

Title 8. Environmental Law

Chapter I. Arkansas Pollution Control and Ecology Commission, Department of Energy and Environment

Subchapter D. Air Quality

Part 40. Arkansas Air Pollution Control Code

Subpart 1. General Provisions

8 CAR § 40-101. Title.

This part, adopted pursuant to Subchapter 2 of the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., shall be referred to as the "Arkansas Air Pollution Control Code", hereinafter the "Air Code", the "code", or "Part 40".

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-102. Intent and construction.

(a)(1) Part 40 consists of those rules deemed necessary and desirable by the Arkansas Pollution Control and Ecology Commission for control of air pollution pursuant to its rulemaking mandates under state law, Arkansas Code §§ 8-4-311(b)(1) and 8-1-203(b)(1).

(2) Part 40 should be construed as consistent with the legislative intent and purpose of air pollution control regulations set out in Arkansas Code §§ 8-4-301 and 8-4-302, as those provisions apply to the Division of Environmental Quality's permitting, enforcement, and administrative functions, Arkansas Code § 8-1-202, and the commission's rulemaking and adjudicatory functions, Arkansas Code § 8-1-203.

(b)(1) By authority of the same state law, the commission has also adopted 8 CAR pt. 41, Rules of the Arkansas Plan of Implementation for Air Pollution Control, and 8 CAR pt. 42, Rules of the Arkansas Operating Air Permit Program, which deal exclusively with regulations compelled by federal mandates and which are to some extent federally enforceable.

(2)(A) It is the specific intent of this part to preclude federal enforceability of the requirements of this part.

(B) Part 40 permits or permit conditions issued under its authority, or enforcement issues arising from this part, shall not be deemed to be federally enforceable.

(c)(1) To the extent consistent with state law and efficient protection of the state's air quality, this part shall be construed in a manner that promotes:

(A) A streamlined permitting process;

(B) Mitigation of regulatory costs; and

(C) Flexibility in maintaining compliance with regulatory mandates.

(2) Any applicable documents, e.g., "White Papers", regulatory preambles, or interpretive memoranda, issued by the United States Environmental Protection Agency which are consistent with this policy and the legislative intent of state laws governing air pollution control, Arkansas Code § 8-4-301 et seq., are aids for construing the requirements of this part.

(3) Any procedure applicable to major sources that promotes operational flexibility are presumed to be authorized by this part unless manifestly inconsistent with its substantive terms.

(d) In all applications of this part, the division 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-103. Applicability.

This part is applicable to any source which emits or has the potential to emit any air contaminant as defined in 8 CAR § 40-105.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-104. Severability.

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

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-105. Definitions.

When used in this part:

(1) "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;

(2)(A) "Air contaminant" means any solid, liquid, gas, or vapor or any combination thereof.

(B) The following shall not be considered air contaminants:

- (i) Water vapor;
- (ii) Oxygen;
- (iii) Carbon dioxide;
- (iv) Nitrogen;
- (v) Hydrogen; and
- (vi) Inert gases;

(3) "Air contamination" means the presence in the outdoor atmosphere of one (1) or more air contaminants which contribute to a condition of air pollution;

(4) "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:

(A) Are materially injurious or can be reasonably expected to become materially injurious to human, plant, or animal life or to property; or

(B) 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;

(5) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(6) "Conditions of air pollution" as distinguished from "air pollution" in a given area shall be deemed to exist when the Director of the Division of Environmental Quality finds that the National Ambient Air Quality Standards, as established from time to time by the United States Environmental Protection Agency, have been exceeded in such area, or when the Director of the Division of Environmental Quality finds that extraordinary measures are necessary to prevent them from being exceeded;

(7) "Conditions of episodic air pollution" in a given area shall be deemed to exist when the Director of the Division of Environmental Quality 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:

(A) Sulfur dioxide (SO₂) of a concentration equal to or greater than eight hundred micrograms per cubic meter (800 µg/m³) (one and three-tenths parts per million (1.3 ppm)) for any twenty-four-hour average, or where particulate matter (PM) of a concentration equal to or greater than three hundred seventy-five micrograms per cubic meter (375 µg/m³) for any twenty-four-hour average or where the coefficient of haze (COH) is equal to or greater than three (3.0) for any twenty-four-hour average, or where the product of SO₂ and PM reported in µg/m³ for any twenty-four-hour average exceeds sixty-five thousand (65,000);

(8) "Control apparatus" means any device which prevents, controls, detects, or records the emission of any air contaminant;

(9) "Director" means the Director of the Division of Environmental Quality, or its successor, acting directly or through the staff of the Division of Environmental Quality;

(10)(A) "Division" means the Division of Environmental Quality, or its successor.

(B) When reference is made in this part to actions taken by or with reference to the Division of Environmental Quality, the reference is to the staff of the Division of Environmental Quality acting at the direction of the Director of the Division of Environmental Quality;

(11) "EPA" means the United States Environmental Protection Agency;

(12) "Equipment" means any:

(A) Device, except equipment used for any mode of vehicular transportation, capable of causing the emission of an air contaminant into the open air; and

(B) Any stack, conduit, flue, duct, vent, or similar device connected or attached to or serving the equipment;

(13) "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 part;

(14) "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;

(15) "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;

(16) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening;

(17) "Hazardous air pollutant" or "HAP" means any pollutant listed pursuant to Section 112 of the federal Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., as of the effective date of this part;

(18) "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:

- (A) Meat;
- (B) Fish;
- (C) Fowl;
- (D) Fruit; or
- (E) Vegetable;

(19) "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;

