

EASE Collaborative

June 20, 2019 Webinar



ADEQ
ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

Overview

- Regulatory Streamlining Workgroup Progress



- Permitting Guidance Workgroup Progress



- Questions and Feedback



Readability Statistics

Counts	
Words	16042
Characters	86606
Paragraphs	591
Sentences	384
Averages	
Sentences per Paragraph	1.3
Words per Sentence	32.8
Characters per Word	5.1
Readability	
Passive Sentences	0%
Flesch Reading Ease	16.1
Flesch-Kincaid Grade Level	19.0

OK

Regulatory Streamlining Workgroup Progress



ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

Main Objective



- Review of Arkansas Pollution Control and Ecology Commission (APC&EC) air quality regulations to develop recommendations to:
 - Improve readability and organization to make the requirements easier to understand.
 - Update or remove outdated provisions.
 - Reduce redundancy.
 - Ensure consistency with State and federal requirements.

Topics discussed during Q1 and Q2 Workgroup Meetings

- Regulatory Structure Options
- Grandfathering
- Incorporation by Reference (IBR) Dates
- Prevention of Significant Deterioration (PSD)

Regulatory Structure

Option 1: Current Structure (Four Regulations)

1. Regulation No. 18, Arkansas Air Pollution Control Code

- Pursuant to State statute only (not federally enforceable)
- Investigation and consideration of citizen complaints
- Director's powers during conditions of air pollution
- Prohibition of open burning
- Visible emissions limitations*
- Prohibitions on excessive emissions
- Registrations
- Permitting of air contaminants*
- Requirements for permitted sources*

*Note: Visible emissions limitations, permitting procedures, and requirements for permitted sources provisions in Regulation No. 18 are similar, and in some cases identical, to corresponding provisions in Regulation No. 19. Pollutants regulated under Regulation No. 19 are a subset of pollutants regulated under Regulation No. 18.

Regulatory Structure

Option 1: Current Structure (Four Regulations)

2. Regulation No. 19, Regulations of the Arkansas Plan for Air Pollution Control
 - Pursuant to State statute and Clean Air Act
 - Contains most, but not all, provisions submitted for codification in the federally enforceable state implementation plan (SIP)
 - New source and modification review (NSR) for non-major sources*
 - NSR for major sources in attainment areas [Prevention of significant deterioration (PSD)]
 - Permitting procedures for sources not subject to Title V
 - Requirements for permitted sources
 - Other programmatic control strategies (e.g. regional haze)
 - Contains all provisions submitted as federally enforceable 111(d) plans

*Note: "Non-major" means not subject to PSD or nonattainment NSR. Regulations No. 18 and 26 also contains provisions applicable to NSR for non-major sources. Permitting procedures in Regulation No. 26 are incorporated by reference into Regulation No. 19.

Regulatory Structure

Option 1: Current Structure (Four Regulations)

3. Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program
 - Pursuant to State statute and Clean Air Act
 - EPA-approval of ADEQ's Title V Operating Permit program based on Regulation No. 26
 - Most of Regulation No. 26 is not codified at federal level
 - Minor NSR provisions for non-major sources subject to Title V submitted for codification in the federally-enforceable SIP

Note: "Non-major" means not subject to PSD or nonattainment NSR. Regulations No. 18 and 19 also contains provisions applicable to NSR for non-major sources.

Regulatory Structure

Option 1: Current Structure (Four Regulations)

4. Regulation No. 31, Nonattainment New Source Review Requirements
 - Pursuant to State statute and Clean Air Act
 - Major NSR for nonattainment areas (nonattainment NSR)
 - Not applicable unless a county in Arkansas is designated nonattainment for ozone
 - Provisions submitted to EPA submitted for codification in the federally enforceable SIP*

Note: EPA approved Regulation No. 31 based on requirements in existence at the time of approval. Regulation No. 31 is not been updated to reflect current requirements for nonattainment areas. Therefore, Regulation No. 31 would need to be updated before it could be applied in any new nonattainment area.

