

**Title 8. Environmental Law**

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

**Subchapter D. Air Quality**

**Part 41. Rules of the Arkansas Plan of Implementation for Air Pollution Control**

**Subpart 1. Title, Intent, and Purpose — Definitions**

**8 CAR § 41-101. Title.**

The following part, adopted in accordance with the provisions of Subchapter 2 of the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-201 et seq., shall be known as "Rules of the Arkansas Plan of Implementation for Air Pollution Control", hereinafter referred to as "8 CAR pt. 41".

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-102. Applicability.**

This part is applicable to any stationary source that has the potential to emit any federally regulated air pollutant.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-103. Intent and construction.**

(a)(1) The purpose and intent of this part, as amended, is to provide a clear delineation of those rules that are promulgated by the Arkansas Pollution Control and Ecology Commission in satisfaction of certain requirements of the Clean Air Act, and the federal regulations stemming therefrom.

(2) Federal programs that the Division of Environmental Quality is responsible for administering include, but are not limited to:

(A) The attainment and maintenance of the national ambient air quality

standards (40 C.F.R. pt. 50);

(B) Certain delegated subparts of the new source performance standards (40 C.F.R. pt. 60);

(C) Provisions designed for the prevention of significant deterioration (40 C.F.R. § 52.21);

(D) Minor new source review as described in Subpart 3 of this part (40 C.F.R. pt. 51); and

(E) Certain delegated subparts of the national emission standards for hazardous air pollutants (40 C.F.R. pts. 61 and 63).

(3) This subsection shall not be construed as limiting the future delegation of federal programs to the division for administration.

(b)(1) This part, as amended, is further intended to limit the federal enforceability of its requirements to only those mandated by federal law.

(2) This part, as amended, is also intended to facilitate a permit system for stationary sources within the state, which permit shall provide which provisions are federally enforceable and which provisions are state enforceable.

(c)(1) This part, as amended, presumes a single-permit system, encompassing both federal and state requirements.

(2) A regulated facility that is subject to permitting under this part shall be required to apply for and comply with only one (1) permit, even though that permit may contain conditions derived from the federal mandates contained in this part, as well as conditions predicated solely on state law.

(3) This part, through construction or implication, shall not support the conclusion that all conditions of a permit have become federally enforceable because the permit contains provisions derived from this part.

(4) Permits or permit conditions issued under the authority of state law, or enforcement issues arising out of state law, shall not be federally enforceable.

(d)(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 federal mandates.

(2) Any applicable documents (e.g., “White Papers”, regulatory preambles, or interpretive memoranda) issued by the United States Environmental Protection Agency that are consistent with this part 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.

(e) Nothing in this part shall be construed as curtailing the division’s or commission’s authority under state law.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-104. Severability.**

(a) If any provision of this part is determined to be invalid, such invalidity shall not affect other provisions of this part.

(b) If federal legislation or a federal court stays, invalidates, delays the effective date of, or otherwise renders unenforceable, in whole or in part, the United States Environmental Protection Agency’s regulation of greenhouse gases, then the provisions of this part concerning greenhouse gases based thereon shall be stayed and shall not be enforceable until such time as the Arkansas Pollution Control and Ecology Commission makes a final decision on whether or not to revise this part due to the federal legislation or federal court order.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-105. Incorporation by reference.**

Unless a contrary intent is expressly stated, any adoption or descriptive reference

to a law or federal regulation shall be construed as though the reference law were set forth in this part line-by-line, word-for-word as it existed on the effective date of this part.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-106. Definitions.**

(a) Terms and phrases used in this part that are not explicitly defined herein shall have the same meaning as those terms that are used in the Clean Air Act.

(b) For purposes of this part:

(1) "Actual emissions" means the quantity of federally regulated air pollutants emitted from a stationary source considering emissions control equipment and actual hours of source operation or amount of material processed;

(2) "Clean Air Act" means the federal Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.;

(3)(A) "CO<sub>2</sub> equivalent emissions" means an amount of greenhouse gases emitted, and shall be computed by multiplying the mass amount of emissions in tons per year, for each of the six (6) greenhouse gases in the pollutant greenhouse gases, by the gas's associated global warming potential published at Table A-1 to Subpart A of 40 C.F.R. pt. 98, "Global Warming Potentials", and summing the resultant value for each to compute a tons-per-year of CO<sub>2</sub> equivalent emissions.

(B) Table A-1 to Subpart A of 40 C.F.R. pt. 98 is incorporated by reference as of January 1, 2015;

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

(5) "Construction" means fabrication, erection, or installation of equipment (see also 40 C.F.R. § 60.2, 40 C.F.R. § 51.165, and 40 C.F.R. § 52.21);

(6) "Control apparatus" means any device that prevents, controls, detects, or records the emission of any federally regulated air pollutants;

(7)(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;

(8) "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;

(9) "Emission limitation" and "emission standard" mean a requirement established by the Division of Environmental Quality or the Administrator of the United States Environmental Protection Agency that limits the emissions of federally regulated air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction;

(10) "Emission unit" means any article, machine, equipment, operation, or contrivance that emits or has the potential to emit any federally regulated air pollutant;

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

(12) "Equipment" means any device, except equipment used for any mode of vehicular transportation, capable of causing the emission of a federally regulated air pollutant into the open air, and any stack, conduit, flue, duct, vent, or similar device connected or attached to or serving the equipment;

(13) "Federally regulated air pollutant" means the following:

(A) Nitrogen oxides or any volatile organic compounds;

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Except as provided in subdivision (b)(13)(E) of this section, any pollutant that is subject to any standard promulgated under the Clean Air Act, as of the effective date of this part;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act, as of the effective date of this part; and

(E) Greenhouse gases, except that greenhouse gases shall not be a

federally regulated air pollutant unless the greenhouse gas emissions are:

(i) From a stationary source emitting or having the potential to emit seventy-five thousand (75,000) tons per year or more of CO<sub>2</sub> equivalent emissions; and

(ii) Regulated under Subpart 8 of this part;

(14)(A) "Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(B) Those emissions are those that, according to customary and good engineering practice, considering technological and economic feasibility, could not pass through a stack, chimney, vent, or other functionally equivalent opening, except that the Division of Environmental Quality will utilize the definition of fugitive emissions for those industries for which an approved United States Environmental Protection Agency definition exists under federal law or regulation and that are meeting that law or regulation;

(15) "Greenhouse gases" means the aggregate group of six (6) greenhouse gases:

(A) Carbon dioxide;

(B) Nitrous oxide;

(C) Methane;

(D) Hydrofluorocarbons;

(E) Perfluorocarbons; and

(F) Sulfur hexafluoride;

(16) "Hazardous air pollutant" means any air pollutant listed pursuant to § 112 of the Clean Air Act as of the effective date of this part;

(17) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the emission rate of any federally regulated air pollutant over permitted rates or that results in the emission of a federally regulated air pollutant not previously emitted, except that:

(A) Routine maintenance, repair, and replacement shall not be considered a physical change; and

(B) The following shall not be considered a change in the method of

operation:

(i) Any change in the production rate, if such change does not exceed the permitted operating capacity of the source;

(ii) Any change in the hours of operation, as long as it does not violate applicable air permit conditions; or

(iii) The use of an alternate fuel or raw material, as long as it does not violate applicable air permit conditions.

(C) De minimis changes, as defined in 8 CAR § 41-307(c), and changes in ownership shall not be considered;

(18) "National ambient air quality standards" 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 final rule published by the United States Environmental Protection Agency in the Federal Register on October 26, 2015 (80 FR 65292), as set forth in Appendix B of this part;

(19) "National ambient air quality standards state implementation plan", as defined by Arkansas Code § 8-4-303, means a state implementation plan that specifies measures to be used in the implementation of the state's duties under the Clean Air Act for the attainment and maintenance of a specified national ambient air quality standard in each air quality control region or portion of an air quality control region within the state;

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

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

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

(23) "Part 70 source" means any stationary source subject to the permitting requirements of Rules of the Arkansas Operating Air Permit Program, 8 CAR pt. 42;

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

micrometers;

(25) "Particulate matter emissions" means all particulate matter, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternate method, specified in 40 C.F.R. pt. 60, Appendix 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 FR 11257), or by a test method specified in this part or any supplement thereto, with the exception of condensable particulate matter;

(26) "Person" means any individual or other legal entity or their legal representative or assignee;

(27) "PM<sub>2.5</sub>" 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 final rule published by the United States Environmental Protection Agency in the Federal Register on October 17, 2006 (71 FR 61226), or by an approved regional method designated in accordance with Appendix C of 40 C.F.R. pt. 53;

(28) "PM<sub>2.5</sub> emissions" means PM<sub>2.5</sub> 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 FR 18452), or by a test method specified in this part or any supplement thereto;

(29) "PM<sub>10</sub>" 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 FR 29467), or by an equivalent method designated in accordance with 40 C.F.R. pt. 53 as of December 8, 1984;

(30) "PM<sub>10</sub> emissions" means PM<sub>10</sub> 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 FR 18452), or by a test method specified in this part or any supplement thereto;

(31)(A) "Potential to emit" means the maximum capacity of a stationary source to emit a federally regulated air pollutant under its physical and operational design.

(B) Any physical or operational limitation on the capacity of the source to emit a federally regulated air pollutant, 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 enforceable to the extent it is regulated by the Clean Air Act.

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

(32) "Responsible official" means one (1) 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 (1) or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

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

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

(B) For a 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 or the regulations promulgated thereunder are concerned; and

(ii) The designated representative for any other purposes under Part 70;

(33) "Rule 8" means Arkansas Pollution Control and Ecology Commission Regulation No. 8 until it is amended to replace the term "regulation" with "rule." After that time, "Rule 8" means Arkansas Pollution Control and Ecology Commission Rule 8;

(34) "Rule 18" means Arkansas Pollution Control and Ecology Commission Regulation No. 18, until it is amended to replace the term "regulation" with "rule." After that time, "Rule 18" means Arkansas Pollution Control and Ecology Commission Rule 18;

(35) "Rule 26" means Arkansas Pollution Control and Ecology Commission Regulation No. 26, until it is amended to replace the term "regulation" with "rule." After that time, "Rule 26" means Arkansas Pollution Control and Ecology Commission Rule 26;

(36) "Secondary emissions" means those emissions of federally regulated air pollutants that, although associated with a source, are not emitted from the source itself;

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

(38) "Startup" means the setting in operation of equipment;

(39) "State implementation plan", as defined at Arkansas Code § 8-4-303, means a plan that specifies measures to be used in the implementation of the state's duties under the Clean Air Act, and that is developed by the Division of Environmental Quality and submitted to the United States Environmental Protection Agency for review

and approval;

(40) "Stationary source" means any building, structure, facility, or installation that emits or may emit any federally regulated air pollutant;

(41)(A) "Title I modification" means any modification as defined under any regulation promulgated pursuant to Title I of the Clean Air Act.