(20) "National Ambient Air Quality Standards" or "NAAQS" means those ambient air quality standards promulgated by the United States Environmental Protection Agency in 40 C.F.R. pt. 50 as of the effective date of the federal rule published by the United States Environmental Protection Agency in the Federal Register on January 15, 2013 (78 Fed. Reg. 3,086), as set forth in Appendix B of this part;

(21) "Opacity" means the degree to which air emissions reduce the transmission of light and obscure the view of an object in the background;

(22) "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;

(23) "Operator" means any person who leases, operates, controls, or supervises any equipment affected by this part;

(24) "Owner" means any person who has legal or equitable title to any source, facility, or equipment affected by this part;

(25) "Particulate matter" or "PM" means any airborne finely divided solid or liquid material with an aerodynamic diameter equal to or less than one hundred (100) micrometers;

(26) "PM_{2.5}" means particulate matter with an aerodynamic diameter less than or equal to a nominal two and one-half (2.5) micrometers as measured by a reference method based on Appendix L of 40 C.F.R. pt. 50, as of the effective date of the federal rule published by the United States Environmental Protection Agency in the Federal Register on October 17, 2006 (71 Fed. Reg. 61,144, 61,226), or by an approved regional method designated in accordance with Appendix C of 40 C.F.R. pt. 53;

(27) "PM₁₀" means particulate matter with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 C.F.R. pt. 50, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on August 7, 1987 (52 Fed. Reg. 29,467), or by an equivalent method designated in accordance with 40 C.F.R. pt. 53;

(28) "PM_{2.5} emissions" means PM_{2.5} emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. pt. 51, Appendix M, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on April 2, 2014 (79 Fed. Reg. 18,452), or by a test method specified in this part or any supplement thereto;

(29) "PM₁₀ emissions" means PM₁₀ emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 C.F.R. pt. 51, Appendix M, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on April 2, 2014 (79 Fed. Reg. 18,452), or by a test method specified in this part or any supplement thereto;

(30)(A) "Potential to emit" means the maximum capacity of a stationary source to emit air contaminants under its physical and operational design.

(B) Any physical or operational limitation on the capacity of the source to emit an air contaminate, 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.

(C) Secondary emissions do not count in determining the potential to emit of a stationary source;

(31) "Refuse" means any combustible waste material containing carbon in a free or combined state, other than liquid or gases;

(32) "Responsible official" means one (1) of the following:

(A) For a corporation:

(i) 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

(ii) A duly authorized representative or such person if the representative is responsible for the overall operation of one (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(a) The facilities employ more than two hundred fifty (250) persons or have a gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000) (in second quarter 1980 United States dollars); or

(b) The delegation of authority to such representative is approved in advance by the Division of Environmental Quality;

(B) For partnership or sole proprietorship, a general partner or the proprietor, respectively;

(C)(i) For a municipality, state, federal, or other public agency, either a principal executive officer or ranking elected official.

(ii) For the purposes of this part, 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 the United States Environmental Protection Agency); or

(D) For acid rain sources:

(i) The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act, 42 U.S.C. § 7401, et seq., as of July 1, 1997, or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under Part 70 of Title 40 of the Code of Federal Regulations;

(33) "Salvage" means an operation conducted in whole or in part for the reclaiming of any product or material;

(34) "Shutdown" means the cessation of operation of equipment;

(35) "Startup" means the setting in operating of equipment;

(36) "Stationary source" means any building, structure, facility, or installation which emits or may emit any air contaminant;

(37)(A) "Title I modification" means any modification as defined under any regulation promulgated pursuant to Title I of the federal Clean Air Act, 42 U.S.C. § 7401 et seq., as of July 2, 2008.

(B) De minimis changes under 8 CAR pt. 41, changes to state-only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications;

(38) "Total suspended particulate" or "TSP" means particulate matter as measured by the method described in Appendix B of 40 C.F.R. pt. 50;

(39) "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:

(A) Plastics;

(B) Cardboard cartons;

(C) Grease;

(D) Oil;

(E) Chemicals; and

(F) Cinders; and

(40) "Twelve-month period" means a period of twelve (12) consecutive months determined on a rolling basis with a new twelve-month period beginning on the first day of each calendar month.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-106. Effective date.

This part is effective ten (10) days after filing with the:

- (1) Secretary of State;
- (2) Arkansas State Library; and
- (3) Bureau of Legislative Research.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 2. Permits

8 CAR § 40-201. Applicability.

(a) **General applicability.** No person shall cause or permit the operation, construction, or modification of a stationary source, which actually emits:

- (1) Seventy-five (75) tons per year or more of carbon monoxide;
- (2) Forty (40) tons per year or more of nitrogen oxides;
- (3) Forty (40) tons per year or more of sulfur dioxide;
- (4) Forty (40) tons per year or more of volatile organic compounds;
- (5) Twenty-five (25) tons per year or more of particulate matter;
- (6) Ten (10) tons per year or more of direct PM_{2.5};
- (7) Fifteen (15) tons per year or more of PM₁₀;
- (8) One-half (0.5) ton per year or more of lead;
- (9) Two (2) tons per year or more of any single hazardous air pollutant;
- (10) Five (5) tons per year or more of any combination of hazardous air pollutants; or

(11) Twenty-five (25) tons per year or more of any other air contaminant without first obtaining a permit from the Division of Environmental Quality.

(b) **Special applicability.** Except as provided for by law or rule, the following stationary sources are required to obtain a permit under this subpart regardless of emissions:

(1) Any stationary source that the Director of the Division of Environmental Quality 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;

(2)(A) 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.

