

# EXHIBIT D

## DEPARTMENT OF ENVIRONMENTAL QUALITY

**SUBJECT:** Regulation Number 18; Air Pollution Control Code

**DESCRIPTION:** The department proposed this rulemaking to clarify that a permit issued through the administrative permitting procedure described in Reg. No. 8 of the APC&EC is not required to obtain permission for open burning. The proposed changes will amend the language of Reg. No. 18 to align with the open burning practices currently in use by the ADEQ, and will resolve inconsistency in the language used for such practices within different sections of Reg. No. 18, Chapter 6.

The proposed regulatory amendments precipitated by the above-referenced need for clarification involve the following changes made to Reg. 18.605 of Reg. No. 18. The proposed regulatory amendments seek to clarify the administrative process necessary to obtain department authorization to conduct open burning and to resolve inconsistency in the language used for such practices with different sections of Reg. No. 18, Chapter 5. It is not the intention of ADEQ to issue a permit for open burning that would have to follow the administrative procedures required under APC&EC Reg. No. 8. Reg. 18.603 refers to the process as a "letter of authorization," whereas Reg. 18.605 uses the term "permit." The phrase "letter of authorization" more accurately and appropriately describes the document and process utilized by the department for these short term activities and does not imply that the permitting process described in Reg. No. 8 must be followed. Making this change will help clarify the requirements to obtain authorization for open burning and is consistent with the procedures regarding open burning currently addressed in Reg. 18.603(I)

**PUBLIC COMMENT:** A public hearing was held November 5, 2009. The public comment period expired November 20, 2009. No public comments were submitted to the department regarding the proposed changes to the rule. The proposed effective date is February 15, 2010.

**CONTROVERSY:** This is not expected to be controversial

### **FINANCIAL IMPACT:**

#### **Economic Impact Statement**

1. Explain the need for the proposed changes. Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints. The changes to Reg. 18.605 of Reg. 18 clarify what is required for open burning. It is not the intention of ADEQ to issue a permit for open burning that would have to follow the administrative procedure required under Reg. No. 8 of the APC&EC. The phrase "letters of authorization" more accurately describes the document issued by ADEQ for open burning and does not infer that the permitting process described in Reg. No. 8 must be followed. Making this change will help clarify for the citizens what is needed to obtain permission for open burning and is consistent with the procedures regarding open burning currently addressed at Reg. 18.603(I).

2. What are the top three benefits of the proposed rule? 1) The amendment clarifies that a permit issued through the administrative permitting procedure described in Reg. No. 8 of the APC&EC is not required to obtain permission for open burning. 2) Publication of this clarification in Reg. 18.605 of Reg. No. 18 will inform the businesses and citizens that a permit is not necessary to obtain permission for open burning. 3) Informed businesses and citizens will not be deterred from requesting permission for open burning under this section of Reg. No. 18, knowing that they need not request a permit under the administrative permitting process described in Reg. No. 8.
3. What would be the consequence of taking no action, thereby maintaining the status quo? Taking no action could result in businesses and citizens not taking advantage of open burning allowed under this section due to the belief that a permit issued under Reg. No. 8 of the APC&EC is required.
4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason for not selecting those alternatives. There are no market-based alternatives or voluntary standards that can be considered for the proposed amendments for Reg. No. 18.
5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing, and inspecting associated with this new rule. The proposed amendments will not create any costs to the state government.
6. What types of small businesses will be required to comply with the proposed rule? Please estimate the number of small businesses affected. The proposed amendments will not create any new compliance requirements for small businesses.
7. Does the proposed regulation create barriers to entry? Is so, please describe those barriers and why those barriers are necessary. The proposed amendments will not create any barriers to entry.
8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance. The proposed amendments will not create any new compliance requirements for small businesses.
9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary. The proposed amendments will not contain different requirements for different sized entities.
10. Describe your understanding of the ability of small business owners to implement changes required by the proposed rule. The proposed amendments do not create any new compliance requirements for small business. As such, there are no changes that small businesses will need to implement.
11. How does this rule compare to similar rules in other states or the federal government. There are states that have similar rules regarding open burning using a process by which an individual, business, or municipality requests permission from a state or local agency to conduct an open burning.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule. ADEQ has not received any input from small businesses or small business advocates at this time.

**LEGAL AUTHORIZATION:** Arkansas Code § 8-4-315 specifically authorizes the Arkansas Department of Environmental Quality to "require, issue, and enforce operating permits for major sources in satisfaction of Title V of the Clean Air Act Amendments of 1990." Arkansas Code § 8-4-311 (a)(1) grants the department the power to "[d]evelop and effectuate a comprehensive program for the prevention and control of all sources of pollution of the air of this state." Arkansas Code § 8-4-311 (b)(1)(A) generally authorizes the Arkansas Pollution Control & Ecology Commission to "[p]romulgate rules and regulations for implementing the substantive statutes charged to the department for administration."



Pollution Control and Ecology Commission # 014.00-018

**ARKANSAS POLLUTION CONTROL  
and ECOLOGY COMMISSION**

**REGULATION NO. 18  
ARKANSAS AIR POLLUTION CONTROL CODE**



**INITIAL DRAFT  
mark-up**

Submitted to the PC&E Commission September 2009

EXHIBIT A

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## CHAPTER 1: TITLE AND PURPOSE

### Reg. 18.101 Title

The following rules and regulations, adopted pursuant to Subchapter 2 of the Arkansas Water and Air Pollution Control Act (Arkansas Code Annotated [A. C. A.] §§ 8-4-101 et seq.) shall be referred to as the “Arkansas Air Pollution Control Code,” hereinafter the “Air Code,” the “Code,” or “Regulation 18.”