(B) De minimis changes under this part, changes to state-only permit requirements, administrative permit amendments, and changes to the insignificant activities list are not Title I modifications;

(42) "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; and

(43)(A) "Volatile organic compounds" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

(B) This includes any organic compound other than the following, which have been determined to have negligible photochemical reactivity:

- (i) Acetone;
- (ii) Methane;
- (iii) Ethane;
- (iv) Methylene chloride (dichloromethane);
- (v) 1,1,1-trichloroethane (methyl chloroform);
- (vi) Tetrachloroethylene (perchloroethylene);
- (vii) 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
- (viii) Trichlorofluoromethane (CFC-11);
- (ix) Dichlorodifluoromethane (CFC-12);
- (x) Chlorodifluoromethane (HCFC-22);
- (xi) Trifluoromethane (HFC-23);
- (xii) 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);
- (xiii) Chloropentafluoroethane (CFC-115);

- (xiv) 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
- (xv) 1,1,1,2-tetrafluoroethane (HFC-134a);
- (xvi) 1,1-dichloro 1-fluoroethane (HCFC-141b);
- (xvii) 1-chloro-1,1-difluoroethane (HCFC-142b);
- (xviii) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
- (xix) Pentafluoroethane (HFC-125);
- (xx) 1,1,2,2-tetrafluoroethane (HFC-134);
- (xxi) 1,1,1-trifluoroethane (HFC-143a);
- (xxii) 1,1-difluoroethane (HFC-152a);
- (xxiii) Parachlorobenzotrifluoride (PCBTF);
- (xxiv) Cyclic, branched, or linear completely methylated siloxanes;
- (xxv) 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca);
- (xxvi) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb);
- (xxvii) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
- (xxviii) Difluoromethane (HFC-32);
- (xxix) Fluoroethane (ethyl fluoride or HFC-161);
- (xxx) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa);
- (xxxi) 1,1,2,2,3-pentafluoropropane (HFC-245ca);
- (xxxii) 1,1,2,3,3-pentafluoropropane (HFC 245ea);
- (xxxiii) 1,1,1,2,3-pentafluoropropane (HFC-245eb);
- (xxxiv) 1,1,1,3,3-pentafluoropropane (HFC-245fa);
- (xxxv) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea);
- (xxxvi) 1,1,1,3,3-pentafluorobutane (HFC-365mfc);
- (xxxvii) Chlorofluoromethane (HCFC-31);
- (xxxviii) 1-chloro-1-fluoroethane (HCFC-151a);
- (xxxix) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a);
- (xl) 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub> or HFE-7100);
- (xli) 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>);

- (xlii) 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub> or HFE-7200);
- (xliii) 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>);
- (xliv) Methyl acetate;
- (xlv) 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub> or HFE-7000);
- (xlvi) 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500);
- (xlvii) 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea);
- (xlviii) Methyl formate (HCOOCH<sub>3</sub>);
- (xlix) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
- (l) Propylene carbonate;
- (li) Dimethyl carbonate;
- (lii) (1E)-1,3,3,3-tetrafluoroprop-1-ene (HFO-1234ze);
- (liii) HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134);
- (liv) HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2);
- (lv) HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13);
- (lvi) HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 [or 150 or 180]);
- (lvii) (1E)-1-chloro-3,3,3-trifluoroprop-1-ene;
- (lviii) 2,3,3,3-tetrafluoropropene;
- (lix) 2-amino-2-methyl-1-propanol;
- (lx) T-butyl acetate;
- (lxi) Cis-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mz-Z); and
- (lxii) Perfluorocarbon compounds that fall into these classes:
- (a) Cyclic, branched, or linear, completely fluorinated alkanes;
- (b) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(c) Cyclic, branched, or linear, completely fluorinated tertiary amines with no saturations; and

(d) Sulfur-containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

(C)(i) For purposes of determining compliance with emission limits, volatile organic compounds are measured by the test methods in the approved state implementation plan or 40 C.F.R. pt. 60, Appendix A, as applicable.

(ii) Where such a method also measures compounds with negligible photochemical reactivity, these negligibly reactive compounds may be excluded as volatile organic compounds if the amount of such compounds is accurately quantified, and such exclusion is approved by the Division of Environmental Quality.

(D) As a precondition to excluding these compounds as volatile organic compounds or at any time thereafter, the Division of Environmental Quality may require an owner or operator of a stationary source to provide monitoring or testing methods and results demonstrating, to the satisfaction of the Division of Environmental Quality, the amount of negligibly reactive compounds in the emissions from the stationary source.

(E) [Reserved].

**Authority.** Arkansas Code § 8-4-311.

**Codification Notes.** "Rule 8", defined in this section, is codified in the Code of Arkansas Rules as 8 CAR pt. 11. During codification, all other references in this rule to "Rule 8" were changed to "8 CAR pt. 11".

"Rule 18", defined in this section, is codified in the Code of Arkansas Rules as 8 CAR pt. 40. During codification, all other references in this rule to "Rule 8" were changed to "8 CAR pt. 40".

"Rule 26", defined in this section, is codified in the Code of Arkansas Rules as 8 CAR pt.

42. During codification, all other references in this rule to "Rule 8" were changed to "8 CAR pt. 42".

## **Subpart 2. Protection of the National Ambient Air Quality Standards**

### **8 CAR § 41-201. Purpose.**

(a) The purpose of this subpart is to state the responsibilities of the Division of Environmental Quality and regulated sources in meeting and maintaining the national ambient air quality standards.

(b) If any area of the state is determined to be in violation of the national ambient air quality standards, all applicable requirements contained in the Clean Air Act, as amended, and all regulations promulgated thereto shall be met by the division.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-202. Division responsibilities.**

The Division of Environmental Quality shall be responsible for taking the following precautions to prevent the national ambient air quality standards from being exceeded:

(1) Ambient air monitoring in any area that can reasonably be expected to be in excess of the national ambient air quality standards.

(2)(A) Computer modeling of regulated air pollutant emissions for any area that can reasonably be expected to be in excess of the national ambient air quality standards, and review of the ambient air impacts of any new or modified source of federally regulated air emission that is the subject of the requirements of this part.

(B) All computer modeling shall be performed using United States Environmental Protection Agency-approved models, and using averaging times commensurate with averaging times stated in the national ambient air quality standards.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-203. Regulated sources responsibilities.**

Any source subject to the provisions of this part shall be responsible for taking the following precautions to prevent the national ambient air quality standards from being exceeded:

(1) When required by law or this part, obtaining a permit from the Division of Environmental Quality prior to construction of a new source of federally regulated air pollutant emissions or prior to the modification of an existing source of air emissions;

(2) Operating equipment in such a manner as to meet any applicable permit requirement or any applicable rules; and

(3)(A) Repairing malfunctioning equipment and pollution control equipment as quickly as possible.

(B) If the malfunctioning equipment is causing, or contributing to, a violation of the national ambient air quality standards as determined by computer modeling, the source is responsible for ceasing operations of the affected equipment until such time that it is repaired.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-204. Delegated federal programs.**

(a)(1) Sources subject to this part shall also comply with all federal programs that the Division of Environmental Quality is responsible for administering, including:

(A) Certain delegated subparts of the new source performance standards (40 C.F.R. pt. 60);

(B) Provisions designed for the prevention of significant deterioration (40 C.F.R. § 52.21); and

(C) Certain delegated subparts of the national emission standards for hazardous air pollutants (40 C.F.R. pts. 61 and 63).

(2) These delegated subparts only apply to major sources.

(b) There are subparts that apply to minor sources, but the division has not

requested delegation of them as of April 28, 2006.

**Authority.** Arkansas Code § 8-4-311.

### **Subpart 3. Minor Source Review**

#### **8 CAR § 41-301. General applicability.**

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

- (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) Ten (10) tons per year or more of direct PM<sub>2.5</sub>;
- (6) Fifteen (15) tons per year or more of PM<sub>10</sub>;
- (7) One-half (0.5) ton per year or more of lead;
- (8) Two (2) tons per year or more of any single hazardous air pollutant; or
- (9) Five (5) tons per year or more of any combination of hazardous air

pollutants without first obtaining a permit from the Division of Environmental Quality pursuant to the provisions of this subpart.

**Authority.** Arkansas Code § 8-4-311.

#### **8 CAR § 41-302. 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 or without interfering with the attainment or maintenance of a national ambient air quality standard.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-303. 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 § 8-4-311.

**8 CAR § 41-304. Required information.**

(a) **General.** Application for 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 federally regulated air pollutants to be emitted by the stationary source; and

(2) Such information on the location, design, and operation of the 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 § 8-4-311.

**8 CAR § 41-305. 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 §§ 111, 112, and 114 of the Clean Air Act, as amended;

(3) The stationary source will be constructed or modified to operate without resulting in a violation of any applicable provisions of this part;

(4) The emission rate calculations are complete and accurate; and

(5) If the facility wishes to measure and/or monitor operating parameters rather than actual emissions, the application describes a process that 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 that:

(A) Contains such conditions as are necessary to comply with this part;

and

(B) Addresses all federally regulated air pollutant emissions and all federally regulated air 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) Except as provided in 8 CAR § 41-307, the public shall have an opportunity

to comment on the division's proposed permit decision in accordance with 8 CAR § 41-306.

(4)(A) Within ninety (90) days of receipt by the division of an initial permit application, or an application for a major modification that contains such information as required by the division (unless said period is extended by mutual agreement between the division and the applicant), the division shall notify the applicant in writing of its draft permitting decision.

(B)(i) If the division fails to take action on the application within the prescribed timeframes, the aggrieved applicant may petition the Arkansas Pollution Control and Ecology Commission for relief from division inaction.

(ii) The commission shall either grant or deny the petition within forty-five (45) days of its submittal.

**(c) Final action.**

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

(2) 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 § 8-4-311.

**8 CAR § 41-306. 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 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 the division's draft decision, information submitted by the owner/operator, and 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) 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.

(ii) Such notice shall, as a minimum, describe the locations at which the information submitted by the owner/operator and the division's analysis of this information may be inspected and the procedure for submitting public comment; and

(D) A copy of the notice, required pursuant to this subsection, shall be sent to the owner/operator and to the:

(i) Regional Administrator of the United States Environmental Protection Agency;

(ii) Mayor of the community where the stationary source is proposed to be constructed or modified;

(iii) County judge of the county where the equipment is proposed to be constructed or modified; and

(iv) Appropriate air pollution control agencies of adjoining states if the construction or modification of the source will impact air quality in adjoining states.

(2) 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 taking final action on the permit application.

**Authority.** Arkansas Code § 8-4-311.

## **8 CAR § 41-307. 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 in 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)(i) Submits a disclosure statement, or other such documents as required by the division.