Regulatory Structure

Option 2: Consolidation into One Regulation

Maximize consolidation of redundant provisions

- Illustrated by strawman draft Regulation 35 V1.0
- Regulations No. 18 and 19 redundant provisions consolidated with carve outs for non-federally enforceable provisions and caveats
- Regulations No. 26 and 31 chapters

Program areas separated into different chapters

- Illustrated by strawman draft Regulation 35 V2.0
- Common definitions section for general terms
- Use subchapter structure for each program area subsection with additionally applicable definitions
- Nonattainment NSR outdated requirements replaced with incorporation by reference of federal requirements

Regulatory Structure

Option 3: Partial Consolidation

2 Regulations:

- State-only requirements (Regulation No. 18)
- Regulations for Clean Air Act programs consolidated (Regulations No. 19, 26, and 31)

3 Regulations:

- State-only requirements (Regulation No. 18)
- Title V requirements (Regulation No. 26)
- SIP requirements (Regulations No. 19 and 31)

Regulatory Structure

Workgroup Recommendations

Separate, but streamlined, Regulation No. 18

- Reduce redundancy with regulations for Clean Air Act programs and Regulation No. 8 (administrative procedures)
- Ensure consistency with current State statutes

Regulatory Structure

Workgroup Recommendations

Consolidation of regulations for Clean Air Act programs

- Common definitions section for general terms
- Use chapters to separate program areas
 - Definitions that uniquely apply to a program area contained within chapter
 - Subchapters used for organization within chapter
- Maintain and clarify existing relationship between Title V and minor NSR permitting requirements
- Hold nonattainment permitting requirements as “reserved”

Grandfathering

Discussion and Recommendations

Reg.18.1103

- Exception to inapplicability of enforcement discretion for upset conditions during Conditions of Air Pollution for sources that:
 - Submitted prior to April 30, 1972 a schedule of precautionary devices and procedures to minimize upsets
 - Filed prior to April 30, 1972 a demonstration regarding anticipated periods of non-compliance to changes of fuel because of fuel curtailment
- Only applicable to permit conditions pursuant to Regulation No. 18 if the requirements above were met by April 30, 1972

Workgroup Recommendation: This could be removed without consequence.

Grandfathering

Discussion and Recommendations

Regulation No. 19 Provisions

Reg. 19.408(B)

- Stationary sources operating prior to June 30, 1975 that have not modified since are not required to obtain a permit under Regulation No. 19, Chapter 4
- **Workgroup:** this should be kept

Reg. 19.503(A)(1):

- Less stringent opacity requirements for equipment permitted prior to January 30, 1972
- **Workgroup:** this should be kept

Reg. 19.903(B)(6):

- Condensable particulate matter not accounted for in PSD applicability determinations made prior to October 25, 2012
- **Workgroup:** this should be kept

Incorporation by Reference (IBR)

Discussion

APC&EC Regulation No. 8 specifies how provisions of other laws may be incorporated by reference by into APC&EC regulations:

Reg.8.817 INCORPORATION BY REFERENCE

(A) The Commission may, through incorporation by reference, adopt a regulation that contains all or portions of the provisions of other laws (i.e., statutes or regulations).

(B) Unless a contrary intent is expressly stated, any adoption by specific or descriptive reference to another law shall be construed as though the referenced law were set forth in the Commission regulation line for line, word for word.

(C) The effective date of any regulation that the Commission adopts by reference shall be the effective date of the Commission regulation, not that of the referenced regulation.

(D) Unless the Commission expressly states a contrary intent, the Commission adopts a referenced law as it exists at the date of Commission promulgation. -

(E) Any subsequent changes in the referenced law do not affect the provisions of those regulations adopted by the Commission.

Incorporation by Reference (IBR)

Discussion

In Regulations No. 18, 19, 26, and 31, IBR of other laws is not performed consistently:

- Some provisions are incorporated as of a specific date related to the publication or effective date of federal rules, which may or may not be referenced or cited
- Some provisions are incorporated as of a date that may match when the IBR provision was first adopted into the APC&EC Regulation
- Other IBR provisions do not provide a specific date

Incorporation by Reference (IBR) Challenges and Cautions

- IBRs that are not kept up to date make finding applicable requirements a research project into archived Code of Federal Regulations editions and/or Federal Register notices.
- Removing an IBR “as of” date may mean that the effective IBR date changes every time the APC&EC regulation is reopened.
- Adequate public notice should be provided regarding changes in the referenced law if the “as of” date is removed or updated.