### Reg. 18.102 Intent and Construction

- (A) Regulation 18 consists of those rules and regulations deemed necessary and desirable by the Commission for control of air pollution pursuant to its rulemaking mandates under State law [A.C.A. §§ 8-4-311 (b)(1) and 8-1-203(b)(1)]. Regulation 18 should be construed as consistent with the “Legislative Intent and Purpose” of air pollution control regulations set out in A.C.A. §§ 8-4-301--302, as those provisions apply to the Department’s permitting, enforcement, and administrative functions (A.C.A. § 8-1-202) and the Commission’s rulemaking and adjudicatory functions (A.C.A. § 8-1-203).
- (B) By authority of the same State law, the Commission has also adopted Regulation 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control (Regulation 19) and Regulation 26, Regulations of the Arkansas Operating Air Permit Program (Regulation 26) which deal exclusively with regulations compelled by federal mandates and which are to some extent federally enforceable. It is the specific intent of Regulation 18 to preclude federal enforceability of Regulation 18 requirements. Regulation 18 permits or permit conditions issued under its authority, or enforcement issues arising from Regulation 18 shall not be deemed to be federally enforceable.
- (C) To the extent consistent with state law and efficient protection of the State’s air quality, Regulation 18 shall be construed in a manner that promotes a streamlined permitting process, mitigation of regulatory costs, and flexibility in maintaining compliance with regulatory mandates. Any applicable documents (e.g. “White Papers,” regulatory preambles, or interpretive memoranda) issued by the EPA 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 18. 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.
- (D) In all applications of Regulation 18, the Department and Commission shall be guided to a resolution that categorically assures that:
  - (1) The least possible injury will be done to human, plant, or animal life, or to property;
  - (2) The public enjoyment of the State’s air quality resources will be maintained; and

- (3) The resolution is consistent with the economic and industrial well-being of the State.

**Reg. 18.103 Applicability**

These regulations are applicable to any source which emits or has the potential to emit any air contaminant as defined in Chapter 2 of Regulation 18.

**Reg. 18.104 Severability**

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

## CHAPTER 2: DEFINITIONS

When used in this Code:

**“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 air contaminants emitted from a stationary source considering emissions control equipment and actual hours of source operation or amount of material processed.

**“Air contaminant”** means any solid, liquid, gas, or vapor or any combination thereof. The following shall not be considered air contaminants: water vapor, oxygen, carbon dioxide, nitrogen, hydrogen, and inert gases.

**“Air contamination”** means the presence in the outdoor atmosphere of one (1) or more air contaminants which contribute to a condition of air pollution.

**“Air pollution”** means the presence in the outdoor atmosphere of one (1) or more air contaminants in quantities, of characteristics, and of a duration that are materially injurious or can be reasonably expected to become materially injurious to human, plant, or animal life or to property, or that unreasonably interfere with enjoyment of life or use of property throughout the state or throughout the area of the state as shall be affected thereby.

**“Commission”** means the Arkansas Pollution Control and Ecology Commission.

**“Conditions of air pollution”** as distinguished from “air pollution” in a given area shall be deemed to exist when the Director finds that the National Ambient Air Quality Standards, as established from time to time by the EPA, have been exceeded in such area, or when the Director finds that extraordinary measures are necessary to prevent them from being exceeded.

**“Conditions of episodic air pollution”** in a given area shall be deemed to exist when the Director finds that meteorological conditions are such as to minimize the normal dispersion of air contaminants and that the following levels are determined to exist in a given area and that such levels can be reasonably expected to persist for twelve (12) or more hours or increase unless control actions are taken:

Sulfur dioxide (SO<sub>2</sub>) of a concentration equal to or greater than 800 µg/m<sup>3</sup> (1.3 ppm) for any 24 hour average (where µg/m<sup>3</sup> means micrograms per cubic meter and where ppm means parts per million), or where particulate matter (PM) of a concentration equal to or greater than 375 µg/m<sup>3</sup> for any 24 hour average or where the coefficient of haze (COH) is equal to or greater than 3.0 for any 24 hour average, or where the product of SO<sub>2</sub> and PM reported in µg/m<sup>3</sup> for any 24 hour average exceeds 65,000.

**“Control apparatus”** means any device which prevents, controls, detects, or records the emission of any air contaminant.

**“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 Department, or its successor, acting directly or through the staff of the Department.

**“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 an air contaminant 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.

**“Fuel burning equipment”** means equipment, the primary purpose of which is the production of thermal energy from the combustion of fuel by indirect heat transfer.

**“Flue”** or **“stack”** means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

**“Fugitive emissions”** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

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

**“Garbage”** means rejected food waste including waste accumulation of animal, fruit, or vegetable matter used or intended for food or that attend the preparation, use, cooking, dealing in or storage of meat, fish, fowl, fruit, or vegetable.

**“Incinerator”** means all devices by which garbage, refuse, or other combustible material is reduced in volume by a combustion process in which the fuel/air ratio is or can be controlled so that the remaining solid residues contain little or no combustible material.

**“National Ambient Air Quality Standards”** means those ambient air quality standards promulgated by the EPA in 40 CFR Part 50 which are in effect as of the effective date of this Regulation.

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

**“Open fire”** or **“open burning”** means a fire in which a material is burned in the open or in a receptacle having no means for significantly controlling the fuel/air ratio.

**“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”** or **“PM”** means any airborne finely divided solid or liquid material with an aerodynamic diameter equal to or less than 100 micrometers.

**“PM<sub>10</sub>”** 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 as modified February 12, 1998, or by an equivalent method designated in accordance with 40 CFR Part 53.”

**“Potential to emit”** means the maximum capacity of a stationary source to emit air contaminants under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit an air contaminant, 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 practically enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

**“Refuse”** means any combustible waste material containing carbon in a free or combined state, other than liquid or gases.

**“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 a 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 as of July 1, 1997, or the regulations promulgated thereunder are concerned; and

The designated representative for any other purposes under Part 70.