(ii) The disclosure statement shall include but not be limited to the following information:

(a) The full name, business address, and Social Security number or tax i.d. number of the applicant and all affiliated persons;

(b) The full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or

which is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact operations within the state;

(c) A description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation;

(d) A listing and explanation of any civil or criminal legal actions by governmental agencies involving environmental protection laws or regulations against the applicant and affiliated persons in the ten (10) years immediately preceding the filing of the application, including:

(1) Administrative enforcement actions resulting in the imposition of sanctions;

(2) Permit or license revocations or denials issued by any state or federal authority;

(3) Actions that have resulted in a finding or a settlement of a violation; and

(4) Actions that are pending;

(e) A listing of any federal environmental agency and any other environmental agency outside this state that has or has had regulatory responsibility over the applicant; and

(f) Any other information the director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

(iii) The following persons or entities are not required to file a disclosure statement:

(a)(1) Governmental entities, consisting only of subdivisions or agencies of the federal government, agencies of the state government, counties, municipalities, or duly authorized regional solid waste authorities as defined by law.

(2) This exemption shall not extend to improvement districts or any other subdivision of government which is not specifically instituted by an act of the General Assembly; and

(b) Applicants for a general permit to be issued by the division

pursuant to its authority to implement the National Pollutant Discharge Elimination System for stormwater discharge or any other person or entity the Arkansas Pollution Control and Ecology Commission may by rule exempt from the submission of a disclosure statement.

(2) Nothing in this section, including the exemptions listed herein, shall be construed as a limitation upon the authority of the director to deny a permit based upon a history of noncompliance to any applicant or for other just cause.

(3)(A) Any applicant that is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company, shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission which provide information regarding legal proceedings in which the applicant has been involved.

(B) The applicant shall submit such other information as the director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

(4) 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 that 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 who 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 that could have an impact upon the environment.

(5) Public notice requirements shall not apply to changes in ownership or changes in name.

(6) Denial of a permit transfer shall constitute a final permitting decision of the director and may be appealed to the Arkansas Pollution Control and Ecology Commission.

**(c) De minimis changes.**

(1) A proposed change to a facility will be considered de minimis if:

(A) Minimal judgment is required to establish the permit requirements for the change; and

(B) The change 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 emissions 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 dioxides;

(b) Sulfur dioxides; or

(c) Volatile organic compounds;

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

(iv) Ten (10) tons per year of direct PM<sub>2.5</sub>;

(v) Fifteen (15) tons per year of PM<sub>10</sub> emissions; and

(vi) One-half (0.5) a ton per year of lead; or

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

Pollutant	<i>De Minimis</i> Concentration	Averaging Time
carbon	Five hundred (500) micrograms	Eight-hour

monoxide	per cubic meter	
nitrogen dioxide	Ten (10) micrograms per cubic meter	Annual
PM <sub>2.5</sub>	Two (2) micrograms per cubic meter	Twenty-four-hour
PM <sub>10</sub>	Eight (8) micrograms per cubic meter	Twenty-four-hour
sulfur dioxide	Eighteen (18) micrograms per cubic meter	Twenty-four-hour
lead	One-tenth (0.1) micrograms per cubic meter	Three-month

(3) [Reserved].

(4) 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 that 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, § 112(g), § 112(i)(5), § 112(j), or § 111(d) of the Clean Air Act;

(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 that requires more than minimal judgment to determine eligibility.

(5)(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.

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

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

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

**Authority.** Arkansas Code § 8-4-311.

**Codification Notes.** The Securities and Exchange Act of 1934 is codified generally at 15 U.S.C. § 78a et seq.

**8 CAR § 41-308. 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 June 30, 1975, and that have not been modified since, will not be required to obtain a permit under this subpart.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-309. [Reserved].**

**8 CAR § 41-310. 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 the construction or modification is not begun within eighteen (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 eighteen (18) months or more.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-311. 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) The criteria for the review and approval of permits under this subpart shall be used for general permits as well.

(3) 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.

(4) They shall also include enforceable emission limitations or other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this part.

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

(6) 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)(A) When any application for the issuance of a new permit or a modification of an existing permit is filed with the division, the division shall cause notice of the application to be published in a newspaper of general circulation in the county in which the proposed facility is to be located.

(B) The notice required by subdivision (b)(3)(A) of this section shall advise that any interested person may request a public hearing on the permit application by giving the division a written request within ten (10) days of the publication of the notice.

(C) Should a hearing be deemed necessary by the division, or in the event the division desires such a hearing, the division shall schedule a public hearing and shall, by first-class mail, notify the applicant and all persons who have submitted comments of the date, time, and place thereof.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-312. Dispersion modeling.**

(a) The following shall apply when dispersion or other air quality modeling is used to meet the requirements of this subpart.

(b) **General.** All applications of air quality modeling involved in this subpart shall be based on the applicable models, data bases, and other requirements specified in Appendix W of 40 C.F.R. pt. 51, Guideline on Air Quality Models.

(c) **Substitution.**

(1) Where an air quality model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted.

(2) Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific pollutant or type of stationary source.

(3) Written approval of the Administrator of the United States Environmental Protection Agency must be obtained for any modification or substitution.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-313. Confidentiality.**

(a) Information that 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 that describes in a manner that does not reveal trade secrets the processes or market conditions that support 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'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:

(A) One (1) prominently marked as confidential; and

(B) Another that is subject to public review with confidential information excised.

(2) The division will not accept applications that are deemed totally confidential except under extraordinary circumstances guaranteeing future disclosure at a meaningful time for public review.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-314. Operational flexibility — Applicant's duty to apply for alternative scenarios.**

(a)(1) The permit applicant shall apply for any reasonably anticipated alternative stationary source operating scenarios at the time of permit application.

(2) The Division of Environmental Quality shall include approved alternative operating scenarios in the permit.

(b) The permittee may implement any operating scenario allowed in the permit without the need for a permit revision or notification to the division.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-315. Changes resulting in no emissions increases.**

(a) A permittee may make a change to a stationary source that contravenes permit

terms without a permit revision if the change:

- (1) Is not a Title I modification;
- (2) Does not exceed emissions allowable under the permit, whether expressed therein as a rate of emissions or in the terms of total emissions;
- (3) Does not violate applicable requirements; and
- (4) Does not violate federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(b) The permittee shall provide written notice to the Division of Environmental Quality at least seven (7) days prior to implementing the proposed changes allowed under subsection (a) of this section, or such shorter timeframe that the division allows for emergencies.

(c)(1) The permittee and the division shall attach each such notice pursuant to subsection (b) of this section to their copy of the relevant permit.

- (2) For each such change, the written notice shall include:
  - (A) A brief description of the change to the permitted stationary source;
  - (B) The date the change will occur;
  - (C) Any change in emissions; and
  - (D) Any permit term or condition that is no longer applicable as a result of the change.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-316. Permit flexibility.**

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

(2) No extensions shall be authorized until the permittee of the stationary source 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 stationary source makes such a request in writing at least fifteen (15) days in advance of the deadline specified in the stationary source's permit;

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

(C) The permittee of the stationary source demonstrates the need for the extension; and

(D) The permittee of the stationary source 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 stationary source's permit.

(2) No such activities shall be authorized until the permittee of the stationary source 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 stationary source makes such a request in writing at least thirty (30) days in advance of the date that temporary emissions and/or testing would otherwise exceed a permitted emission rate, throughput requirement, or other limit in a stationary source'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 as defined in 8 CAR § 40-105 of the Arkansas Air Pollution Code, 8 CAR pt. 40;

(E) The request contains such information necessary for the division to evaluate the request, including without limitation, quantification of such emissions and the date and time such emission will occur;

(F) Such a request will result in increased emissions less than five (5) tons of any individual criteria pollutant, one (1) ton of any single hazardous air pollutant, and two and one-half (2.5) tons of total hazardous air pollutants; and

(G) The permittee of the stationary source 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 stationary source's permit.

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

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

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

(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 stationary source's permit; and

(D) Any such request for an alternative monitoring method, if approved by the division, is incorporated into the next permit modification application by the permittee of the stationary source.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-317. Registration.**

(a)(1) Sources currently holding permits issued pursuant to this part but whose emissions are below the permitting thresholds of 8 CAR § 41-301, and above the registration thresholds of 8 CAR § 40-215, may elect to continue to operate under their existing Part 41 permit or they may submit a registration under 8 CAR § 40-215 and request their Part 41 permit to be terminated.

(2) The Part 41 permit shall remain in effect until terminated.

(3) If a source takes no action, the Part 41 permit shall remain in effect.

(b) A source otherwise subject to registration under 8 CAR § 40-215 may elect to instead operate under a permit issued in accordance with 8 CAR § 41-302.

**Authority.** Arkansas Code § 8-4-311.

#### **Subpart 4. General Emissions Limitations Applicable to Equipment**

##### **8 CAR § 41-401. Purpose.**

(a) The purpose of this subpart is to define the general federally regulated air pollutant emissions limitations applicable to all equipment subject to this part.

(b) Stricter specific limitations may be required in applicable permits if such limitations are necessary to comply with federal law or regulations that are in effect as of the effective date of this part.

**Authority.** Arkansas Code § 8-4-311.

##### **8 CAR § 41-402. General rules.**

No person shall cause or permit the construction or modification of equipment that would cause or allow the following standards or limitations to be exceeded:

- (1) Any national ambient air quality standard as defined herein;
- (2) Any ambient air increment pursuant to Subpart 8 of this part;
- (3) Any applicable emission limitation promulgated by the United States Environmental Protection Agency; or
- (4) Any applicable emission limitation promulgated by the Division of Environmental Quality in this part.

**Authority.** Arkansas Code § 8-4-311.

##### **8 CAR § 41-403. Visible emission rules.**

(a) No person shall cause or permit visible emissions (other than uncombined water vapor) from equipment identified hereunder and that was installed and in operation, or for which a permit had been issued by the Division of Environmental

Quality prior to January 30, 1972, to exceed the following limitations:

(1) 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.

(b) No person shall cause or permit visible emissions (other than uncombined water vapor) from new equipment identified hereunder that was installed or permitted by the division after January 30, 1972, to exceed the following limitations or to exceed any applicable visible emission limitations of the new source performance standards promulgated by the United States Environmental Protection Agency:

(1) For incinerators and fuel-burning equipment, exclusively, emissions shall not exceed twenty percent (20%) opacity except that emissions greater than twenty percent (20%) opacity but not exceeding sixty percent (60%) 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; and

(2) For equipment used in a manufacturing process, emissions shall not exceed twenty percent (20%).

(c) Opacity of visible emissions shall be determined using United States Environmental Protection Agency Method 9 (40 C.F.R. pt. 60, Appendix A).

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-404. Stack height/dispersion rules.**

(a) The stack height provisions of 40 C.F.R. § 51.118 are incorporated by reference.

(b) The definition of "stack", "a stack in existence", "dispersion technique", "good engineering practice", "nearby", and "excessive concentration" are defined in 40 C.F.R. § 51.100(ff) – (kk) and are incorporated into this subpart by reference.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-405. Revised emissions limitation.**

(a)(1) The emissions limitations contained within this part and applicable permits are for the purpose of assuring the attainment and maintenance of the national ambient air quality standards and have been established within the framework of information presently available to the Division of Environmental Quality.

(2) As additional and more precise information becomes available, the emission limitations and reporting procedures of this subpart may be amended as described below:

(A)(i) More restrictive limitations to protect the national ambient air quality standards.