Incorporation by Reference (IBR) Recommendations

- Options for **simplifying IBRs** in air quality regulations:
 - Remove dates unless it is important to avoid incorporating the updated version of a law.
 - Move superfluous information (including citations, basis for the “as of” date) to footnotes.
 - Add effective dates for entire Chapters or sections when revised, to avoid reopening IBR “as of” dates.
- Create a **guidance document** with the language of the referenced laws as in existence on each IBR date.

Prevention of Significant Deterioration Discussion

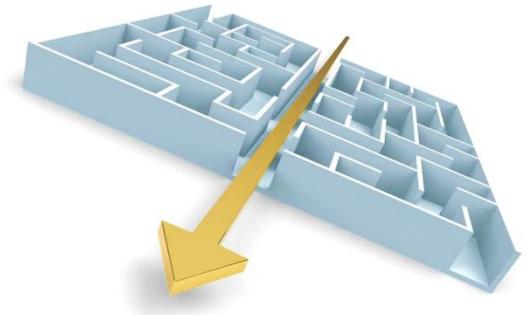
Current structure of PSD chapter is a mix of IBR provisions and some language directly from the code of federal regulations

- Most referenced provisions incorporated as of 2005, with some exceptions that have more recent “as of” dates
- Some structural decisions were made to intentionally exclude certain parts of referenced law
 - Law challenged or stayed by the courts at the time of rulemaking (e.g. GHG permitting)
 - Important definitions

Workgroup continues to discuss this topic

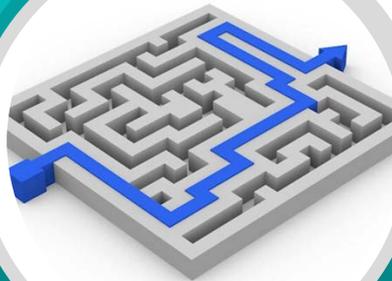
Regulatory Streamlining Workgroup: Next Steps

- Continued PSD discussion
- Definitions
- Public Notice Requirements
- New Arkansas Statutory Requirements
- Consistency with Regulation No. 8
- Disentanglement of Title I and Title V Permit Requirements
- Stage I Vapor Recovery





Permitting Guidance Workgroup Progress



ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

Main Objective



- Develop recommendations for a consolidated and robust guidance for Arkansas's air permitting program
- Make existing resources more user friendly

Topics discussed during Q1 and Q2 Workgroup Meetings

Permitting Guidance:

- Scope
- Format
- Intended Audience
- Contents

Scope

- Website content (FAQs and webpages)
- Guidance documents (ADEQ and EPA)
- Instructions
- Policies
- Regulation background and interpretations
- Living document with frequent updates



Format

The workgroup considered several options:

- Database
- PDF
- Searchable website
- Help Desk (live chat or phone)
- Permit Wizard
- Evolving Q&A webpage
- Annotated versions of the Regulations
- Applicability tools
- Moderated discussion board

Workgroup Recommendations:

- Create a PDF-format document that describes ADEQ's policies, and links to external documents and memos
- Make ADEQ's existing online FAQs more visible

Intended Audience

- Potential users:
 - General Public
 - Environmental Managers
 - Consultants
- Organize guidance document based on user type



Contents

- Arkansas air permit system history and overview
- Arkansas-specific regulations that impact permitting
- Permitting
 - When do I need a Permit or Registration?
 - Major Source permitting

Contents (cont.)

- How does the permitting process work?
 - Types of permitting actions
 - Required submissions
 - Timeframes
 - Public Notice
 - Fees
 - Confidential business information
 - Administrative and technical review

Contents (cont.)

- FAQs
 - Do changes at a facility require changes to the permit?
 - Permitting fees
- Compliance and Permitting
- Resources and Appendices
 - Manuals, forms, instructions, etc.

Permitting Guidance Workgroup: Next Steps

- Add detail and narrative for each item to be addressed in the guidance
- Discuss inconsistencies and other issues
- Organize guidance based on intended audience





Questions?

Tricia Treece

treecep@adeq.state.ar.us

Tom Rheaume

rheaume@adeq.state.ar.us