**“Salvage”** means an operation conducted in whole or in part for the reclaiming of any product or material.

**“Shutdown”** means the cessation of operation of equipment.

**“Startup”** means the setting in operating of equipment.

**“Stationary source”** means any building, structure, facility, or installation which emits or may emit any air contaminant.

**“Title I modification”** means any modification as defined under any regulation promulgated pursuant to Title I of the federal Clean Air Act as of July 2, 2008. 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.

**“Trade waste”** means any solid, liquid, or gaseous material resulting from construction of the prosecution of any business, trade or industry, or any demolition operation including, but not limited to, plastics, cardboard cartons, grease, oil, chemicals, and cinders.

**“Total suspended particulate”** or **“TSP”** means particulate matter as measured by the method described in Appendix B of 40 Code of Federal Regulations (CFR) Part 50.

## CHAPTER 3: PERMITS

### Reg. 18.301 Applicability

#### (A) General Applicability

No person shall cause or permit the operation, construction, or modification of a stationary source, which actually emits:

- 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;
- 25 tons per year or more of particulate matter;
- 15 tons per year or more of PM<sub>10</sub>
- 0.5 tons per year or more of lead;
- 2.0 ton per year or more of any single hazardous air pollutant;
- 5.0 tons per year or more of any combination of hazardous air pollutants; or
- 25 tons per year or more of any other air contaminant

without first obtaining a permit from the Department.

#### (B) Special Applicability

Except as provided for by law or regulation, the following stationary sources are required to obtain a permit under this chapter regardless of emissions:

- (1) Any stationary source that the Director determines should obtain a permit in order to protect the public health and welfare or to assist in the abatement or control of air pollution; or
- (2) Any class of stationary sources for which the Director has determined that the intrinsic nature of the source's operation and/or actual emissions is such that a permit is necessary for the protection of public health and welfare or to assist in the abatement or control of air pollution. Such sources include but are not limited to:
  - (a) Medical waste incinerators;

- (b) Rendering plants;
  - (c) Pathological waste incinerators, including crematories;
  - (d) Chemical process plants;
  - (e) Hazardous waste treatment storage or disposal facilities;
  - (f) Sour gas process plants;
  - (g) Lead acid battery recycling facilities; or
  - (h) Charcoal plants.
- (3) Any source subject to the requirements of a rule promulgated under 40 CFR Part 60, Part 61, or Part 63 as of June 27, 2008, except for:
- (a) 40 CFR Part 60, Subpart AAA (Wood Stoves);
  - (b) 40 CFR Part 60, Subpart JJJ (Petroleum Dry Cleaners);
  - (c) 40 CFR Part 63, Subpart M (Perchloroethylene Dry Cleaners);
  - (d) 40 CFR Part 63, Subpart Q (Industrial Cooling Towers);
  - (e) Sources subject to 40 CFR Part 60, Subpart Dc (Steam Generating Units) which only burn gas;
  - (f) 40 CFR Part 63, Subpart ZZZZ (Stationary Reciprocating Internal Combustion Engines) for non-Part 70 sources (minor sources);
  - (g) 40 CFR Part 63, Subpart WWWW (Hospital Ethylene Oxide Sterilizers);
  - (h) 40 CFR Part 63, Subpart CCCCCC (Gasoline Dispensing Facilities);
  - (i) 40 CFR Part 60, Subpart IIII (Stationary Compression Ignition Internal Combustion Engines) for engines with a displacement of less than 30 liters per cylinder;
  - (j) 40 CFR Part 60, Subpart JJJJ (Stationary Spark Ignition Internal Combustion Engines); and
  - (k) 40 CFR Part 63, Subpart HHHHHH (Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources).

### **Reg. 18.302 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 and without causing air pollution.

### **Reg. 18.303 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. 18.304 Required Information**

#### **(A) General**

Application of 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 air pollutants to be emitted by the stationary source or by associated mobile sources; 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. 18.305 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 EPA pursuant to §§111, 112, and 114 of the Clean Air Act as amended by February 15, 1999;
- (3) the stationary source will be constructed or modified to operate without causing air pollution;
- (4) the stationary source will be constructed or modified to incorporate the appropriate control technology, if any, developed for the kind and amount of federally regulated air pollutant emitted by the facility;
- (5) the stationary source will be constructed or modified to operate without resulting in a violation of any applicable provisions of this regulation;
- (6) the emission rate calculations are complete and accurate; and
- (7) 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**

If the Department initially determines the requirements of Reg. 18.304(A) are met, they shall prepare a draft permit which:

- (1) contains such conditions as the Department may prescribe, to prevent, control, or abate air pollution;
- (2) addresses all recognized air pollutant emissions and all pollutant emitting equipment at the stationary source except pollutants or equipment specifically exempt;

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.

The public shall have an opportunity to comment on the Department's proposed permit decision in accordance with Reg. 18.305.

**(C) Final Action**

At the conclusion of the public comment period, the Department shall announce in writing its final permit decision.

## **Reg. 18.306 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**

- (1) For purposes of this section, opportunity to comment shall include, at a minimum:
  - (a) 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;
  - (b) 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);
  - (c) 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;
  - (d) A copy of the notice, required pursuant to this subsection, shall be sent to the owner/operator and to the:
    - (i) mayor of the community where the stationary source is proposed to be constructed or modified;
    - (ii) county judge of the county where the stationary source is proposed to be constructed or modified; and
  - (e) 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 making its final decision.
- (2) 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. 18.307 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 at 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.
    - (i) "Disclosure statement" means a written statement by the applicant which contains:
- (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 modification to a facility will be considered *De Minimis* if:
- (a) minimal judgment is required to establish the permit requirements for the modification; and
  - (b) the modification will result in a trivial environmental impact.
- (2) The environmental impact of a proposed modification generally will be considered trivial if the potential emissions from the modification alone, without taking into account any corresponding emission reductions, will either:
- (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 dioxide, sulfur dioxide, or volatile organic compounds;
    - (iii) one-half (0.5) a ton per year of lead;
    - (iv) twenty five (25) tons per year of particulate matter; and
    - (v) fifteen (15) tons per year of PM<sub>10</sub> emissions
  - (b) or, result in an air quality impact less than:

Pollutant	<i>De Minimis</i> Concentration	Averaging Time
carbon monoxide	500 µg/m <sup>3</sup>	8-hour

nitrogen dioxide	10 $\mu\text{g}/\text{m}^3$	annual
PM <sub>10</sub>	8 $\mu\text{g}/\text{m}^3$	24-hour
sulfur dioxide	18 $\mu\text{g}/\text{m}^3$	24-hour
lead	0.1 $\mu\text{g}/\text{m}^3$	3-month

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

### **Reg. 18.308 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 July 30, 1969, and have not been modified since, will not be required to obtain a permit under this chapter.

#### **(C) Regulation 26 Sources**

A stationary source subject to the permitting requirements of Regulation 26 and the requirements of this chapter, will only be required to obtain one permit which shall also contain the requirements unique to this regulation.

#### **(D) Regulation 19 Sources**

A stationary source subject to the permitting requirements of Regulation 19 and the requirements of this chapter, will only be required to obtain one permit which shall also contain the requirements unique to this regulation.

### **Reg. 18.309 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. 18.310 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. 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. 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 a 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. The Department will give notice of all applications for general permits pursuant to A.C.A. §8-4-203(c).

**Reg. 18.311 Transition**

Facilities which are now subject to this regulation and were not previously subject to this regulation shall be in full compliance 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. 18.312 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. 18.313 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 as amended by July 2, 2008;
- (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 the Department allows for emergencies. The source and the 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. 18.314 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 emissions 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 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. 18.315 Registration**

- (A) No person shall cause or permit the operation, construction, or modification of a stationary source, whose actual emissions are:
- (1) 40 tons per year or more but less than 75 tons per year of carbon monoxide;
  - (2) 25 tons per year or more but less than 40 tons per year of nitrogen oxides;
  - (3) 25 tons per year or more but less than 40 tons per year of sulfur dioxide;
  - (4) 25 tons per year or more but less than 40 tons per year of volatile organic compounds;

- (5) 15 tons per year or more but less than 25 tons per year of particulate matter;
- (6) 10 tons per year or more but less than 15 tons per year of PM<sub>10</sub>;
- (7) 1.0 ton per year or more but less than 2 tons per year of any single hazardous air pollutant; or
- (8) 3.0 tons per year or more but less than 5 tons per year of an combination of hazardous air pollutants

without first having registered the source with the Department.

(For the purpose of Reg. 18.315(A) “modification” shall mean any physical change in or change in the method of operation of a stationary source which increases the emission rates of any air pollutant, specified above, previously registered with the Department or results in the emission of an air pollutant not previously emitted and registered with the Department.)

- (B) Such registration shall be made on such forms and contain such information as the Department may reasonably require, including but not limited to:
  - (1) the name and address of the facility;
  - (2) an estimate of emissions from the facility; and
  - (3) an explanation of how the emissions estimate was determined.
- (C) Such registration does not affect the responsibility of the owner/operator to comply with applicable portions of this regulation.
- (D) A facility may construct, operate, or modify a source subject to registration under this section immediately upon submittal of the registration.
- (E) Sources registered under this section shall pay an annual fee of \$200. The requirements of Chapter 3 of the Arkansas Pollution Control and Ecology Commission’s Regulation 9, Permit Fee (Regulation 9) shall apply to fees collected under this section.
- (F) Sources currently holding permits but whose emissions are below the permitting thresholds in Reg. 18.301, and above the registration thresholds under Reg. 18.315(A) may elect to continue to operate under their existing permit or they may submit a

- (G) A source otherwise required to be registered under this section may instead choose to operate under a permit issued in accordance with Reg. 18.302.

**CHAPTER 4: [RESERVED]**

## CHAPTER 5: VISIBLE EMISSIONS

### Reg. 18.501 Visible Emissions Limitations

- (A) No person shall cause or permit visible emissions (other than uncombined water vapor) from equipment to exceed the limitations of this section except as specifically provided within this Code. More stringent limitations on individual pieces of equipment may be imposed by the Department in applicable permits due to control requirements or control apparatus, corresponding emission limitations and/or applicable national standards.
- (1) For equipment installed on or before January 30, 1972, emissions shall not exceed 40% opacity, except that emissions greater than 40% opacity will be allowed for not more than six (6) minutes in the aggregate in any consecutive 60 minute period, provided such emissions will not be permitted more than three (3) times during any 24 hour period.
  - (2) For equipment installed or modified after January 30, 1972, emissions shall not exceed an opacity greater than 20% except as described in (A)(3) below.
  - (3) Notwithstanding (A)(2) if this subsection, for wood, coal or oil fired boilers installed or modified after January 30, 1972, emissions shall not exceed 20% opacity, except that emissions of opacity greater than 20%, but not exceeding 60%, will be allowed for not more than six (6) minutes in the aggregate in any consecutive 60 minute period, provided such emissions will not be permitted more than three (3) times during any 24 hour period.
  - (4) Wood fired boilers shall meet all visible emissions of this chapter except that visible emissions may exceed the permitted opacity for up to 45 minutes once in any consecutive 8 hour period, three times in any consecutive 24 hour period for soot blowing, grate cleaning, ash raking, and refiring necessary for proper operation of these units. This practice is to be scheduled for the same specific time each day and shall be recorded. The Department shall be notified in advance and in writing of the schedule or any changes. The process of soot blowing, grate cleaning, ash raking, and refiring or any part thereof is considered one activity and the time limit on this activity is 45 minutes.
- In determining the emissions of a source for purposes of demonstrating air pollution will not occur, the Department shall take into account any incremental increase in allowable emissions under these conditions.
- (B) Opacity of visible emissions shall be determined using EPA Method 9 (40 CFR Part 60, Appendix A as of July 1, 1997).
- (C) As used in this subsection, the term "existing equipment" means equipment which was installed and in operation as of January 30, 1972, or equipment for which a permit has