(ii) In accordance with the provisions of the federal Clean Air Act, as amended, and the federal regulations promulgated pursuant to the Clean Air Act, as amended, the emission limitations and reporting procedures of this subpart or any applicable permits may be further amended and made more restrictive where the Director of the Division of Environmental Quality finds more restrictive measures are necessary to assure maintenance of the national ambient air quality standards; and

(B)(i) Less restrictive limitations.

(ii) Any person subject to the emission limitations contained in this part or in a permit may petition the director for a less stringent limitation on the grounds that the existing limitation cannot be met when considering physical, economical, or technological constraints.

(iii) In no case shall the director approve a less stringent limitation if it would cause a violation of the national ambient air quality standards.

(iv) The director shall not approve a less stringent limitation if it violates a federal emission standard or regulation, unless approved according to applicable federal regulations.

(3) The director shall take into account the following factors when making

such determinations:

(A) The process, fuels, and raw materials available and to be employed in the facility involved;

(B) The engineering aspects of the application of various types of control techniques that have been adequately demonstrated;

(C) Process and fuel changes;

(D) The respective costs of the application of all such control techniques, process changes, alternative fuels, etc.; and

(E) Locational and siting considerations.

(b) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(c) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

**Authority.** Arkansas Code § 8-4-311.

## **Subpart 5. Upset and Emergency Conditions**

### **8 CAR § 41-501. Upset conditions.**

(a)(1) For purposes of this subpart, "upset condition" means exceedances of applicable emission limitations lasting thirty (30) or more minutes, in the aggregate, during a twenty-four-hour period, unless otherwise specified in an applicable permit or rule (such as new source performance standards).

(2) All upset conditions resulting in a violation of an applicable permit or rule shall be reported to the Division of Environmental Quality.

(b)(1) Any source exceeding an emission limit established by this part or applicable permit shall be deemed in violation of this part or permit and shall be subject to enforcement action.

(2) The division may forego enforcement action for federally regulated air pollutant emissions given that the person responsible for the source of the excess

emissions does the following:

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

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

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

(iii) That all reasonable measures have been taken to immediately minimize or eliminate the excess emissions;

(B) Reports such occurrence or upset or breakdown of equipment to the division by the end of the next business day after the discovery of the occurrence; and

(C) Submits to the division, at its request, a full report of such occurrence, including the identification of and location of the process and control equipment involved in the upset and including a statement of all known causes and the scheduling and nature of the actions to be taken to eliminate future occurrences or to minimize the amount by which said limits are exceeded and to reduce the length of time for which said limits are exceeded.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-502. Emergency conditions.**

(a)(1) 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.

(2) An “emergency” shall not include noncompliance to the extent caused by:

(A) Improperly designed equipment;

(B) Lack of preventive maintenance;

- (C) Careless or improper operation; or
- (D) Operator error.

(b)(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 to the Division of Environmental Quality by the end of the next business day after the emergency.

(ii) This notice must contain:

(a) A description of the emergency;

(b) Any steps taken to mitigate emissions; and

(c) Corrective actions taken.

**Authority.** Arkansas Code § 8-4-311.

## **Subpart 6. Sampling, Monitoring, and Reporting Requirements**

### **8 CAR § 41-601. 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.

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

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-602. 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 federally regulated air pollutant emissions sampling, including safe and easy access to such ports;

(2) **Sampling.**

(A) To conduct federally regulated air pollutant 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 with continuous emissions monitors;

(3) **Averaging times.** All compliance testing averaging times shall be consistent with the averaging times of the applicable federally regulated air pollutant 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 standards;

(4) **Process rates.**

(A) Unless otherwise approved by the division, all federally regulated air pollutant 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 timeframes.** Any equipment that is to be tested at the request of the division shall be tested in accordance with the following timeframes:

(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 startup; and

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

(6) **Testing methods and records.**

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

(i) 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 FR 18452);

(ii) 40 C.F.R. pt. 60, Appendix 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 FR 11257);

(iii) 40 C.F.R. pt. 61, Appendix 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 FR 62161); and

(iv) 40 C.F.R. pt. 63, Appendix 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 FR 62002).

(B) The division, with the concurrence of the United States Environmental Protection Agency, may approve, at its discretion, alternate sampling methods that are equivalent to the specified methods.

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

(D) 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 § 8-4-311.

**8 CAR § 41-603. Continuous emissions monitoring.**

Any stationary source subject to this part shall, as required by federal law and upon request of the Division of Environmental Quality:

(1)(A) Install, calibrate, operate, and maintain equipment to continuously monitor or determine federally regulated air pollutant emissions in accordance with:

(i) Applicable performance specifications in 40 C.F.R. pt. 60, Appendix 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 FR 11271);

(ii) Quality assurance procedures in 40 C.F.R. pt. 60, Appendix 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 FR 11274); and

(iii) Other methods and conditions that the division, with the concurrence of the United States Environmental Protection Agency, shall prescribe.

(B) Any source listed in a category in 40 C.F.R. pt. 51, Appendix 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 FR 40675), or in 40 C.F.R. pt. 60 as of August 30, 1992, shall adhere to all continuous emissions monitoring or alternative continuous emission 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 40 C.F.R. pt. 51, Appendix 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 FR 40675), and any other

applicable reporting requirements promulgated by the United States Environmental Protection Agency.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-604. Notice of completion.**

For equipment for which a new permit or major permit modification is required, the Division of Environmental Quality shall be notified in writing within thirty (30) days of the following events:

- (1) The date of commencement of construction or modification; and
- (2) The date of commencement of operation of the equipment.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-605. Recordkeeping and reporting requirements.**

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

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

(B) All records, including compliance status reports and excess emissions measurements shall be retained for at least five (5) years, and shall be made available to any agent of the division or United States Environmental Protection Agency during regular business hours; and

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

(A) General process information related to the emissions of federally regulated air pollutants into the air; and

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

(b)(1) 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.

(2) Reporting periods shall be a twelve-month period.

(c)(1) Each emission inventory is to be accompanied by a certifying statement, signed by the owner or owners or operator or operators and attesting that the information contained in the inventory is true and accurate to the best knowledge of the certifying official.

(2) The certification shall include the full name, title, signature, date of signature, and telephone number of the certifying official.

**Authority.** Arkansas Code § 8-4-311.

#### **8 CAR § 41-606. 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 § 8-4-311.

### **Subpart 7. 111(d) Designated Facilities**

#### **8 CAR § 41-701. Purpose.**

The purpose of this subpart is to establish rules for designated pollutants emitted from designated facilities in accordance with Section 111(d) of the Clean Air Act.

**Authority.** Arkansas Code § 8-4-311.

#### **8 CAR § 41-702. Permit emissions limitations.**

(a) No person shall cause or permit emissions from equipment located at facilities described in this subpart to be exceeded.

(b) Future permit conditions may place more stringent emissions limitations on the equipment that shall supersede the limitations of this section.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-703. [Reserved].**

**8 CAR § 41-704. Kraft pulp mills.**

(a) Subsections (b) and (c) of this section and the total reduced sulfur emissions limitations contained in Table 41.7.1 are applicable to equipment located at the following kraft pulp mills:

- (1) Evergreen Packaging (AFIN 35-00016);
- (2) Green Bay Packaging, Arkansas Kraft Division (AFIN 15-00001);
- (3) Twin Rivers Pine Bluff, LLC (AFIN 35-00017);
- (4) Georgia-Pacific Corporation (AFIN 02-00013);
- (5) Domtar A.W. (AFIN 41-00002); and
- (6) Clearwater Paper Corporation (AFIN 21-00036).

(b)(1) The owner or operator of designated facilities listed in Table 41.7.1 shall test compliance with total reduced sulfur emissions limitations using EPA Method 16 at intervals of no longer than five (5) years following the previous compliance test.

(2) Data reduction shall be performed as set forth in 40 C.F.R. § 60.8.

(3) Compliance testing is not required for equipment with a total reduced sulfur continuous emissions monitor.

(c)(1) The owner or operator of any equipment located at the designated facilities specified under subsection (a) of this section shall conduct total reduced sulfur continuous monitoring in accordance with the requirements of 40 C.F.R. § 60.284, date of installation notwithstanding.

(2) The continuous monitoring systems shall be operated according to the provisions of 40 C.F.R. § 60.284 by April 1, 1993, except that continuous emissions monitors for affected lime kilns shall be installed and certified by January 1, 1994.

Table 41.7.1 Kraft Pulp Mill TRS Emission Limits			
AFIN	Facility	Equipment	TRS Concentration (parts per million [ppm])
35-00016	Twin Rivers Pine Bluff, LLC	recovery furnace	Forty (40) parts per million
		lime kiln	Forty (40) parts per million
		smelt dissolving tank	0.0168 grams per kilogram
15-00001	Green Bay Packaging, Arkansas Kraft Division	recovery furnace	Forty (40) parts per million
		lime kiln	Forty (40) parts per million
		smelt dissolving tank	0.0168 grams per kilogram
35-00017	Mondi Pine Bluff	recovery furnace	One hundred (100) parts per million
		lime kiln	Forty (40) parts per million
		smelt dissolving tank	0.0168 grams per kilogram
02-00013	Georgia Pacific Corporation	recovery furnace	Five (5) parts per million

		lime kiln	Eight (8) parts per million
		smelt dissolving tank	0.0168 grams per kilogram
41-00002	Domtar A.W.	recovery furnace	Five (5)parts per million
		lime kiln	Eight (8) parts per million
		smelt dissolving tank	0.0168 grams per kilogram
21-00036	Clearwater Paper Corporation	recovery furnace	Five (5) parts per million
		lime kiln	Twenty (20) parts per million
		smelt dissolving tank	0.0168 grams per kilogram

Recovery Furnaces—measured as hydrogen sulfide on a dry basis and on a twelve-hour average, corrected to eight percent (8%) by volume oxygen.

Lime Kilns—measured as hydrogen sulfide on a dry basis and on a twelve-hour average, corrected to ten percent (10%) volume oxygen.

Smelt Dissolving Tanks—measured as grams hydrogen sulfide per kilogram black liquor solids on a twelve-hour average.

Digesters and Evaporators—efficient incineration of non-condensable gases (at least twelve hundred degrees Fahrenheit [1200°F] for at least one-half [0.5] of one [1]

second).

**Authority.** Arkansas Code § 8-4-311.

## **Subpart 8. Prevention of Significant Deterioration Rules of the Arkansas Plan of Implementation for Air Pollution Control**

### **8 CAR § 41-801. Title.**

This subpart, adopted in accordance with the provisions of Part 2 of the Arkansas Water and Air Pollution Control Act at Arkansas Code § 8-4-101 et seq., shall be known as "Prevention of Significant Deterioration Rules of the Arkansas Plan of Implementation for Air Pollution Control", hereinafter referred to, respectively, as the "Prevention of Significant Deterioration Rules".