(B) Such sources include but are not limited to:

- (i) Medical waste incinerators;
- (ii) Rendering plants;
- (iii) Pathological waste incinerators, including crematories;
- (iv) Chemical process plants;
- (v) Hazardous waste treatment storage or disposal facilities;
- (vi) Sour gas process plants;
- (vii) Lead acid battery recycling facilities; or
- (viii) Charcoal plants; and

(3) Any stationary source subject to the requirements of a rule promulgated under 40 C.F.R. pt. 60, pt. 61, or pt. 63, as of June 27, 2008, except for:

- (A) 40 C.F.R. pt. 60, subpt. AAA (wood stoves);
- (B) 40 C.F.R. pt. 60, subpt. JJJ (petroleum dry cleaners);
- (C) 40 C.F.R. pt. 63, subpt. M (perchloroethylene dry cleaners);
- (D) 40 C.F.R. pt. 63, subpt. Q (industrial cooling towers);
- (E) Sources subject to 40 C.F.R. pt. 60, subpt. Dc (steam generating units) which only burn gas;

- (F) 40 C.F.R. pt. 63, subpt. ZZZZ (stationary reciprocating internal combustion) for non-Part 70 sources (minor sources);
- (G) 40 C.F.R. pt. 63, subpt. WWWW (hospital ethylene oxide sterilizers);
- (H) 40 C.F.R. pt. 63, subpt. CCCCC (gasoline dispensing facilities);
- (I) 40 C.F.R. pt. 60, subpt. IIII (stationary compression ignition internal combustion engines) for engines with a displacement of less than thirty (30) liters per cylinder;
- (J) 40 C.F.R. pt. 60, subpt. JJJJ (stationary spark ignition internal combustion engines);
- (K) 40 C.F.R. pt. 63, subpt. HHHHH (paint stripping and miscellaneous surface coating operations at area sources);
- (L) 40 C.F.R. pt. 63, subpt. BBBBB (national emission standards for hazardous air pollutants for source category: gasoline distribution bulk terminals, bulk plants, and pipeline facilities with a throughput less than twenty thousand (20,000) gallons per day of gasoline); and
- (M) 40 C.F.R. pt. 63, subpt. OOOOO (national emission standards for hazardous air pollutants for flexible polyurethane foam production and fabrication area sources).

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-202. Approval criteria.

No permit shall be granted or modified under this subpart unless the owner/operator demonstrates to the reasonable satisfaction of the Division of Environmental Quality that the stationary source will be constructed or modified to operate without resulting in a violation of applicable portions of this part and without causing air pollution.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-203. Owner/operator’s responsibilities.

Issuance of a permit by the Division of Environmental Quality does not affect the responsibility of the owner/operator to comply with applicable portions of this part.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-204. Required information.

(a) **General.** Application of a permit shall be made on such forms and contain such information as the Division of Environmental Quality 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 division may reasonably require.

(b) **Duty to supplement submittal.** If, while processing an application that has been determined to be complete, the division determines that additional information is necessary to evaluate or take final action on that application, the division may request such information in writing and set a reasonable deadline for a response.

(c) **Duty to correct submittal.**

(1) 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.

(2) 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-205. Action on application.

(a) **Technical review.** The Division of Environmental Quality will review the application submitted under this subpart 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 United States Environmental Protection Agency pursuant to Sections 111, 112, and 114 of the Clean Air Act, 42 U.S.C. § 7401 et seq., 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 part;

(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.**

(1) If the division initially determines the requirements of subsection (a) of this section are met, they shall prepare a draft permit which:

(A) Contains such conditions as the division may prescribe, to prevent, control, or abate air pollution; and

(B) Addresses all recognized air pollutant emissions and all pollutant emitting equipment at the stationary source except pollutants or equipment specifically exempt.

(2)(A) If the division initially determines the requirements of this subpart are not met, they shall prepare a notice of intent to deny.

(B) This notice will state the reasons for the division's denial of the stationary source's submittal.

(3) The public shall have an opportunity to comment on the division's proposed permit decision in accordance with 8 CAR § 40-206.

(c) **Final action.** At the conclusion of the public comment period, the division shall announce in writing its final permit decision.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-206. 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 Division of Environmental Quality's analysis, as demonstrated by the permit record, of the effect of construction or modification on ambient air quality, including the division'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 (1) location in the area where the source is located, or proposes to locate, and in the division's central offices of:

(i) The division's draft decision;

(ii) Information submitted by the owner/operator; and

(iii) Any information developed by the division in support of its draft permit decision;

(B) A thirty-day period for submittal of public comment (beginning on the date of the latest newspaper notice, ending on the date thirty (30) days later);

(C)(i) 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.

(ii) Such notice shall, as a minimum, describe the:

(a) Locations at which the information submitted by the owner/operator and the division's analysis of this information may be inspected; and

(b) Procedure for submitting public comment;

(D) A copy of the notice, required pursuant to this section, 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; and

(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 division'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 division prior to making its final decision.

(2)(A) The division shall take final action on a permit application after the close of the public comment period.

(B) The division shall notify in writing the owner/operator and any person that submitted a written comment of the division's final action and the division's reasons for its final action.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-207. 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 Division of Environmental Quality 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 part shall remain freely transferable provided the applicant for the transfer:

(A) Notifies the Director of the Division of Environmental Quality 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 8 CAR pt. 11, Administrative Procedures, or other such documents as required by the division.