- (D) The emission limitations of this section shall not apply to the following conditions and activities:
- (1) The start-up of a new fire in an incinerator used exclusively for the disposal of woodwaste or the waste from cotton gins, provided that start-up does not exceed thirty minutes and provided, further, that there is only one such start-up per day;
  - (2) The application of fertilizers, pesticides, and defoliants;
  - (3) The use of mobile and portable equipment in the clearing, grading, or plowing of land;
  - (4) The application of base or surface materials to roads, runways, parking lots, and similar facilities;
  - (5) The use of agricultural equipment in the planting, cultivating, or harvesting of crops, or in the feeding of animals or fowls;
  - (6) The non-commercial preparation of food and to the use of outdoor fireplaces used in connection with any residence;
  - (7) The use of incinerators and heating equipment used in connection with residences used exclusively as dwellings for not more than four families; and
  - (8) The use of portable incinerators used for the disposal of debris from demolition and land clearing operations.
- (E) The owner or operator of equipment may petition the Director for an emission limitation less stringent than that provided in Reg. 18.501(A) provided, however, that such petition if filed not more than six months after commencement of operation of equipment for which a permit has been issued by the Director and, provided further, that such equipment is in compliance with all provisions of the Air Code except those of Reg. 18.501(A). The petition shall contain such information as the Director may reasonably require. Upon review of the petition and any other evidence before him or her, the Director may require additional information; grant the relief sought in the petition; or establish an emission limitation other than that sought by the petitioner; provided that the Director affirmatively finds full compliance with all other provisions of the Air Code, and that full compliance with provisions of this section is technically or economically infeasible. The petitioner shall be notified of the Director's decision within a reasonable time.

## CHAPTER 6: EMISSIONS FROM OPEN BURNING

### Reg. 18.601 Intent

In order to avoid conflicting and overlapping jurisdiction, it is the intention of this chapter to clarify the position that the Department occupies the field of control and abatement of air pollution and contamination; and no political subdivision of this state shall enact or enforce laws, ordinances, resolutions, rules or regulation in this field, unless such laws, ordinances, resolutions, rules or regulations are for the purpose of prohibiting burning in the open or in a receptacle having no means for significantly controlling the fuel/air ratio.

### Reg. 18.602 General Prohibition

No person shall cause or permit the open burning of refuse, garbage, trade waste, or other waste material, or shall conduct a salvage operation by open burning.

### Reg. 18.603 Exemptions

The provisions of Reg. 18.602 herein shall not apply to the following activities:

- (A) Fires used for the non-commercial cooking of food or for ceremonial or recreational purposes, including barbecues and outdoor fireplaces used in connection with any residence;
- (B) Open burning related to agricultural activities including, but not limited to, clearing previously uncultivated lands and burning of stubble and other debris on previously harvested fields; provided however, that this exemption shall not be extended to the disposal, by open burning, of waste products generated by cotton gins, or similar equipment used in a manufacturing process or to the disposal by open burning of fowls or animals;
- (C) Controlled fires used for purposes of forest and wildlife management, provided that such fires are used and burned when winds are blowing away from populated areas which might be affected;
- (D) Controlled fires used only for purposes of on-site land clearing operations;
- (E) Smokeless flares or safety flares from the combustion of waste gases, provided that all other applicable provisions of this Code are complied with;
- (F) Open burning of the site or origin of waste hydrocarbon products from oil exploration, development, or production, or from natural gas processing plants, or from materials spilled or lost from pipeline breaks, where, because of the isolated location, such waste products cannot be reclaimed, recovered, or disposed of lawfully in any other manner;
- (G) Fires set or authorized by any public officer, board, council, or commission when the fire is set or permission to burn is given in the performance of the duty of the officer for the

purpose of weed abatement, or the prevention or elimination of a fire hazard; or fires set for the purposes of the instruction in methods of firefighting or for civil defense instructions;

- (H) Open burning incident to on-site clean-up operations resulting from transportation accidents where, because of the isolated location, the material to be burned cannot be reclaimed or recovered, or where there is no other practical, safe, or lawful method of disposal; provided, however, that the Director shall be notified of the exact location, and the nature and quantities of materials to be burned prior to ignition; and provided, further, that such burning shall be conducted in accordance with the written approval of the Director. At his or her election, the Director's approval may be delivered by telephone, and confirmed, thereafter, in writing, in the case of an emergency; and
- (I) Open burning of any material not elsewhere specifically prohibited or exempted in this chapter and for which there is no practical, safe, or lawful means of disposal; except that no person shall cause or permit such open burning without first obtaining a letter of authorization for open burning from the Director in accordance with the provisions as set forth in Reg. 18.605.

#### **Reg. 18.604 Conditions of Air Pollution**

During conditions of air pollution, when declared by the Director to exist in any area of the State, all open burning in such area which otherwise is exempted in this Section, shall be discontinued as set forth herein, unless otherwise is specifically provided in the Director's public announcements pursuant to the provisions of Chapter 14 of this Code.