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-802. Purposes.**

Promulgation and enforcement of this subpart is intended to further the purposes of the state implementation plan and this part, including, but not limited to, acceptance of delegation by the United States Environmental Protection Agency of authority for enforcement of rules governing the prevention of significant deterioration of air quality and rules governing the protection of visibility in mandatory Class I federal areas.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-803. Definitions.**

(a) As used in this subpart:

(1)(A) "Advance notification" (of a permit application) means any written communication that establishes the applicant's intention to construct, and that provides the Division of Environmental Quality with sufficient information to determine that the

proposed source may constitute a major new source or major modification, and that such source may affect any mandatory Class I federal area, including, but not limited to:

- (i) Submittal of a draft or partial permit application;
- (ii) A prevention of significant deterioration monitoring plan; or
- (iii) A sufficiently detailed letter.

(B) "Advance notification" does not include general inquiries about Arkansas Pollution Control and Ecology Commission rules;

(2) "Regulated new source review pollutant" means the following:

(A)(i) Any pollutant for which a national ambient air quality standard has been adopted under 8 CAR § 41-106 and any pollutant identified under this subdivision (a)(2)(A) as a constituent or precursor for such pollutant.

(ii) Precursors identified by the division for purposes of new source review are the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas;

(b) Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas; and

(c) Nitrogen oxides are presumed to be precursors to PM<sub>2.5</sub> in all attainment and unclassifiable areas, unless Arkansas demonstrates to the Administrator of the United States Environmental Protection Agency's satisfaction or the United States Environmental Protection Agency demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations.

(iii) Volatile organic compounds are presumed not to be precursors to PM<sub>2.5</sub> in any attainment or unclassifiable area, unless Arkansas demonstrates to the Administrator of the United States Environmental Protection Agency's satisfaction or the United States Environmental Protection Agency demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient PM<sub>2.5</sub> concentrations;

(B) Any pollutant that is subject to any standard promulgated under Section 111 of the Clean Air Act;

(C) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Clean Air Act;

(D) Any pollutant that otherwise is subject to regulation under the Clean Air Act;

(E) Notwithstanding subdivisions (a)(2)(A) – (D) of this section, the term “regulated new source review pollutant” shall not include any or all hazardous air pollutants either listed in Section 112 of the Clean Air Act, or added to the list pursuant to Section 112(b)(2) of the Clean Air Act, and that have not been delisted pursuant to Section 112(b)(3) of the Clean Air Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Clean Air Act; and

(F)(i) PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity that condense to form particulate matter at ambient temperatures.

(ii) As of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on Thursday, October 25, 2012 (77 FR 65107), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in prevention of significant deterioration permits.

(iii) Compliance with emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan.

(iv) Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this subpart; and

(3) “Subject to regulation” means, for any air pollutant, that the pollutant is subject to either a provision of the federal Clean Air Act, or a nationally applicable regulation codified by the Administrator of the United States Environmental Protection

Agency pursuant to 40 C.F.R., Chapter 1, Subchapter C, and adopted herein, that requires actual control of the quantity of emissions of that pollutant and that such a control requirement has taken effect and is operative to control, limit, or restrict the quantity of emissions of that pollutant released from the regulated activity.

(b)(1) All other terms used herein shall have the same meaning as set forth in 8 CAR § 41-106 or in 40 C.F.R. § 52.21(b) (prevention of significant deterioration) and 40 C.F.R. § 51.301 (Protection of Visibility) as of October 20, 2010, and adopted in 8 CAR § 41-804, unless manifestly inconsistent with the context in which they are used.

(2) Wherever there is a difference between the definitions in 8 CAR § 41-106 and those listed in 40 C.F.R. § 52.21(b) and 40 C.F.R. § 51.301, the federal definitions as listed in 40 C.F.R. § 52.21(b), as adopted in 8 CAR § 41-804 and subdivisions (a)(1), (2), and (3) of this section, and 40 C.F.R. § 51.301 as of October 20, 2010, shall apply.

(c) The definition for "routine maintenance, repair and replacement" in 40 C.F.R. § 52.21(b)(2)(iii)(a) is not incorporated.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-804. Adoption of rules.**

(a)(1) Except where manifestly inconsistent with the provisions of the Clean Air Act, as amended, or with federal regulations adopted pursuant thereto, and as amended specifically herein by subsections (b), (c), (d), (e), (f), and (g) of this section, the Division of Environmental Quality shall have those responsibilities and that authority, with reference to the State of Arkansas, granted to the Administrator of the United States Environmental Protection Agency under 40 C.F.R. § 52.21(a)(2) – (bb), as in effect on November 29, 2005, which are hereby incorporated herein by reference with the exception of:

(A)(i) 40 C.F.R. § 52.21(aa), which is incorporated by reference as in effect on August 13, 2012, except for instances in the sections of 40 C.F.R. § 52.21(aa) where 40 C.F.R. § 52.21(b)(49) is referenced.

(ii) In those instances, subsection (g) of this section shall apply;

(B) 40 C.F.R. § 52.21(r)(6), which is incorporated by reference as of the effective date of the federal final rule published by the United States Environmental Protection Agency in the Federal Register on December 21, 2007 (72 FR 72607);

(C) 40 C.F.R. §§ 52.21(b)(23), 52.21(i)(5)(ii), and 52.21(i)(5)(iii), which are incorporated by reference as of May 16, 2008;

(D) 40 C.F.R. §§ 52.21(b)(14)(i) (major source baseline date), 52.21(b)(14)(ii) (minor source baseline date), 52.21(b)(14)(iii), 52.21(b)(15) (baseline area), 52.21(c) (ambient air increments), 52.21(k)(1) (source impact analysis requirements), and 52.21(p) (requirements for sources impacting federal Class I areas), which are incorporated herein by reference as of October 20, 2010; and

(E) 40 C.F.R. §§ 52.21(b)(49), 52.21(b)(50), 52.21(b)(55 – 58), 52.21(i)(9), and 52.21(cc), which are not incorporated herein.

(2) In the absence of a specific imposition of responsibility or grant of authority, the division shall be deemed to have that responsibility and authority necessary to attain the purposes of the state implementation plan, this subpart, and the applicable federal regulations, as incorporated herein by reference.

(b)(1) Exclusions from the consumption of increments, as provided in 40 C.F.R. § 51.166(f)(1)(iii) as of November 29, 2005, shall be effective immediately.

(2) Submission of the state implementation plan under the Governor's signature constitutes a request by the Governor for this exclusion.

(c) In addition to the requirements of 40 C.F.R. § 52.21(o) as of November 29, 2005, the following requirements, designated as subdivisions (c)(1), (2), (3), and (4) of this section, shall also apply:

(1) Where air quality impact analyses required under this subpart indicate that the issuance of a permit for any major stationary source or for any major modification would result in the consumption of more than fifty percent (50%) of any available annual increment or eighty percent (80%) of any short-term increment, the person applying for such a permit shall submit to the division an assessment of the following factors:

(A) Effects that the proposed consumption would have upon the industrial

and economic development within the area of the proposed source; and

(B) Alternatives to such consumption, including alternative siting of the proposed source or portions thereof;

(2) The assessment required under subdivision (c)(1) of this section shall be made part of the application for permit and shall be made available for public inspection as provided in 40 C.F.R. § 52.21(q) as of November 29, 2005;

(3) The assessment required under subdivision (c)(1) of this section shall be in detail commensurate with the degree of proposed increment consumption, both in terms of the percentage of increment consumed and the area affected; and

(4)(A) The assessment required under subdivision (c)(1) of this section may be made effective where a proposed source would cause an increment consumption less than that specified in said subdivision (c)(1) of this section if the Director of the Division of Environmental Quality finds that unusual circumstances exist in the area of the proposed source that warrant such an assessment.

(B) The director shall notify the applicant in writing of those circumstances that warrant said assessment.

(C) The Arkansas Pollution Control and Ecology Commission may rescind or modify the director's action upon a showing by the applicant that the circumstances alleged by the director either do not exist or do not warrant the aforesaid assessment.

(d) In addition to the requirements of 40 C.F.R. § 52.21(p)(1) as of October 20, 2010, the following requirements shall also apply:

(1)(A) Impacts on mandatory Class I federal areas include impacts on visibility.

(B) The preliminary determination that a source may affect air quality or visibility in a mandatory Class I federal area shall be made by the division, based on screening criteria agreed upon by the division and the Federal Land Manager.

(e) In all instances wherein the aforesaid 40 C.F.R. § 51.301 and 40 C.F.R. § 52.21 refer to the Administrator of the United States Environmental Protection Agency or the United States Environmental Protection Agency, the reference, for the purposes of subsection (a) of this section, shall be deemed to mean the division, unless the context plainly dictates otherwise, except in the following sections:

(1) Exclusion from increment consumption: 40 C.F.R. § 52.21(f)(1)(v), (f)(3), and (f)(4)(I);

(2) Redesignation: 40 C.F.R. § 52.21(g)(1), (g)(2), (g)(4), (g)(5), and (g)(6); and

(3) Air quality models: 40 C.F.R. § 52.21(l)(2).

(f) Redesignation of air quality areas in Arkansas shall comply with Arkansas Code § 8-3-101 et seq.

(g)(1) For the purpose of the regulation of greenhouse gases, only the standards and requirements promulgated by the United States Environmental Protection Agency as of June 3, 2010, related to the permitting of greenhouse gas emissions shall apply to the requirements of 40 C.F.R. § 52.21, as of November 29, 2005, incorporated by reference at subsection (a) of this section.

(2) The following definitions and requirements shall also apply:

(A)(i) "Emissions increase" as used in subdivisions (g)(2)(D) and (E) of this section, means that both a significant emissions increase (as calculated using the procedures in 40 C.F.R. § 52.21(a)(2)(iv), as of November 29, 2005), and a significant net emissions increase (as defined in 40 C.F.R. § 52.21(b)(3), as of November 29, 2005, and 40 C.F.R. § 52.21(b)(23), as of November 29, 2005), occur.

(ii)(a) For the pollutant greenhouse gases, an emissions increase shall be based on tons per year of CO<sub>2</sub> equivalent emissions, and shall be calculated assuming the pollutant greenhouse gases is a regulated new source review pollutant.

