impact to any other relevant state agency to implement or enforce this proposed rule? Is there any other relevant state agency's rule that could adequately address this issue, or is this proposed rulemaking in conflict with or have any nexus to any other relevant state agency's rule? Identify state agency and/or rule.

There is no known impact to another state agency nor is there another state agency's rule that could address any of the proposed changes. This rulemaking is not in conflict with, nor has any nexus to, any other relevant state agency's rule.

Sources and Assumptions: *Not applicable.*

6. Are there any less costly, non-regulatory, or less intrusive methods that would achieve the same purpose of this proposed rule?

No.

Sources and Assumptions: *Not applicable.*

2B. ENVIRONMENTAL BENEFIT

1. What issues affecting the environment are addressed by this proposal?

The federal GHG Tailoring Rule requires permitting of GHG emissions, including CO₂. The proposed revisions to Regulation 26 serve to satisfy the GHG Tailoring Rule's regulation of GHGs. The regulations subject to this analysis are necessary to fully implement the federal requirements.

2. How does this proposed rule protect, enhance, or restore the natural environment for the well-being of all Arkansans?

Conflicts between how like terms are defined in state air regulation can lead to confusion among the regulated community and non-compliance with the applicable requirements contained in other air regulations. By aligning the regulatory definitions and clarifying the purposes and applicability within the various air regulations, ADEQ will be able to continue to protect, enhance, and restore the natural environment.

By adopting the following proposed revisions, Regulation Number 26 will not conflict with other proposed state rulemakings or with the federal GHG Tailoring Rule, and the intended purpose of the regulation will be clarified:

- i. Revision to the definition of “air contaminant”*
- ii. Revisions to the definition of “existing part 70 source”*
- iii. Revision to the “Minor permit modification applicability” section (Reg.26.1002)*

Sources and Assumptions: GHG permitting, including CO₂, has been addressed by EPA and will be addressed by APC&EC pending adoption of federally enforceable regulations.

3. What detrimental effect will there be to the environment or to the public health and safety if this proposed rule is not implemented?

Regulation 26 will be inconsistent with Regulation 19 which is being revised to conform to EPA’s GHG permitting requirements. This inconsistency among state air regulations will cause confusion for the regulated community because, without these revisions, the regulated community would be required to seek the applicable GHG permits from EPA in addition to the permitting requirements as specified in existing state regulations.

Sources and Assumptions: Not applicable.

4. What risks are addressed by the proposal and to what extent are the risks anticipated to be reduced?

There are no risks addressed by this proposal.

Sources and Assumptions: Not applicable.