



ARKANSAS
Department of Environmental Quality

Memorandum

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

FROM: Mike Bates, Chief, Air Division *MKB*

DATE: May 7, 2012

SUBJECT: Proposed Revisions to Regulation Number 26, Regulations of the Arkansas Operating Air Permit Program

The Arkansas Department of Environmental Quality (ADEQ) proposes revisions to Regulation Number 26, Regulations of the Arkansas Operating Air Permit Program.

The changes to Regulation Number 26 are being proposed in response to the United States Environmental Protection Agency's ("EPA") June 3, 2010, Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule ("Tailoring Rule"). The Tailoring Rule requires that greenhouse gases be subject to regulation under the Clean Air Act. Carbon dioxide is one of the gases listed in the Tailoring Rule as a greenhouse gas. The Arkansas Pollution Control and Ecology Commission's ("Commission") Regulation Number 26 currently excludes carbon dioxide from being an air contaminant. For state regulations to be consistent with EPA's Tailoring Rule, the exclusion of carbon dioxide from the definition of "air contaminant" in Chapter 2 needs to be removed. The proposed amendments to Regulation Number 26 also include the addition of definitions for "greenhouse gases" and "carbon dioxide equivalent emissions." The definition of "regulated air pollutant" has been updated to include greenhouse gases. The term "air pollutant" has been included as a synonymous term for "air contaminant." The effective date given in the definition of "Existing part 70 source" has been clarified as September 13, 1993, and in addition, proposed language has also been added to the definition of "Existing part 70 source" making facilities which become a major source due to greenhouse gas emissions as of July 1, 2011, an existing part 70 source. A "rescission clause" has been added to the "Severability" section (Reg.26.103) for rulemaking associated with GHGs, in the event that provisions of enabling federal laws are overturned by the Courts. The "Emissions subject to permitting" section (Reg.26.305) has been modified so that emissions less than the 100,000 tpy carbon dioxide equivalent shall not be included in a part 70 permit. In addition, the "Duty to apply" section (Reg.26.401) has been updated to include the most recent revision to 40 CFR part 70, i.e. June 3, 2010, and language from the "Initial applications from existing part 70 sources" section (Reg.26.403) has been revised to clarify when a facility must submit an application if it becomes subject to the part 70 permit requirements due to GHG emissions. Language is also being added to ensure greenhouse gas emission increases under 75,000 tons per year ("tpy") will be processed as a minor permit modification (Reg.26.1002).

These amendments will modify ADEQ's Title V permitting program to match EPA's Tailoring Rule. Making these changes will maintain consistency between Federal air pollution control programs and the Commission's regulations governing air pollution in Arkansas and enable ADEQ to seek approval of the Arkansas air program from EPA.