(b) "Significant" is defined as seventy-five thousand (75,000) tons per year of CO<sub>2</sub> equivalent emissions instead of applying the value in 40 C.F.R. § 52.21(b)(23)(ii), as of November 29, 2005;

(B) "Greenhouse gases" means the air pollutant defined as the aggregate group of six (6) greenhouse gases, carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in subdivisions (g)(2)(D) and (E) of this section, and shall not be subject to regulation if the stationary source:

(i) Maintains its total plant-wide emissions below the greenhouse gas

plant-wide applicability limitations level;

(ii) Meets the requirements in 40 C.F.R § 52.21(aa)(1) – (aa)(15) as outlined in subdivision (a)(1)(A) of this section; and

(iii) Complies with the greenhouse gases plant-wide applicability limitations contained in the permit;

(C) “Tons per year of CO<sub>2</sub> equivalent emissions”, for purposes of subdivisions (g)(2)(A), (D), and (E) of this section, shall represent an amount of greenhouse gases emitted, and shall be computed as follows:

(i) Multiplying the mass amount of emissions in tons per year, for each of the six (6) greenhouse gases in the pollutant greenhouse gases, by each gas’s associated global warming potential published at Table A-1 to Subpart A of 40 C.F.R. pt. 98 – Global Warming Potentials; and

(ii) Sum the resultant values from this subdivision (g)(2)(C) for each gas to compute tons per year of CO<sub>2</sub> equivalent emissions;

(D) Beginning January 2, 2011, the pollutant greenhouse gases is subject to regulation if:

(i) The stationary source is a new major stationary source for a regulated new source review pollutant that is not greenhouse gases, and also will emit or will have the potential to emit greenhouse gases at seventy-five thousand (75,000) tons per year of CO<sub>2</sub> equivalent emissions or more; or

(ii) The stationary source is an existing major stationary source for a regulated new source review pollutant that is not greenhouse gases, and also will have an emissions increase of a regulated new source review pollutant, and an emissions increase of greenhouse gases of seventy-five thousand (75,000) tons per year of CO<sub>2</sub> equivalent emissions or more; and

(E) [Reserved].

(h) The following shall apply when dispersion or other air quality modeling is used to meet the requirements of this subpart:

(1)(A) General.

(B) All applications of air quality modeling involved in this subpart shall be

based on the applicable models, databases, and other requirements specified in Appendix W of 40 C.F.R. pt. 51, Guideline on Air Quality Models; and

(2)(A) Substitution.

(B)(i) Where an air quality model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted.

(ii) Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific pollutant or type of stationary source.

(iii) Written approval of the Administrator of the United States Environmental Protection Agency must be obtained for any modification or substitution.

**Authority.** Arkansas Code § 8-4-311.

## **Subpart 9. Rules for the Control of Volatile Organic Compounds in Pulaski County**

### **8 CAR § 41-901. Title.**

This subpart, adopted in accordance with the provisions of the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., as amended, and pursuant to the provisions of the Clean Air Act, shall be known as the "Rules for the Control of Volatile Organic Compounds".

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-902. Purpose.**

This subpart is designed to provide for the attainment and maintenance of the National Ambient Air Quality Standards national ambient air quality standards for ozone in those areas of Arkansas which have been designated as nonattainment areas by the United States Environmental Protection Agency pursuant to the Clean Air Act and are further designed to bring this part into compliance with the provisions of the Clean Air

Act.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-903. Definitions.**

(a)(1) Terms and phrases used in this subpart which are not explicitly defined herein shall have the same meaning as those terms used in 8 CAR § 41-106 or, if not defined in 8 CAR § 41-106, as those terms defined in the Clean Air Act.

(2) Unless manifestly inconsistent therewith, terms and phrases used herein shall have the same meaning as used in the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., and the Clean Air Act.

(b) When used in this subpart, the following definitions apply:

(1)(A) "Cutback asphalt" means asphalt cement which has been liquefied by blending with petroleum solvents (diluent).

(B) Upon exposure to atmospheric conditions, the diluents evaporate, leaving the asphalt cement to perform its function; and

(2) "Prime coat" means the first of two (2) or more films of coating applied to a metal surface.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-904. [Reserved].**

**8 CAR § 41-905. Provisions for specific processes.**

(a) [Reserved].

(b) [Reserved].

(c) **Cutback asphalt.** No person shall mix, use, or apply cutback asphalt for roadway paving except where the cutback asphalt is used solely as a penetrating prime coat or when the maximum ambient temperature on the day of application is less than fifteen degrees Celsius (15° C) (fifty-nine degrees Fahrenheit (59° F)).

**Authority.** Arkansas Code § 8-4-311.

## **Subpart 10. Major Source Permitting Procedures**

### **8 CAR § 41-1001. Permitting procedure for Part 70 source.**

An owner or operator of a Part 70 source subject to Rules of the Arkansas Operating Air Permit Program, 8 CAR pt. 42, shall be required to have their permit applications processed in accordance with the procedures contained in 8 CAR pt. 42.

**Authority.** Arkansas Code § 8-4-311.

## **Subpart 11. [Reserved]**

## **Subpart 12. Stage I Vapor Recovery**

### **8 CAR § 41-1201. Purpose.**

The purpose of this subpart is to limit emissions of volatile organic compounds from gasoline stored in stationary dispensing tanks and from gasoline delivered into such tanks.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-1202. Applicability.**

(a) This subpart applies to all gasoline dispensing facilities and gasoline service stations and to delivery vessels delivering gasoline to a gasoline dispensing facility or gasoline service station in a nonattainment area.

(b) This subpart applies to all persons owning or operating a gasoline distribution facility or gasoline service station in a nonattainment area.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1203. Definitions.**

As used in this subpart:

(1)(A) "Coaxial system" means the delivery of the product to the stationary storage tank and the recovery of vapors from the stationary storage tank occurs through a single coaxial fill tube that is a tube within a tube.

(B) Product is delivered through the inner tube, and vapor is recovered through the annular space between the walls of the inner tube and outer tube;

(2) "Delivery vessel" means tank trucks or trailers equipped with a storage tank and used for the transport of gasoline from sources of supply to stationary storage tanks of gasoline dispensing facilities;

(3) "Dual point system" means the delivery of the product to the stationary storage tank and the recovery of vapors from the stationary storage tank occurs through two (2) separate openings in the storage tank and two (2) separate hoses between the tank truck and the stationary storage tank;

(4)(A) "Gasoline" means any petroleum distillate or blend of petroleum distillates with other combustible liquids that is used as a fuel for internal combustion engines and has a Reid vapor pressure of four pounds per square inch (4.0 psi) or greater.

(B) This does not include diesel fuel or liquefied petroleum gas;

(5) "Gasoline dispensing facility" means any site where gasoline is dispensed to motor vehicle gasoline tanks from stationary storage tanks;

(6) "Gasoline service station" means any gasoline dispensing facility where gasoline is sold to the motoring public from stationary storage tanks;

(7)(A) "Independent small business marketer" means a person engaged in the marketing of gasoline unless such person:

(i) Is a refiner or controls, is controlled by, or is under common control with a refiner or is otherwise directly or indirectly affiliated with a refiner or with a person who controls, is controlled by, or is under common control with a refiner,

unless the sole affiliation referred to is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person; or

(ii) Receives less than fifty percent (50%) of his or her annual income from refining or marketing of gasoline.

(B) For purposes of this subpart, the term "refiner" shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed sixty-five thousand (65,000) barrels per day.

(C) For purposes of this section, "control" of a corporation means ownership of more than fifty percent (50%) of its stock;

(8) "Leak free" means a condition in which there is no liquid gasoline escape or seepage of more than three (3) drops per minute from gasoline storage, handling, and ancillary equipment, including, but not limited to, seepage and escapes from aboveground fittings;

(9) "Line" means any pipe suitable for transferring gasoline;

(10) "Nonattainment area" means a county or counties designated by the United States Environmental Protection Agency as not meeting the national ambient air quality standards for ozone;

(11) "Operator" means any person who leases, operates, controls, or supervises a facility at which gasoline is dispensed;

(12) "Owner" means any person who has legal or equitable title to the gasoline storage tank at a facility;

(13) "Poppeted vapor recovery adaptor" means a vapor recovery adaptor that automatically and immediately closes itself when the vapor return line is disconnected and maintains a tight seal when the vapor return line is not connected;

(14) "Stationary storage tank" means a gasoline storage container that is a permanent fixture;

(15) "Submerged fill pipe" means any fill pipe with a discharge opening that is entirely submerged when the pipe normally used to withdraw liquid from the tank can

no longer withdraw any liquid, or that is entirely submerged when the level of the liquid is:

(A) Six inches (6") above the bottom of the tank if the tank does not have a vapor recovery adaptor; or

(B)(i) Twelve inches (12") above the bottom of the tank if the tank has a vapor recovery adaptor.

(ii) If the opening of the submerged fill pipe is cut at a slant, the distance is measured from the top of the slanted cut to the bottom of the tank;

(16) "Throughput" means the amount of gasoline dispensed at a facility; and

(17) "Vapor tight" means a condition in which an organic vapor analyzer or a combustible gas detector at a potential volatile organic compounds leak source shows either less than ten thousand parts per million (10,000 ppm) when calibrated with methane, or less than twenty percent (20%) of the lower explosive limit when calibrated and operated according to the manufacturer's specifications.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-1204. Exemptions.**

This subpart does not apply to:

(1) Transfers made to storage tanks at gasoline dispensing facilities or gasoline service stations equipped with floating roofs or their equivalent;

(2) Stationary storage tanks with a capacity of not more than five hundred fifty gallons (550 gals.), if the tanks are equipped with a submerged fill pipe;

(3) Stationary storage tanks used exclusively for the fueling of implements of normal farm operations;

(4) Facilities selling less than ten thousand gallons (10,000 gals.) of gasoline per month;

(5) Independent small business marketers of gasoline selling less than fifty thousand gallons (50,000 gals.) per month; and

(6) Any other facility or use exempted by state or federal statute.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1205. Prohibited activities.**

No person may cause, allow, or permit the transfer of gasoline from any delivery vessel into any stationary storage tank unless such transfer complies with the following requirements:

(1) The stationary storage tank is equipped with a submerged fill pipe and the vapors displaced from the tank during filling are controlled by a vapor control system as described herein;

(2) The vapor control system is in good working order and is connected and operating with a vapor-tight connection;

(3) The vapor control system is properly maintained and any damaged or malfunctioning components or elements of design have been repaired, replaced, or modified;

(4) Gauges, meters, or other specified testing devices are maintained in proper working order;

(5) All loading lines and vapor lines of delivery vessels and vapor collection systems are equipped with fittings that are leak-tight and vapor-tight;

(6) All hatches on the delivery vessel are kept closed and securely fastened;  
and

(7) The stationary storage tank has been tested, no less than annually, on a schedule acceptable to the Director of the Division of Environmental Quality according to the test methods required herein.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1206. Recordkeeping.**

The following records shall be maintained for not less than two (2) years and the same shall be made available for inspection by the Division of Environmental Quality:

- (1) The scheduled date for maintenance and testing, and the date that a malfunction was detected;
- (2) The date the maintenance and testing was performed or the malfunction corrected;
- (3) The date the component or element of design of the control system was repaired, replaced, or modified; and
- (4) Monthly totals of gallons of gasoline sold by the facility.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1207. Inspections.**

(a) The premises of any gasoline dispensing facility or gasoline service station shall be available for inspection by representatives of the Division of Environmental Quality.

(b) The process of transfer of gasoline from any delivery vessel into any stationary storage tank shall be subject to observation and inspection by representatives of the division.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1208. Vapor recovery systems.**

(a) The vapor control system required by 8 CAR § 41-1205 shall include one (1) or more of the following:

(1) A vapor-tight line from the stationary storage tank to the delivery vessel and:

(A) For a coaxial vapor recovery system, either a poppeted or unpoppeted vapor recovery adaptor; or

(B) For a dual point vapor recovery system, a poppeted vapor recovery adaptor; or

(2) A refrigeration-condensation system or equivalent designed to recover or destroy at least ninety percent (90%) by weight of the organic compounds in the

displaced vapor.