(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 rules 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 rules of this state; or

(C) A person with a history of noncompliance with environmental laws or rules 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 change generally will be considered trivial if the emission increase, based on the differences between the sum of the proposed permitted rates for all emission units and the sum of previously permitted emission rates for all units, 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:

(a) Nitrogen dioxide;

(b) Sulfur dioxide; or

(c) Volatile organic compounds;

(iii) One-half (0.5) ton per year of lead;

(iv) Twenty-five (25) tons per year of particulate matter;

(v) Ten (10) tons per year of direct PM_{2.5}; and

(vi) Fifteen (15) tons per year of PM₁₀ emissions; or

(B) Result in an air quality impact less than:

Pollutant	<i>De Minimis</i> Concentration	Averaging Time
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carbon monoxide	500 $\mu\text{g}/\text{m}^3$	8-hour
nitrogen dioxide	10 $\mu\text{g}/\text{m}^3$	annual
PM _{2.5}	2 $\mu\text{g}/\text{m}^3$	24-hour
PM ₁₀	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, 42 U.S.C. § 7401 et seq.;

(C) Any change seeking to change a case-by-case determination of an emission limitation established pursuant to Best Available Control Technology (BACT), Section 112(g), Section 112(i)(5), Section 112(j), or Section 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 part;

(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) 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.

(B) The division will require such multiple applications be processed as a permit modification with public notice and reconstruction requirements.

(C) Deliberate misrepresentation may be grounds for permit revocation.

(5) The applicant may implement de minimis changes immediately upon approval by the division.

(6) The division shall revise the permit as expeditiously as practicable and may incorporate de minimis changes without providing notice to the public.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-208. Exemption from permitting.

(a) **Insignificant activities.** Stationary sources and activities listed in Appendix A of this part shall be considered to be insignificant and will not require a permit under this subpart or be included in a source's permit.

(b) **Grandfathering.** Stationary sources operating prior to July 30, 1969, and that have not been modified since, will not be required to obtain a permit under this subpart.

(c) **Sources subject to 8 CAR pt. 42.** A stationary source subject to the permitting requirements of 8 CAR pt. 42 and the requirements of this subpart will only be required to obtain one (1) permit which shall also contain the requirements unique to this part.

(d) **Sources subject to 8 CAR pt. 41.** A stationary source subject to the permitting requirements of 8 CAR pt. 41 and the requirements of this subpart will only be required to obtain one (1) permit which shall also contain the requirements unique to this part.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-209. Permit revocation and cancellation.

(a) **Revocation.** Any permit issued under this part 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 rule or change in any preexisting 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 of the Division of Environmental Quality may cancel a permit if:

(1) The construction or modification is not begun within eighteen (18) months from the date of the permit issuance; or

(2) The work involved in the construction or modification is suspended for a total of eighteen (18) months or more.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-210. General permits.

(a) General authority.

(1) The Division of Environmental Quality may, after notice and opportunity for public participation provided under this subpart, issue a general permit covering numerous similar sources.

(2) Any general permit shall:

(A) Comply with all requirements applicable to other permits; and

(B) Identify criteria by which sources may qualify for the general permit.

(3) To sources that qualify, the division shall grant the conditions and terms of the general permit.

(4) 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.

(1) Sources that would qualify for a general permit must apply to the division for coverage under the terms of the general permit or must apply for a permit consistent with this subpart.

(2) The division 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.

(3) The division will give notice of all applications for general permits pursuant to Arkansas Code § 8-4-203(d).

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-211. Transition.

(a) Facilities which are now subject to this part and were not previously subject to this part shall be in full compliance within one hundred eighty (180) days of the effective date of this part.

(b) The Director of the Division of Environmental Quality may extend this compliance period on a case-by-case basis provided that the total compliance period does not exceed one (1) year.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-212. Operational flexibility — Applicant's duty to apply for alternative scenarios.

(a) 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 Division of Environmental Quality.

(b) It is incumbent upon the permit applicant to apply for any reasonably anticipated alternative facility operating scenarios at the time of permit application.

(c) The division shall include approved alternative operating scenarios in the permit.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-213. Changes resulting in no emissions increases.

(a) A permitted source may make changes within the facility that contravene permit terms without a permit revision if the changes:

(1) Are not modifications under any provision of Title I of the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, by July 2, 2008;

(2) Do not exceed emissions allowable under the permit (whether expressed therein as a rate of emissions or in the terms of total emissions);

(3) Do not violate applicable requirements; and

(4)(A) 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 Division of Environmental Quality with written notification as required below in advance of the proposed changes, which shall be a minimum of seven (7) days, or such shorter time frame that the division allows for emergencies.

(B) The source and the division shall attach each such notice to their copy of the relevant permit.

(b) For each such change, the written notification required above shall include:

(1) A brief description of the change within the permitted facility;

(2) The date on which the change will occur;

(3) Any change in emissions; and

(4) Any permit term or condition that is no longer applicable as a result of the change.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-214. Permit flexibility.

(a)(1) The Division of Environmental Quality may grant an extension to any testing, compliance, or other dates in the permit.

(2) No extensions shall be authorized until the permittee of the facility receives written approval from the division.

(3) The division may grant such a request, at its discretion, in the following circumstances:

(A) The permittee of the facility makes such a request in writing at least fifteen (15) days in advance of the deadline specified in the facility's permit;

(B) The extension does not violate a federal requirement;

(C) The permittee of the facility demonstrates the need for the extension;

and

(D) 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)(1) The division 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.

(2) No such activities shall be authorized until the permittee of the facility receives written approval from the division.

(3) The division may grant such a request, at its discretion, in the following circumstances:

(A) The permittee of the facility makes such a request in writing at least thirty (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;

(B) Such a request does not violate a federal requirement;

(C) Such a request is temporary in nature;

(D) Such a request will not result in a condition of air pollution;

(E) The request contains such information necessary for the division to evaluate the request, including but not limited to quantification of such emissions and the date and time such emissions will occur;

(F) Such a request will result in increased emissions less than:

(i) Five (5) tons of any individual criteria pollutant;

(ii) One (1) ton of any single HAP; and

(iii) Two and one-half (2.5) tons of total HAPs; and

(G) The permittee of the facility maintains records of the dates and results of such temporary emissions and/or testing.