- (A) Conditions of air pollution as defined in Chapter 2 of this Code -- Open burning as provided in Reg. 18.603(B)(C)(F) and (H) shall be discontinued until such conditions have been declared by the Director to have ceased to exist. The Department may limit the scope of such discontinuance to one or more of the activities as provided in Reg. 18.603(B)(C)(F) and (H) if it finds that the conditions of air pollution are primarily caused by such activity.
- (B) Conditions of episodic air pollution as defined in Chapter 2 of this Code -- Open burning as provided in Reg. 18.603(B)(C)(F) and (G) shall be discontinued upon public announcement by the Director, until such time that the Director declares such conditions have ceased to exist. The Director may limit the scope of such discontinuance to one or more of the activities if he or she finds that the conditions of air pollution are caused primarily by such activity.
- (C) The prohibition of open burning pursuant to the provisions of Reg. 18.604 shall be in effect as of January 30, 1972, except that such prohibition shall not be applicable to Reg. 18.603(B) of this chapter until July 15, 1973.
- (D) The Director may permit open burning during the existence of a condition of air pollution under conditions described in Reg. 18.603(F)(G) and (H) if the Director, after consultation with public safety officials in the locality in question, determines that such

- (E) The statutory authority of the Department to grant variances and permits is in no way limited by this chapter.

**Reg. 18.605 Open Burning Authorizations Permits**

Upon application, the Department shall issue letters of authorization permits for open burning, provided that the applicant affirmatively demonstrates to the satisfaction of the Department, that there are no practicable, safe, and lawful alternative methods of disposal and that open burning is absolutely necessary and in the public interest and provided, further, that said applications contain such other information as the Department may reasonably require. Only letters of authorization permits issued by the Department satisfy this chapter. Open burning permits may also be required by the local public officers, boards, councils, or commissions for safety or other purposes; however, those permits do not satisfy the requirement to obtain an authorization a permit under this chapter.

## CHAPTER 7: EMISSIONS OF AIR CONTAMINANTS FROM MOBILE EQUIPMENT

### Reg. 18.701 Emissions from Mobile Equipment

- (A) Any person owning or operating a motor vehicle including, but not limited to automobiles and trucks, incorporating a system for the control or emissions from the crankcase or exhaust system, or for the control or evaporative emissions, shall maintain the system in good operable condition and shall use it at all times that the vehicle is operated. The operator of such vehicle shall not intentionally make the system inoperable and shall not remove it except to install a proper replacement.
- (B) No person shall cause or permit the emission of an air contaminant from a motor vehicle including, but not limited to, automobiles and trucks of a density exceeding 30% opacity, except during acceleration and gear shifting for periods not to exceed 5 seconds. Where the presence of an uncombined water is the only reason for failure of an emission to comply herewith, this subsection shall not apply.
- (C) Railroad locomotives shall be maintained and operated such as to minimize visible emissions.
- (D) The provisions of this chapter shall not be applicable to the emission of air contaminants from motor exhaust of tractors, graders, earthmovers, or other mobile and portable equipment used exclusively in land clearing, agricultural, or road building operations; provided, however, that prime movers used for the transportation of said portable and mobile equipment shall not be exempt.

## **CHAPTER 8: EMISSION OF AIR CONTAMINANTS SUCH AS TO CONSTITUTE AIR POLLUTION**

### **Reg. 18.801 Prohibition of the Emission of Air Contaminants Such as to Constitute Air Pollution**

No person shall cause or permit the emission of air contaminants, including odors or water vapor and including an air contaminant whose emission is not otherwise prohibited by this Code, if the emission of the air contaminant constitutes air pollution.

## CHAPTER 9: CONTROL OF FUGITIVE EMISSIONS

### Reg. 18.901 Prohibitions

- (A) No person shall cause or permit the handling, transporting, or storage of any material in a manner which allows or may allow unnecessary amounts of air contaminants to become airborne.
- (B) No person shall cause or permit any building or its appurtenances to be constructed, altered, used, repaired, or demolished without applying all such reasonable measures as may be required to prevent unnecessary amounts of particulate matter from becoming airborne.

## **CHAPTER 10: SAMPLING, MONITORING, AND REPORTING REQUIREMENTS**

### **Reg. 18.1001 Purpose**

The purpose of this chapter is to generally define the powers of the Department in requiring sampling, monitoring, and reporting requirements at stationary sources. The Department shall enforce all properly incorporated and delegated federal testing requirements at a minimum, and the Department reserves the right to require additional sampling, monitoring, and reporting requirements not already required in federal regulations. Any credible evidence based on sampling, monitoring, and reporting may be used to determine violations of applicable emission limitations.

### **Reg. 18.1002 Air Emissions Sampling**

Any stationary source subject to this regulation shall be subject to the following requirements:

- (A) To provide any sampling ports, at the request of the Department, required for air emissions sampling, including safe and easy access to such ports.
- (B) To conduct air contaminant emissions sampling, at the request of the Department, to determine the rate, opacity, composition, and/or contaminant concentration of the emissions. All compliance testing shall be done at the expense of the permittee by an independent firm, unless otherwise approved by the Department. Sampling shall not be required for those pollutants monitored with continuous emissions monitors.
- (C) All compliance testing averaging times shall be consistent with the averaging times of the applicable emissions limitations stated in the applicable permit, which in no case shall be greater than the minimum averaging times of the applicable National Ambient Air Quality Standard.
- (D) Unless otherwise approved by the Department, all air contaminant emissions sampling shall be performed with the equipment being tested operating at least at 90% of its permitted capacity. Emissions results shall be extrapolated to correlate with 100% of permitted capacity to determine compliance.
- (E) Any equipment that is to be tested, at the request of the Department, shall be tested in accordance with the following time frames:
  - (1) Equipment to be constructed or modified shall be tested within 60 days after achieving its maximum permitted production rate, but no later than 180 days after its initial start-up.
  - (2) Equipment already operating shall be tested according to the time frames set forth by the Department.

The Department shall require that all applicable testing be performed using the methods described in 40 CFR Part 60, Appendix A. The Department may approve, at its discretion, alternative sampling methods that are equivalent to the specified methods. The results of such tests shall be submitted to the Department within the time frame and on such forms as required by the Department and federal regulations. The owner or operator of the equipment shall retain the results of such tests for at least 5 years, and shall make the results available to any agents of the Department or the EPA during regular business hours.

