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:

(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.)

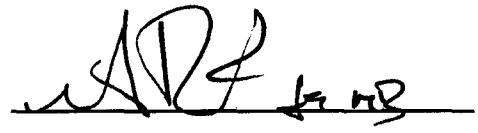
The federal Clean Air Act and the implementing regulations, as noted above, provide significant discretionary authority for a State to craft its permitting fee system to the specific needs of the individual State.

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