(c)(1) The division may grant a request to allow an alternative to the monitoring specified in a facility's operating permit.

(2) No such activities shall be authorized until the permittee of the facility receives written approval from the division.

(3) The division may grant such a request, at its discretion, in the following circumstances:

(A) The permittee of the facility makes such a request in writing at least thirty (30) days in advance of the first date that the monitoring alternative will be used at the facility;

(B) Such a request does not violate a federal requirement;

(C) The monitoring alternative provides an equivalent or greater degree of actual monitoring to the requirements in the facility's operating permit; and

(D) Any such request, if approved by the division, is incorporated into the next permit modification application by the permittee of the facility.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-215. Registration.

(a) No person shall cause or permit the operation, construction, or modification of a stationary source, whose actual emissions are:

(1) Forty (40) tons per year or more but less than seventy-five (75) tons per year of carbon monoxide;

(2) Twenty-five (25) tons per year or more but less than forty (40) tons per year of nitrogen oxides;

(3) Twenty-five (25) tons per year or more but less than forty (40) tons per year of sulfur dioxide;

(4) Twenty-five (25) tons per year or more but less than forty (40) tons per year of volatile organic compounds;

(5) Fifteen (15) tons per year or more but less than twenty-five (25) tons per year of particulate matter;

(6) Ten (10) tons per year or more but less than fifteen (15) tons per year of PM₁₀;

(7) One (1) ton per year or more but less than two (2) tons per year of any single hazardous air pollutant; or

(8)(A) Three (3) tons per year or more but less than five (5) tons per year of a combination of hazardous air pollutants without first having registered the source with the Division of Environmental Quality.

(B) For the purpose of this subsection, "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 Division of Environmental Quality or results in the emission of an air pollutant not previously emitted and registered with the division.

(b) Such registration shall be made on such forms and contain such information as the division 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 part.

(d) A facility may construct, operate, or modify a source subject to registration under this section immediately upon submittal of the registration.

(e)(1) Sources registered under this section shall pay an annual fee of two hundred dollars (\$200).

(2) The requirements of Subpart 2, Permit Fee Payment, of 8 CAR pt. 12, Permit Fee Rules, shall apply to fees collected under this section.

(f)(1) Sources currently holding permits but whose emissions are below the permitting thresholds in 8 CAR § 40-201, and above the registration thresholds under subsection (a) of this section, may elect to continue to operate under their existing permit or they may submit a registration and request their permit be voided.

(2) The permit shall remain in effect until voided.

(3) If a source takes no action, the permit will remain in effect.

(g) A source otherwise required to be registered under this section may instead choose to operate under a permit issued in accordance with 8 CAR § 40-202.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 3. [Reserved]

Subpart 4. Visible Emissions

8 CAR § 40-401. Visible emissions limitations.

(a)(1) 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 part.

(2) More stringent limitations on individual pieces of equipment may be imposed by the Division of Environmental Quality in applicable permits due to:

- (A) Control requirements or control apparatus;
- (B) Corresponding emission limitations; and/or
- (C) Applicable national standards.

(3) For equipment installed on or before January 30, 1972, emissions shall not exceed forty percent (40%) opacity, except that emissions greater than forty percent (40%) opacity will be allowed for not more than six (6) minutes in the aggregate in any consecutive sixty-minute period, provided such emissions will not be permitted more than three (3) times during any twenty-four-hour period.

(4) For equipment installed or modified after January 30, 1972, emissions shall not exceed an opacity greater than twenty percent (20%) except as described in subdivision (a)(5) of this section.

(5) Notwithstanding subdivision (a)(4) of this section, for wood, coal, or oil-fired boilers installed or modified after January 30, 1972, emissions shall not exceed twenty percent (20%) opacity, except that emissions of opacity greater than twenty percent (20%), but not exceeding sixty percent (60%), will be allowed for not more than six (6) minutes in the aggregate in any consecutive sixty-minute period, provided such emissions will not be permitted more than three (3) times during any twenty-four-hour period.

(6)(A) Wood-fired boilers shall meet all visible emissions of this subpart except that visible emissions may exceed the permitted opacity for up to forty-five (45) minutes once in any consecutive eight-hour period, three (3) times in any consecutive twenty-four-hour period for soot blowing, grate cleaning, ash raking, and refiring necessary for proper operation of these units.

(B) This practice is to be scheduled for the same specific time each day and shall be recorded.

(C) The division shall be notified in advance and in writing of the schedule or any changes.

(D) The process of soot blowing, grate cleaning, ash raking, and refiring or any part thereof is considered one (1) activity, and the time limit on this activity is forty-five (45) minutes.

(E) In determining the emissions of a source for purposes of demonstrating air pollution will not occur, the division shall take into account any incremental increase in allowable emissions under these conditions.

(b) Opacity of visible emissions shall be determined using United States Environmental Protection Agency Method 9 (40 C.F.R. pt. 60 app. A as of July 1, 1997).

(c) As used in this section, the term "existing equipment" means equipment which was installed and in operation as of January 30, 1972, or equipment for which a permit has been issued pursuant to Subpart 2 of this part prior to January 30, 1972, and the term "new equipment" means all equipment other than existing equipment.

(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 wood waste or the waste from cotton gins, provided that start-up does not exceed thirty (30) minutes and provided, further, that there is only one (1) such start-up per day;

(2) The application of:

(A) Fertilizers;

(B) Pesticides; and

(C) 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:

(A) Roads;

(B) Runways;

(C) Parking lots; and

(D) 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 noncommercial preparation of food and 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 (4) families; and

(8) The use of portable incinerators used for the disposal of debris from demolition and land clearing operations.