#### **Reg. 18.1003 Continuous Emissions Monitoring**

Any stationary source subject to this regulation shall, upon request by the Department:

- (A) Install, calibrate, operate, and maintain equipment or continuously monitor air contaminant emissions in accordance with applicable performance specifications in 40 CFR Part 60, Appendix B, and quality assurance procedures in 40 CFR Part 60, Appendix F as of July 1, 1997, or other methods and conditions that the Department shall approve. Any source listed in a category in 40 CFR Part 51, Appendix P or 40 CFR Part 60 shall adhere to all continuous emissions monitoring requirements stated therein, if applicable.
- (B) Report the data collected by the monitoring equipment to the Department at such intervals and on such forms as the Department shall prescribe, in accordance with 40 CFR Part 51, Appendix P, Section 4.0 (Minimum Data Requirements) as of July 1, 1997, and any other applicable reporting requirements promulgated by the EPA.

#### **Reg. 18.1004 Recordkeeping/Reporting Requirements**

Any stationary source subject to this regulation shall, upon request of the Department:

- (A) Maintain records on the nature and amounts of contaminants emitted to the air by the equipment in question. All records, including compliance status records and excess emissions measurements, shall be retained for at least 5 years, and shall be made available to any agent of the Department or the EPA during regular business hours. Reporting periods shall be a 12 month period.
- (B) Supply the following information, correlated in units of the applicable emissions limitations, to the Department:
  - (1) general process information related to the emissions of contaminants into the air; and
  - (2) emissions data obtained through sampling or continuous emissions monitoring.

Information and data shall be submitted to the Department by a responsible official on such forms and at such time intervals as prescribed by applicable federal regulations or the Department.

**Reg. 18.1005 Public Availability of Emissions Data**

Emissions data obtained by the Department shall be correlated in units of applicable emissions limitations and be made available to the public at the Department's central offices during normal business hours.

## **CHAPTER 11: STARTUP/SHUTDOWN, UPSET CONDITIONS, BREAKDOWNS, SCHEDULED MAINTENANCE, INTERRUPTION OF FUEL SUPPLY**

### **Reg. 18.1101 Upsets**

Any source exceeding an emission limit established by this Code or applicable permit, shall be deemed in violation of said Code or permit and shall be subject to enforcement action. The Director may forego enforcement action for emissions exceeding any limits established by this Code or permit as a direct result of unavoidable upset conditions in the nature of the process, or unavoidable and unforeseeable breakdown of any air pollution control equipment or related operating equipment, or as a direct result of shutdown or start-up of such equipment for necessary scheduled maintenance, provided that all reasonable measures have been taken to immediately minimize or eliminate the excess emissions and the following requirements are met:

- (A) Such occurrence, in the case of unavoidable upset in or breakdown of equipment, shall have been reported to the Director by the end of the next business day after the occurrence.
- (B) The person responsible for such emissions shall submit to the Director, at his or her request, a full report of such occurrence, including a statement of all known causes and of the scheduling and nature of the actions to be taken to minimize or eliminate future occurrences, including, but not limited to, action to reduce the frequency of occurrence of such conditions, to minimize the amount by which said limits are exceeded, and to reduce the length of time for which said limits are exceeded.
- (C) In the case of a shutdown for necessary scheduled maintenance, the intent to shutdown shall be reported to the Director at least twenty-four (24) hours prior to the shutdown; provided, however, that the exception provided by this subsection shall only apply in those cases where maximum reasonable effort has been made to accomplish such maintenance during periods of non operation of any related source operation or where it would be unreasonable or impossible to shut down the source operation during the maintenance period.
- (D) The person responsible for such emissions shall have submitted to the Department for its approval prior to April 30, 1972, either as a part of its permit application, if a new source, or on a separate application for existing sources, a schedule of those precautionary devices and procedures designed to minimize such occurrences as are described in Reg. 18.110(A); said application shall be on such forms and shall contain such information as the Department may reasonably require; said application shall have been approved by the Department and not therefore withdrawn; and said equipment is being operated within the terms of the application as approved, at the time of such occurrence.
- (E) Demonstrates to the satisfaction of the Department that the emissions resulted from:

- (1) equipment malfunction or upset condition and are not the result of negligence or improper maintenance; and
- (2) physical constraints on the ability of a source to comply with the emission standard, limitation or rate during startup or shutdown.

And that all reasonable measures have been taken to immediately minimize or eliminate the excess emissions.

#### **Reg. 18.1102 Fuel Curtailment**

Any person responsible for the operation of any equipment operating in compliance with the provisions of this Code but which can reasonably anticipate periods of non-compliance due to change of fuels, or lack thereof, shall file with the Department, for its approval prior to April 30, 1972, and on such forms and containing such information as the Department may reasonably require, an application which demonstrates to the Department's satisfaction:

- (A) The nature and frequency of such anticipated periods of non-compliance;
- (B) That such alterations in fuel supply are beyond the control of said person, firm, or corporation;
- (C) That said person, firm, or corporation has, or will, incorporate all reasonable steps to minimize the frequency of such periods of non-compliance and to minimize the degree of non-compliance during such periods; and
- (D) That such person, firm, or corporation has, or will, take such measures as may be necessary, to insure full or substantial compliance with all provisions of the Code during periods of episodic air pollution. Such required measures may include but need not be limited to the maintenance of an emergency fuel supply, and/or provisions for shutdown or curtailment of production.

#### **Reg. 18.1103 Conditions of Air Pollution**

Except for those persons who have filed for and received Department approval of applications submitted pursuant to the provisions of Reg. 18.1101 or Reg. 18.1102 hereof, the exceptions granted in said sections shall not be extended and shall be considered inapplicable during the existence of conditions of air pollution, as declared by the Director pursuant to provisions of Reg. 18.604 if the affected sources are located in the area in which a condition of air pollution is so declared.