(b) If an unpoppeted vapor recovery adaptor is used, the tank liquid fill connection shall remain covered either with a vapor-tight cap or a vapor return line except when the vapor return line is being connected or disconnected.

(c) If an unpoppeted vapor recovery adaptor is used, the unpoppeted vapor recovery adaptor shall be replaced with a poppeted vapor recovery adaptor when the tank is replaced or upgraded.

(d)(1) Where vapor lines from the storage tanks are manifolded, poppeted vapor recovery adapters shall be used.

(2) No more than one (1) tank is to be loaded at a time if the manifold vapor lines have a nominal pipe size of less than three inches (3").

(3) If the manifold vapor lines have a nominal pipe size of three inches (3") or larger, then two (2) tanks at a time may be loaded.

(e) Vent lines on stationary storage tanks shall have pressure release valves or restrictors.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1209. Gasoline delivery vessels.**

(a) Gasoline delivery vessels shall be designed and maintained to be vapor-tight during loading and unloading operations and during transport.

(b) Gasoline delivery vessels shall be tested, no less than annually, on a schedule acceptable to the Director of the Division of Environmental Quality according to the test methods required herein.

(c) Gasoline delivery vessels shall sustain a pressure change of no more than seven hundred fifty (750) pascals (three inches (3") of H<sub>2</sub>O) in five (5) minutes when pressurized to a gauge pressure of four thousand five hundred (4,500) pascals (eighteen inches (18") of H<sub>2</sub>O) or evacuated to a gauge pressure of one thousand five hundred (1,500) pascals (six inches (6") of H<sub>2</sub>O) during testing.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1210. Owner/operator responsibility.**

(a) It shall be the responsibility of owners and operators of gasoline dispensing facilities and gasoline service stations to assure compliance with this subpart and to disallow the transfer from any delivery vessel that does not comply with those requirements of this subpart applicable to delivery vessels.

(b) It shall be the responsibility of owners, operators, and drivers of delivery vessels to assure compliance with this subpart and to refuse to transfer from any delivery vessel that does not comply with those requirements of this subpart applicable to delivery vessels.

(c) It shall be the responsibility of owners and operators of gasoline dispensing facilities and gasoline service stations to properly maintain, repair, replace, modify, and test the vapor recovery system components of stationary storage tanks regulated herein.

(d) It shall be the responsibility of owners and operators of gasoline dispensing facilities, gasoline service stations, and gasoline delivery vehicles to repair and retest equipment within fifteen (15) days of a test that exceeds the limitations set forth herein.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1211. Test methods.**

(a) Test method for leak detection:

(1) Within four (4) hours prior to monitoring, the organic vapor analyzer or combustible gas detector shall be suitably calibrated in a manner and with the gas specified by the manufacturer for twenty percent (20%) of the lower explosive limit response, or calibrated with methane for a ten thousand parts per million (10,000 ppm) response;

(2) The probe inlet shall be two and one-half centimeters (2.5 cm) or less from

the potential leak source when searching for leaks; and

(3)(A) The highest detector reading and location for each incident of detected leakage shall be recorded, along with the date, time, and name of the person performing the testing.

(B) If no gasoline vapor is detected, that fact shall be recorded.

(b)(1) Control efficiency of vapor recovery systems and vapor collection/processing systems shall be determined according to EPA Method 2A and either EPA Method 25A or 25B.

(2) EPA Method 2B shall be used for vapor incineration devices.

(c)(1) Vapor pressure of gasoline shall be determined using American Society for Testing and Materials (ASTM) Method D323-94 or ASTM Method D4953-93.

(2) Method D323-94 shall be used for gasoline either containing no oxygenates or MTBE (methyl ethyl butyl ether) as the sole oxygenate.

(3) Method D4953-93 shall be used for oxygenated gasoline.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1212. Effective date.**

(a) The requirements of this subpart shall be effective within nonattainment areas one (1) year after the designation by the United States Environmental Protection Agency of an area as a nonattainment area.

(b) In the case of an independent small business marketer with sales of fifty thousand gallons (50,000 gals.) or more per month, this subpart shall be phased in as follows:

(1) Thirty-three percent (33%) of facilities shall be in compliance at the end of the first year;

(2) Sixty-six percent (66%) at the end of the second year; and

(3) One hundred percent (100%) at the end of the third year.

**Authority.** Arkansas Code § 8-4-311.

### **Subpart 13. [Reserved]**

### **Subpart 14. Best Available Retrofit Technology**

#### **8 CAR § 41-1401. Purpose.**

This subpart establishes certain best available retrofit control technology requirements and compliance provisions pursuant to 40 C.F.R. § 51.308 as of June 22, 2007.

**Authority.** Arkansas Code § 8-4-311.

#### **8 CAR § 41-1402. Definitions.**

For purposes of this subpart, the definitions contained in 40 C.F.R. § 51.301, as in effect on June 22, 2007, are incorporated by reference.

**Authority.** Arkansas Code § 8-4-311.

#### **8 CAR § 41-1403. [Reserved].**

#### **8 CAR § 41-1404. [Reserved].**

#### **8 CAR § 41-1405. Best available retrofit technology requirements.**

(a) SWEPCO Flint Creek Power Plant (AFIN 04-00107) shall comply with best available retrofit technology requirements for particulate matter at SN-01 by meeting the existing permitted particulate matter emission limit as of October 15, 2007.

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

(e) Entergy Arkansas, Inc. White Bluff (AFIN 35-00110) shall comply with best

available retrofit technology requirements for particulate matter at Unit 1 (SN-01) and Unit 2 (SN-02) by meeting existing permitted particulate matter emission limits for the respective units as of October 15, 2007.

(f) [Reserved].

(g) [Reserved].

(h) [Reserved].

(i) [Reserved].

(j) [Reserved].

(k) [Reserved].

(l) Entergy Arkansas, Inc. Lake Catherine (AFIN 30-00011) shall comply with best available retrofit technology requirements for particulate matter when burning natural gas at Unit 4 Boiler (SN-03) by meeting the existing permitted particulate matter emission limit as of October 15, 2007.

**Authority.** Arkansas Code § 8-4-311.

**Codification Notes.** "SWEPCO" means Southwestern Electric Power Company.

**8 CAR § 41-1406. Compliance provisions.**

The owner or operator of each stationary source subject to 8 CAR § 41-1405 shall:

(1) Comply with the applicable emission limit as expeditiously as practicable, but in no event later than five (5) years after the United States Environmental Protection Agency approval of the emission limit into the Arkansas state implementation plan;

(2) Properly operate and maintain the control equipment necessary to comply with the applicable emission limitations set forth in 8 CAR § 41-1405;

(3) Establish and implement procedures to ensure that the control equipment necessary to comply with the applicable emission limitations set forth in 8 CAR § 41-1405 is properly operated and maintained; and

(4) Demonstrate compliance with the applicable emission limitations listed in 8

CAR § 41-1405 in accordance with the provisions of Subpart 6 of this part.

**Authority.** Arkansas Code § 8-4-311.

### **Subpart 15. [Reserved]**

### **Subpart 16. 111(d) Requirements for Landfills**

#### **8 CAR § 41-1601. Purpose.**

(a) This subpart establishes standards of performance, monitoring, recordkeeping, and reporting requirements for the control of designated pollutants from municipal solid waste landfills pursuant to 40 C.F.R. pt. 60, subpt. Cf.

(b) Requirements under this subpart shall not affect an owner's or operator's requirements under Solid Waste Management Rules, 8 CAR pt. 60.

**Authority.** Arkansas Code § 8-4-311.

#### **8 CAR § 41-1602. Definitions.**

(a) For the purposes of this subpart, the definitions in 40 C.F.R. § 60.41f are incorporated by reference except the definition of NMOC.

(b) "NMOC" means nonmethane organic compounds, as measured according to the provisions of 40 C.F.R. § 60.35f.

**Authority.** Arkansas Code § 8-4-311.

#### **8 CAR § 41-1603. Applicability.**

This subpart applies to each municipal solid waste landfill that:

(1) Accepted waste after November 8, 1987, or has capacity for future waste deposition; and

(2) Commenced construction, reconstruction, or modification on or before July

17, 2014.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1604. Requirement to obtain a permit.**

(a) The owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity greater than or equal to two and one-half million (2,500,000) megagrams or two and one-half million (2,500,000) cubic meters and that is not otherwise subject to Part 70 shall obtain a Part 70 permit in accordance with the procedures of Rules of the Arkansas Operating Air Permit Program, 8 CAR pt. 42, by no later than ninety (90) days after the effective date of United States Environmental Protection Agency approval of this subpart.

(b) The owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity less than two and one-half million (2,500,000) megagrams or two and one-half million (2,500,000) cubic meters is not subject to the requirement to obtain a Part 70 permit under this subpart and may instead obtain a permit in accordance with this part if the municipal solid waste landfill is not otherwise subject to Part 70.

(c) If a municipal solid waste landfill subject to this subpart becomes a closed landfill and is not otherwise subject to Part 70, the owner or operator is no longer subject to the requirement to maintain a Part 70 permit if the following conditions are met:

(1) The landfill was never subject to the requirement to install, maintain, and operate a gas collection and control system under 40 C.F.R. § 60.33f; or

(2) The landfill meets the conditions for control system removal or decommissioning specified in 40 C.F.R. § 60.33f(f).

(d) Physical or operational changes made to a municipal solid waste landfill subject to this subpart are not considered a modification or reconstruction under this subpart if the changes are made solely to comply with this subpart.

(e) The permit of each municipal solid waste landfill subject to this subpart shall be

subject to reopening to incorporate the applicable requirements of this subpart in accordance with the procedures of this part for municipal solid waste landfills not subject to the requirement to obtain a Part 70 permit, or in accordance with the procedures of 8 CAR pt. 42 for municipal solid waste landfills required to obtain a Part 70 permit.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1605. Exemption from reporting requirements for closed landfills.**

The owner or operator of a closed landfill subject to this subpart is not subject to the requirement to submit the following reports if the owner or operator submitted the reports to the Division of Environmental Quality or the United States Environmental Protection Agency under the provisions of 40 C.F.R. pt. 60, subpt. WWW or 40 C.F.R. pt. 62, subpt. GGG on or before July 17, 2014:

- (1) Initial design capacity report required under 8 CAR § 41-1606(a)(1);
- (2) Initial or subsequent NMOC emission rate report required under 8 CAR § 41-1607, if the most recent NMOC emission rate report indicated the NMOC emissions were below fifty (50) megagrams per year;
- (3) Collection and control system design plan required under 8 CAR § 41-1610;
- (4) Closure report required under 8 CAR § 41-1613;
- (5) Equipment removal report required under 8 CAR § 41-1613;
- (6) Initial annual report required under 8 CAR § 41-1612; and
- (7) Initial performance test report required under 8 CAR § 41-1612.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1606. Design capacity reports.**

(a)(1) For each municipal solid waste landfill subject to this subpart having a design capacity less than two and one-half million (2,500,000) megagrams by mass or

two and one-half million (2,500,000) cubic meters by volume, the owner or operator shall submit to the Division of Environmental Quality an initial design capacity report that meets the requirements of 40 C.F.R. § 60.38f(a).