(e)(1) The owner or operator of equipment may petition the Director of the Division of Environmental Quality for an emission limitation less stringent than that provided in subsection (a) of this section provided, however, that such petition is filed not more than six (6) 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 this part except those of subsection (a) of this section.

(2) The petition shall contain such information as the director may reasonably require.

(3) 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 this part, and that full compliance with provisions of this section is technically or economically infeasible.

(4) The petitioner shall be notified of the director's decision within a reasonable time.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 5. Emissions from Open Burning

8 CAR § 40-501. Intent.

In order to avoid conflicting and overlapping jurisdiction, it is the intention of this subpart to clarify the position that:

(1) The Division of Environmental Quality occupies the field of control and abatement of air pollution and contamination; and

(2) No political subdivision of this state shall enact or enforce laws, ordinances, resolutions, or rules in this field, unless such laws, ordinances, resolutions, or rules are for the purpose of prohibiting burning in the open or in a receptacle having no means for significantly controlling the fuel/air ratio.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-502. General prohibition.

No person shall:

- (1) Cause or permit the open burning of:
 - (A) Refuse;
 - (B) Garbage;
 - (C) Trade waste; or
 - (D) Other waste material; or
- (2) Conduct a salvage operation by open burning.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-503. Exemptions.

The provisions of 8 CAR § 40-502 shall not apply to the following activities:

- (1) Fires used for the noncommercial cooking of food or for ceremonial or recreational purposes, including barbecues and outdoor fireplaces used in connection with any residence;
- (2)(A) 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.
 - (B) 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;

(3) 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;

(4) Controlled fires used only for purposes of on-site land clearing operations;

(5) Smokeless flares or safety flares from the combustion of waste gases, provided that all other applicable provisions of this part are complied with;

(6) 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;

(7) 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;

(8)(A) 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.

(B) Provided, however, that the Director of the Division of Environmental Quality 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.

(C) 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

(9) Open burning of any material not elsewhere specifically prohibited or exempted in this subpart 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 8 CAR § 40-505.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-504. Conditions of air pollution.

(a) During conditions of air pollution, when declared by the Director of the Division of Environmental Quality 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 Subpart 13 of this part.

(b) Conditions of air pollution as defined in 8 CAR § 40-105.

(1) Open burning as provided in 8 CAR § 40-503(2), (3), (6), and (8) shall be discontinued until such conditions have been declared by the director to have ceased to exist.

(2) The Division of Environmental Quality may limit the scope of such discontinuance to one (1) or more of the activities as provided in 8 CAR § 40-503(2), (3), (6), and (8) if it finds that the conditions of air pollution are primarily caused by such activity.

(c) Conditions of episodic air pollution as defined in 8 CAR § 40-105.

(1) Open burning as provided in 8 CAR § 40-503(2), (3), (6), and (7) shall be discontinued upon public announcement by the director, until such time that the director declares such conditions have ceased to exist.

(2) The director may limit the scope of such discontinuance to one (1) or more of the activities if he or she finds that the conditions of air pollution are caused primarily by such activity.

(d) The prohibition of open burning pursuant to the provisions of this section shall be in effect as of January 30, 1972, except that such prohibition shall not be applicable to 8 CAR § 40-503(2) of this subpart until July 15, 1973.

(e) The director may permit open burning during the existence of a condition of air pollution under conditions described in 8 CAR § 40-503 (6), (7), and (8) if the director, after consultation with public safety officials in the locality in question, determines that such open burning is absolutely necessary, in the director's opinion, to prevent danger to life or property.

(f) The statutory authority of the division to grant variances and permits is in no way limited by this subpart.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-505. Open burning authorizations.

(a) Upon application, the Division of Environmental Quality shall issue letters of authorization for open burning, provided that the applicant affirmatively demonstrates to the satisfaction of the division 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 division may reasonably require.

(b) Only letters of authorization issued by the division satisfy this subpart.

(c) 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 under this subpart.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 6. Emissions of Air Contaminants from Mobile Equipment

8 CAR § 40-601. Emissions from mobile equipment.

(a)(1) 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.

(2) The operator of such vehicle shall not intentionally make the system inoperable and shall not remove it except to install a proper replacement.

(b)(1) 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 thirty percent (30%) opacity, except during acceleration and gear shifting for periods not to exceed five (5) seconds.

(2) Where the presence of uncombined water is the only reason for failure of an emission to comply herewith, this section shall not apply.

(c) Railroad locomotives shall be maintained and operated such as to minimize visible emissions.

(d) The provisions of this subpart 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 7. Emissions of Air Contaminants Such as to Constitute Air Pollution

8 CAR § 40-701. 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 part, if the emission of the air contaminant constitutes air pollution.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 8. Control of Fugitive Emissions

8 CAR § 40-801. 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 9. Sampling, Monitoring, and Reporting Requirements

8 CAR § 40-901. Purpose.

(a) The purpose of this subpart is to generally define the powers of the Division of Environmental Quality in requiring sampling, monitoring, and reporting requirements at stationary sources.

(b) The division shall enforce all properly incorporated and delegated federal testing requirements at a minimum, and the division reserves the right to require additional sampling, monitoring, and reporting requirements not already required in federal regulations.

(c) Any credible evidence based on sampling, monitoring, and reporting may be used to determine violations of applicable emission limitations.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-902. Air emissions sampling.

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

(1) **Sampling ports.** To provide any sampling ports, at the request of the Division of Environmental Quality, required for air emissions sampling, including safe and easy access to such ports;

(2) **Sampling.**

(A) To conduct air contaminant emissions sampling, at the request of the division, to determine the rate, opacity, composition, and/or contaminant concentration of the emissions.