#### **Reg. 18.1104 Department's Authority**

Nothing provided herein shall be construed to limit the Department's authority to require the installation and maintenance of control equipment as a condition of the granting of a permit or approval of an application.

### **Reg. 18.1105 Emergency Conditions**

An “emergency” means any situation arising from the sudden and reasonably unforeseeable events beyond the control of the source, including natural disasters, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the upset condition. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

- (A) An emergency constitutes a complete affirmative defense to an action brought for noncompliance with such technology-based limitations if the following conditions are met. The affirmative defense of emergency shall demonstrate through properly signed contemporaneous operating logs, or such other relevant evidence that:
  - (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
  - (2) The permitted facility was at the time being properly operated;
  - (3) During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
  - (4) The permittee submitted notice of the upset condition to the Department by the end of the next business day after the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.
  
- (B) [RESERVED]

## **CHAPTER 12: CIRCUMVENTION**

### **Reg. 18.1201 Circumvention**

Unless prior written approval is obtained from the Director, no person shall build, erect, install, or use any article, machine, equipment, or other contrivance, the sole purpose of which is to dilute or conceal an emission without resulting in a reduction of the total amount of air contaminants emitted to the atmosphere. This rule does not apply to the control of odors or to the installation of stacks for which a permit has been issued as provided in Chapter 3 of this Code.

## **CHAPTER 13: AUTHORITY TO DEAL WITH EXTRAORDINARY CONDITIONS**

### **Reg. 18.1301 Authority**

Within areas of high source density or higher receptor density and/or within areas affected by levels of air contamination, which, due to their intensity and/or duration, threaten to constitute a significant departure from the National Ambient Air Quality Standards, the Department may prescribe air quality control requirements that are more restrictive and more extensive than those provided in the regulations of general application within said areas. Such requirements may be kept in effect for such period and to such extent the Department deems necessary to adequately deal with such conditions.

### **Reg. 18.1302 Notification and Reporting Requirements**

- (A) The owner or operator of any stationary source shall, upon notification from the Department, maintain records of the nature and amounts or emissions from such source and/or any other information as may be deemed necessary by the Department to determine whether such source is in compliance with applicable emission limitations or other control measures.
- (B) The information recorded shall be summarized and reported to the Department on forms furnished by the Department, and shall be submitted within 45 days after the end of the reporting period. Reporting periods are January 1-June 30 and July 1-December 31, except that the initial reporting period shall commence on the date the Department issued notification of the record-keeping requirements.
- (C) Information recorded by the owner or operator and copies of the summarizing reports submitted to the Department shall be retained by the owner or operator for 2 years after the date on which the pertinent report is submitted.
- (D) Emission data obtained from owners or operators of stationary sources will be correlated with applicable emission limitations and other control measures and will be available to the public during normal business hours at the Department office in North Little Rock.

## CHAPTER 14: PUBLIC INFORMATION AND CONFIDENTIALITY

### Reg. 18.1401 Public Notification

In the event the Director finds the existence of a condition of air pollution pursuant to Chapter 2 of this Code or of episodic air pollution pursuant to Chapter 2 of this Code, or the Department imposes extraordinary air quality control requirements pursuant to Reg. 18.1301, the Director shall summarize the conditions and the actions taken in response thereto and make said summary available to the news media and to the public, and shall continue to publish such summaries at regular intervals throughout the duration of said conditions and the actions.

### Reg. 18.1402 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. 18.1402(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."

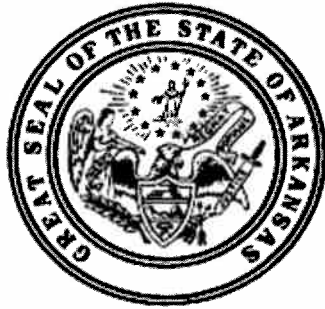
If an applicant anticipates numerous permit modifications that may involve regulatory review of trade secrets, it may submit an omnibus affidavit establishing the prerequisites of Reg. 18.1402(A)(1) and (2) and reference this document in future confidentiality claims.

- (C) Confidentiality claims shall be afforded interim protected status until the Department determines whether the requirements of Reg. 18.402(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.

ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION



REGULATION NO. 18

APPENDIX A

INSIGNIFICANT ACTIVITIES LIST

## **CHAPTER 15: EFFECTIVE DATE**

### **Reg. 18.1501 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.

## 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 New Source Performance Standards [NSPS], National Emissions Standards for Hazardous Air Pollutants [NESHAPs], 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 million British thermal units (MMbtu) per hour, provided that the aggregate pollutant specific emissions from all such units listed as insignificant do not exceed 5 tons per year (tpy) of any combination of HAPs and 10 tpy of any other 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 pounds-force per square inch absolute (psia), provided that the aggregate 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 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 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 pollutant.
4. Caustic storage tanks that contain no Volatile Organic Compounds (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 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 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, containing less than 0.4 pounds per gallon (lb/gal) VOCs, any hexavalent chromium, or that emit 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 pollutant regulated under this regulation or less than 2 tpy of a single HAP<sup>1</sup> or 5 tpy of any combination of HAPs.
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 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:
  - (A) of equal or smaller capacity than the primary operating unit;
  - (B) cannot be used in conjunction with the primary operating unit; and
  - (C) 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 insure compliance with any applicable law or regulation provided that the emissions are 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.

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<sup>1</sup> 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.

## 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, upkeep, 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.<sup>2</sup>
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.<sup>3</sup>
  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.<sup>4</sup>
  19. Air compressors and pneumatically operated equipment, including hand tools.
  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.<sup>5</sup>
  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 nonvolatile 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.

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<sup>2</sup> 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.

<sup>3</sup> “Moved by hand” means that it can be moved by one person without assistance of any motorized or non-motorized vehicle, conveyance, or device.

<sup>4</sup> 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.

<sup>5</sup> 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.

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.
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, 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 or 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.