(2) The owner or operator may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values.

(3) The owner or operator shall document and submit any density conversions with the design capacity report.

(b) If the maximum design capacity of a landfill increases such that the maximum design capacity is equal to or exceeding two and one-half million (2,500,000) megagrams by mass or two and one-half million (2,500,000) cubic meters by volume:

(1) The owner or operator shall submit to the division an amended design capacity report within ninety (90) days of the increase in maximum design capacity; and

(2) The owner or operator shall obtain a Part 70 permit in accordance with the procedures of Rules of the Arkansas Operating Air Permit Program, 8 CAR pt. 42, and comply with 8 CAR §§ 41-1607 and 41-1608.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-1607. NMOC emission rate reports.**

(a) For each municipal solid waste landfill subject to this subpart having a design capacity equal to or exceeding two and one-half million (2,500,000) megagrams by mass or two and one-half million (2,500,000) cubic meters by volume, the owner or operator shall:

(1) Prepare an initial NMOC emission rate report using the emission rate calculation procedures specified in 40 C.F.R. § 60.35f(a);

(2) Recalculate the NMOC emission rate annually in accordance with the procedures specified in 40 C.F.R. § 60.35f(a), except as provided in 40 C.F.R. § 60.38f(c)(3); and

(3) Follow the procedures specified in 40 C.F.R. § 60.33f(e)(1) – (3).

(b)(1) For demonstrations using the Tier 4 provisions of 40 C.F.R. § 60.35f(a)(6), the owner or operator shall notify the Division of Environmental Quality of the date or dates upon which the owner or operator intends to demonstrate that site-specific surface methane emissions are below five hundred parts per million (500 ppm) methane.

(2) The notification shall include a description of the wind barrier to be used during the surface emission monitoring described in the notification.

(3) The notification must be postmarked or delivered to the division not less than thirty (30) days prior to the date or dates on which surface emissions monitoring is scheduled to occur.

**Authority.** Arkansas Code § 8-4-311.

### **8 CAR § 41-1608. Standards of performance.**

(a) **Requirement to install, maintain, and operate a gas collection and control system.** The owner or operator of a municipal solid waste landfill subject to this subpart shall install, maintain, and operate a collection and control system meeting the requirements specified in 40 C.F.R. § 60.33f(b)(1) – (3) and 40 C.F.R. § 60.33f(c)(1) – (4), except as provided in 40 C.F.R. § 60.24, within thirty (30) months after:

(1) The first NMOC emission rate report for a landfill in which the NMOC emission rate equals or exceeds thirty-four (34) megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than thirty-four (34) megagrams per year;

(2) The first NMOC emission rate report in the closed landfill subcategory in which the NMOC emission rate equals or exceeds fifty (50) megagrams per year, unless Tier 2 or Tier 3 sampling demonstrates that the NMOC emission rate is less than fifty (50) megagrams per year; or

(3) The most recent NMOC emission rate report in which the NMOC emission rate equals or exceeds thirty-four megagrams per year based on Tier 2, if the Tier 4

surface emission monitoring shows a surface methane emission concentration of five hundred parts per million (500 ppm) methane or greater.

(b) **Collection system standards.** The owner or operator shall ensure that each collection system installed to comply with this subpart shall meet the requirements specified in:

(1) 40 C.F.R. § 60.33f(b)(2) and 40 C.F.R. § 60.40f(a) – (c) for active collection systems; or

(2) 40 C.F.R. § 60.33f(b)(3) for passive collection systems.

(c) **Control system standards.** The owner or operator shall ensure that each control system installed to comply with this subpart shall meet the requirements specified in 40 C.F.R. § 60.33f(c)(1) – (4) except as provided in 40 C.F.R. § 60.24.

(d) **Collection and control system removal requirements.** A collection and control system required under this subpart may be capped, removed, or decommissioned if the criteria specified in 40 C.F.R. § 60.33f(f)(1) – (4) are met.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1609. Compliance schedule and increments of progress for gas collection and control systems.**

(a) The owner or operator of each municipal solid waste landfill subject to the requirement to install and operate a gas emission collection and control system pursuant to this subpart shall complete planning, awarding of contracts, installing, and starting up of municipal solid waste landfill gas emission collection and control equipment within thirty (30) months after the date an NMOC emission rate report shows:

(1) NMOC emissions equal to or exceeding thirty-four (34) megagrams per year for active landfills;

(2) NMOC emissions equal to or exceeding fifty (50) megagrams per year for closed landfills; or

(3) A methane surface emission concentration equal to or exceeding five

hundred parts per million (500 ppm) based on Tier 4 surface emissions monitoring.

(b) The owner or operator of each municipal solid waste landfill subject to this subpart shall comply with the increments of progress listed in Table 41.16.1.

Table 41.16.1 Increments of Progress			
<b>Increment</b>		<b>Date if Using Tiers 1, 2, or 3</b>	<b>Date if Using Tier 4</b>
Increment 1: Submit final collection and control system design plan to the Division in accordance with 8 CAR § 41-1610		Twelve (12) months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions equal to or exceeding thirty-four (34) megagrams per year for active landfills or NMOC emissions equal to or exceeding fifty (50) megagrams for closed landfills	Twelve (12) months after the first measured concentration of methane million or greater from the surface of the landfill
Increment 2: Submit notice to the Division that on-site construction of collection and control system has begun	Twenty-four (24) months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions equal to or exceeding thirty-four (34) megagrams per year for active landfills or NMOC emissions equal to or exceeding fifty (50) megagrams for closed landfills	Twenty-four (24) months after the First measured concentration of methane of five hundred (500) parts per million or greater fro the surface of the landfill	

<p>Increment 3: Submit notice to the Division that on-site construction of collection and control system is complete</p>	<p>Thirty (30) months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions equal to or exceeding to thirty-four (34) megagrams per year for active landfills or NMOC emissions equal to or exceeding fifty (50) megagrams for closed landfills</p>	<p>Thirty (30) months after the first measured concentration of methane of five hundred (500) parts per million or greater from the surface of the landfill</p>
<p>Increment 4: Final compliance with 8 CAR § 41-1608</p>	<p>Thirty (30) months after initial NMOC emission rate report or the first annual emission rate report showing NMOC emissions equal to or exceeding to thirty-four (34) megagrams per year for active landfills or NMOC emissions equal to or exceeding fifty (50) megagrams for closed landfills</p>	<p>Thirty (30) months after the first measured concentration of methane of five hundred (500) parts per million or greater from the surface of the landfill</p>

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1610. Collection and control system design plan.**

(a)(1) The owner or operator shall submit to the Division of Environmental Quality

a site-specific design plan for each gas collection and control system required under this subpart.

(2) The collection and control system design plan shall be prepared and approved by a professional engineer and shall comply with the requirements specified in 40 C.F.R. § 60.38f(d)(1) – (7).

(b) The owner or operator of a municipal solid waste landfill who has already been required to submit a design plan under this subpart under 40 C.F.R. pt. 60, subpt. WWW, or under 40 C.F.R. pt. 62, subpt. GGG, must submit a revised design plan to the division as specified in 40 C.F.R. § 60.38f(e)(1) and (2).

(c)(1) Upon receipt of an initial or revised design plan, the division shall review the information submitted and either approve it, disapprove it, or request that additional information be submitted.

(2) If the division does not approve or disapprove the design plan, or does not request that additional information be submitted, within ninety (90) days of receipt, then the owner or operator may continue with implementation of the design plan at their own risk.

(d) If the owner or operator chooses to demonstrate compliance with the emission control requirements of this subpart using a treatment system as defined in 40 C.F.R. § 60.41f, then the owner or operator shall prepare a site-specific treatment system monitoring plan that meets the requirements specified in 40 C.F.R. § 60.39f(b)(5).

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1611. Operating, compliance, and monitoring requirements for gas collection and control systems.**

(a) The owner or operator of a municipal solid waste landfill with a gas collection and control system used to comply with this subpart shall meet the operating, compliance, and monitoring requirements of this subpart by:

(1) Compliance with the requirements of 40 C.F.R. § 60.34f(a) – (g), 40 C.F.R. § 60.36f(a) – (e), and 40 C.F.R. § 60.37f(a) – (h); or

(2) Compliance with the requirements of 40 C.F.R. § 63.1958, 40 C.F.R. § 63.1960, and 40 C.F.R. § 63.1961.

(b) If the owner or operator chooses to demonstrate compliance with the requirements of this subpart as provided under subdivision (a)(2) of this section, the owner or operator:

(1) Shall submit to the Division of Environmental Quality the twenty-four-hour high temperature report required under 40 C.F.R. § 63.1981(k); and

(2) May no longer use the provisions referenced in subdivision (a)(1) of this section to comply with operating, compliance, and monitoring requirements of this subpart.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1612. Performance testing reports.**

The initial and annual performance test report provisions specified in 40 C.F.R. § 60.38f(h) and (i) are incorporated by reference.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1613. Closure and equipment removal reports.**

The closure report and equipment removal report provisions specified in 40 C.F.R. § 60.38f(f) and (g) are incorporated by reference.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1614. Liquids addition reports.**

The liquids addition reporting requirements specified in 40 C.F.R. § 60.38f(l) are incorporated by reference.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1615. Recordkeeping requirements.**

The recordkeeping provisions specified in 40 C.F.R. § 60.39f(a) – (j) are incorporated by reference.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1616. Electronic reporting of certain reports.**

The owner or operator of a municipal solid waste landfill subject to this subpart shall submit, as applicable, the following reports electronically in accordance with the procedures specified in 40 C.F.R. § 60.38f(j):

- (1) NMOC emission rate reports required under 8 CAR § 41-1607;
- (2) Performance testing reports required under 8 CAR § 41-1612; and
- (3) Liquids addition reports required under 8 CAR § 41-1614.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1617. Test methods and procedures.**

The test methods and procedures provisions specified in 40 C.F.R. § 60.35f(a) – (e) are incorporated by reference.

**Authority.** Arkansas Code § 8-4-311.

**8 CAR § 41-1618. Corrective actions.**

The corrective action and the corresponding timeline requirements specified in 40 C.F.R. § 60.38f(k) are incorporated by reference.

**Authority.** Arkansas Code § 8-4-311.

**Subpart 17. Effective Date**

**8 CAR § 41-1701. 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 § 8-4-311.

**Appendix A. Insignificant Activities List**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/316/8CARpt.41AppendixA.pdf>

**Appendix B. National Ambient Air Quality Standards List**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/317/8CARpt.41AppendixB.pdf>