(B) All compliance testing shall be done at the expense of the permittee by an independent firm, unless otherwise approved by the division.

(C) Sampling shall not be required for those pollutants monitored with continuous emissions monitors;

(3) **Averaging times.** 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;

(4) **Process rates.**

(A) Unless otherwise approved by the division, all air contaminant emissions sampling shall be performed with the equipment being tested operating at least at ninety percent (90%) of its permitted capacity.

(B) Emissions results shall be extrapolated to correlate with one hundred percent (100%) of permitted capacity to determine compliance;

(5) **Testing time frames.** Any equipment that is to be tested, at the request of the division, shall be tested in accordance with the following time frames:

(A) Equipment to be constructed or modified shall be tested within sixty (60) days after achieving its maximum permitted production rate but no later than one hundred eighty (180) days after its initial start-up; and

(B) Equipment already operating shall be tested according to the time frames set forth by the division; and

(6) Testing methods and records.

(A)(i) The division shall require that all applicable testing be performed using the methods described in:

(a) 40 C.F.R. pt. 51 app. M, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on April 2, 2014 (79 Fed. Reg. 18,452);

(b) 40 C.F.R. pt. 60 app. A, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on February 27, 2014 (79 Fed. Reg. 11,257);

(c) 40 C.F.R. pt. 61 app. B, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on October 17, 2000 (65 Fed. Reg. 62,161); and

(d) 40 C.F.R. pt. 63 app. A, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on December 29, 1992 (57 Fed. Reg. 62,002).

(ii) The division may approve, at its discretion, alternative sampling methods that are equivalent to the specified methods.

(B) The results of such tests shall be submitted to the division within the time frame and on such forms as required by the division and federal regulations.

(C) The owner or operator of the equipment shall retain the results of such tests for at least five (5) years and shall make the results available to any agents of the division or the United States Environmental Protection Agency during regular business hours.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-903. Continuous emissions monitoring.

Any stationary source subject to this part shall, upon request by the Division of Environmental Quality:

(1)(A) Install, calibrate, operate, and maintain equipment or continuously monitor air contaminant emissions in accordance with:

(i) Applicable performance specifications in 40 C.F.R. pt. 60 app. B, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on February 27, 2014 (79 Fed. Reg. 11,228, 11,271), and quality assurance procedures in 40 C.F.R. pt. 60 app. F, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on February 27, 2014 (79 Fed. Reg. 11,228, 11,274); or

(ii) Other methods and conditions that the division shall approve.

(B) Any source listed in a category in 40 C.F.R. pt. 51 app. P, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on November 7, 1986 (51 Fed. Reg. 40,656, 40,675), or 40 C.F.R. pt. 60 shall adhere to all continuous emissions monitoring requirements stated therein, if applicable; and

(2) Report the data collected by the monitoring equipment to the division at such intervals and on such forms as the division shall prescribe in accordance with:

(A) 40 C.F.R. pt. 51 app. P, Section 4.0, Minimum Data Requirements, as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on November 7, 1986 (51 Fed. Reg. 40,656, 40,675); and

(B) Any other applicable reporting requirements promulgated by the United States Environmental Protection Agency.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-904. Recordkeeping/reporting requirements.

Any stationary source subject to this part shall, upon request of the Division of Environmental Quality:

(1)(A) Maintain records on the nature and amounts of contaminants emitted to the air by the equipment in question.

(B) All records, including compliance status records and excess emissions measurements, shall be:

(i) Retained for at least five (5) years; and

(ii) Made available to any agent of the division or the United States Environmental Protection Agency during regular business hours.

(C) Reporting periods shall be a twelve-month period; and

(2)(A) Supply the following information, correlated in units of the applicable emissions limitations, to the division:

(i) General process information related to the emissions of contaminants into the air; and

(ii) Emissions data obtained through sampling or continuous emissions monitoring.

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

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-905. Public availability of emissions data.

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

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 10. Startup/shutdown, Upset Conditions, Breakdowns, Scheduled Maintenance, and Interruption of Fuel Supply

8 CAR § 40-1001. Upsets.

(a) Any source exceeding an emission limit established by this part or applicable permit shall be deemed in violation of said part or permit and shall be subject to enforcement action.

(b) The Director of the Division of Environmental Quality may forego enforcement action for emissions exceeding any limits established by this part 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 startup 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:

(1) 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;

(2) 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:

- (A) Reduce the frequency of occurrence of such conditions;
- (B) Minimize the amount by which said limits are exceeded; and
- (C) Reduce the length of time for which said limits are exceeded;

(3) 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 section shall only apply in those cases where:

- (A) Maximum reasonable effort has been made to accomplish such maintenance during periods of nonoperation of any related source operation; or
- (B) It would be unreasonable or impossible to shut down the source operation during the maintenance period;

(4)(A) The person responsible for such emissions shall have submitted to the Division of Environmental Quality 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 subdivision (b)(1) of this section.

(B) Said application shall be on such forms and shall contain such information as the division may reasonably require.

(C) Said application shall have been approved by the division and not therefore withdrawn.

(D) Said equipment is being operated within the terms of the application as approved at the time of such occurrence;

(5) Demonstrates to the satisfaction of the division that the emissions resulted from:

(A) Equipment malfunction or upset condition and are not the result of negligence or improper maintenance; and

(B) Physical constraints on the ability of a source to comply with the emission standard, limitation, or rate during startup or shutdown; and

(6) All reasonable measures have been taken to immediately minimize or eliminate the excess emissions.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-1002. Fuel curtailment.

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

(1) The nature and frequency of such anticipated periods of noncompliance;

(2) That such alterations in fuel supply are beyond the control of said:

(A) Person;

(B) Firm; or

(C) Corporation;

(3) That said person, firm, or corporation has incorporated or will incorporate all reasonable steps to minimize:

(A) The frequency of such periods of noncompliance; and

(B) The degree of noncompliance during such periods; and

(4)(A) That such person, firm, or corporation has taken or will take such measures as may be necessary to ensure full or substantial compliance with all provisions of this part during periods of episodic air pollution.

(B) 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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-1003. Conditions of air pollution.

Except for those persons who have filed for and received Division of Environmental Quality approval of applications submitted pursuant to the provisions of 8 CAR § 40-1001 or 8 CAR § 40-1002, 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 of the Division of Environmental Quality pursuant to provisions of 8 CAR § 40-504 if the affected sources are located in the area in which a condition of air pollution is so declared.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-1004. Division's authority.

Nothing provided herein shall be construed to limit the Division of Environmental Quality'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.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-1005. Emergency conditions.

(a) 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.

(b) An emergency shall not include noncompliance to the extent caused by:

- (1) Improperly designed equipment;
- (2) Lack of preventive maintenance;
- (3) Careless or improper operation; or
- (4) Operator error.

(c)(1) An emergency constitutes a complete affirmative defense to an action brought for noncompliance with such technology-based limitations if the following conditions are met.

(2) The affirmative defense of emergency shall demonstrate through properly signed contemporaneous operating logs, or such other relevant evidence that:

(A) An emergency occurred and that the permittee can identify the cause or causes of the emergency;

(B) The permitted facility was at the time being properly operated;

(C) 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

(D)(i) The permittee submitted notice of the upset condition to the Division of Environmental Quality by the end of the next business day after the emergency.

(ii) This notice must contain a description of:

(a) The emergency;

(b) Any steps taken to mitigate emissions; and

(c) Corrective actions taken.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 11. Circumvention

8 CAR § 40-1101. Circumvention.

(a) Unless prior written approval is obtained from the Director of the Division of Environmental Quality, 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.

(b) This section does not apply to the control of odors or to the installation of stacks for which a permit has been issued as provided in Subpart 2 of this part.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 12. Authority to Deal with Extraordinary Conditions

8 CAR § 40-1201. Authority.

(a) 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 Division of Environmental Quality may prescribe air quality

control requirements that are more restrictive and more extensive than those provided in the rules of general application within said areas.

(b) Such requirements may be kept in effect for such period and to such extent the division deems necessary to adequately deal with such conditions.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-1202. Notification and reporting requirements.

(a) The owner or operator of any stationary source shall, upon notification from the Division of Environmental Quality, maintain records of the nature and amounts or emissions from such source and/or any other information as may be deemed necessary by the division to determine whether such source is in compliance with applicable emission limitations or other control measures.

(b)(1) The information recorded shall be summarized and reported to the division on forms furnished by the division and shall be submitted within forty-five (45) days after the end of the reporting period.

(2) Reporting periods are January 1 – June 30 and July 1 – December 31, except that the initial reporting period shall commence on the date the division issued notification of the recordkeeping requirements.

(c) Information recorded by the owner or operator and copies of the summarizing reports submitted to the division shall be retained by the owner or operator for two (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:

(1) Correlated with applicable emission limitations and other control measures;
and

(2) Available to the public during normal business hours at the division office in North Little Rock.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Subpart 13. Public Information and Confidentiality

8 CAR § 40-1301. Public notification.

In the event the Director of the Division of Environmental Quality finds the existence of a condition of air pollution pursuant to 8 CAR § 40-105 or of episodic air pollution pursuant to 8 CAR § 40-105 or the Division of Environmental Quality imposes extraordinary air quality control requirements pursuant to 8 CAR § 40-1201, the director shall:

- (1) Summarize the conditions and the actions taken in response thereto;
- (2) Make said summary available to the news media and to the public; and
- (3) Continue to publish such summaries at regular intervals throughout the duration of said conditions and the actions.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

8 CAR § 40-1302. Confidentiality.

(a) Information which constitutes a trade secret shall be held confidential and segregated from the public files of the Division of Environmental Quality if requested in writing by the permit applicant in accordance with this section.

(b) For purposes of this section, "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.

(c)(1) In order to establish entitlement to confidentiality, the applicant must submit a sworn affidavit to the division 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 subdivisions (b)(1) and (2) of this section.

(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 Division of Environmental Quality's denial of public access to the documents or information claimed herein to be a trade secret.

(3) 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 subdivisions (b)(1) and (2) of this section and reference this document in future confidentiality claims.

(d)(1) Confidentiality claims shall be afforded interim protected status until the division determines whether the requirements of subsection (c) of this section are satisfied.

(2)(A) The division shall make such determination prior to the issuance of any permit or publication of any draft permit.

(B) In the event the division does not make such determination prior to permit issuance, the information shall be deemed confidential until a request is made.

(3)(A) If a third party request to review information claimed as confidential is received before the division provides its written determination concerning the claim, the division shall not release such information before notifying the applicant of the request.

(B) The division shall notify the applicant of the request and the division's determination on the confidentiality claim at least two (2) business days before releasing the information, at which time the applicant may choose to supplement its affidavit supporting confidentiality or seek legal recourse.

(e)(1) For any permit application submitted subject to a claim of trade secret, the applicant shall provide two (2) copies of the application, one (1) prominently marked as

confidential and another that is subject to public review with confidential information excised.

(2) The division will not accept applications that are deemed totally confidential.

Authority. Arkansas Code §§ 8-1-203, 8-4-311.

Appendix A. Insignificant Activities List

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/299/8CARpt.40AppendixA.pdf>

Appendix B. National Ambient Air Quality Standards List

Link:

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/300/8CARpt.40AppendixB.pdf>