

AEF SPECIFIC COMMENTS ON ADEQ RULE 18 STRAWMAN DRAFT (SC)

1. Chapter 1 Title and Purpose

(a) **Rule 18.105 Incorporation by Reference.** Please consider correction of typos, grammar as follows in bold:

“. . . any adoption **of** or descriptive reference to another law shall be construed as though the referenced **law** were set forth in Rule 18 . . . “

(b) **Rule 18.106 Pre-emption of Political Subdivisions.** The current Arkansas Water and Air Control Pollution Control Act (AWAPCA) at ACA 8-4-306 includes the term “regulations” in its list of laws. Until the Act is changed, it may not be appropriate to delete the term “regulations” in this subsection as proposed by ADEQ. See also AEF General Comments to the Rules on Substituting EPA “Rules” for EPA “Regulations.”

2. Chapter 2 Definitions

(a) **“Air pollution”** – this term is currently identical to ACA 8-4-303(6). ADEQ is proposing to simplify it by changing some of the wording, however, for purposes of consistency, we request that the definition not be changed and believe it should be identical to the statute.

(b) **“Hazardous air pollutant”** – ADEQ is changing the definition of the term from “pollutant” to “air contaminant.” However, aren’t HAPS federally regulated air pollutants and should be defined as such rather than an “air contaminant?”

(c) **“National ambient air quality standards,” “PM1.5,” PM10,” PM2.5 emissions,” “PM10 emissions,” “Responsible Official,”** - these terms are shown as having the same meaning as in Rule 19 and incorporating the definitions in Rule 19 by reference. We appreciate ADEQ confirming that the definitions are currently the same in both Rules so the incorporation by reference would be appropriate. Please also consider that since Rule 18 is applicable to all sources, it may be preferable to include the full definitions of these terms in Rule 18 and instead incorporate them by reference in Rule 19.

(d) **“Permittee”** – this term has been added but we suggest to delete the term “persons” and instead change the definition to mean **“any person, firm, corporation, or entity“** so as to include pluralities for all terms.

3. Chapter 3 Permits

(a) **Rule 18.301(B) Special Applicability.** ADEQ deleted the term “regulation” in the first paragraph, but it seems this term should not be deleted since it could refer to federal law which includes federal regulations. Perhaps an option would be to include the term “rules” in addition to “regulations,” if that is the intent. See also AEF General Comments on Substituting EPA “Rules” for EPA “Regulations.”

(b) **Rule 18.301(B) (3) Special Applicability.** This subsection provides specific exceptions for a stationary source subject to the requirements of federal law at 40 CFR 60, 61 or 63 to obtain a permit under this Rule. A comment has been made that this subsection may be simplified to provide as follows “Any stationary source that may be subject to 40 CFR Part 60, 61 or 63

standards, but not otherwise required to have a permit due to its annual emissions, are not required to have a permit.”

(c) Rule 18.305(A) (4) Required Information. ADEQ has substituted the term “air contaminant” for “federally regulated air pollutant” here but this seems a significant change and should not be revised at this time. Substitution of the term expands ADEQ’s authority to require control technology not just for federally regulated air pollutants but for any air contaminant. We request that this change be held off until further discussion with the EASE groups and the public on the ramifications of the change.

(d) Rule 18.306 Public participation. ADEQ has deleted this subsection in its entirety in order to be consistent with Rule 8 Administrative Procedures. It is understandable to promote consistency among the Rules, but we request that this change not be made at time due to possible unintended consequences if the language in Rule 8 differs substantially from the AWAPCA and/or the current language in this subsection. We request that this change wait until the EASE Workgroups and the public have had the opportunity to discuss and review the differences in the provisions in the applicable Rules.

(e) Rule 18.309(A) (3) Permit Revocation. Please see previous comments where we request that ADEQ not delete the term “regulation” in this context, but keep that term and add the term “rule.”

(f) Rule 18.310 General Permits. The General Permits sections of the Rules are different in some manner. Further general permits are subject to the AWAPCA and Rule 8 as well. At this time, we request that ADEQ not change the wording of any of the General Permits sections in any of the Rules until ADEQ and EASE Workgroups and the public have had a chance to discuss the ramifications of these changes and how they conflict/differ from each other and the language of the Act at ACA 8-4-203(m)(1)(A)(i) on General Permits.

(g) Rule 18.313(B) Changes Resulting in No Emissions Increases. ADEQ deleted the term “Department” in addition to the requirement that the Department and the permittee shall attach a notice of proposed changes to the permit. Did ADEQ mean to substitute the word “Division” for “Department” or, if not, what is the reason for the deletion?

(h) Rule 18.315(G) Registration. Please consider correction of grammar in bold: “The owner or operator of a stationary source . . . may elect to continue to operate under **its** existing permit or **it** may submit . . .”

4. Chapter 7: Emissions of Air Contaminants from Mobile Equipment Rule 18.701(D). It may be cleaner and legally preferable to use the term “however” to pinpoint the exclusion and to use the word “such” instead of “portable and mobile equipment” - to revise as follows (revisions shown in bold):

“This Chapter shall apply to the motor exhaust of tractors, graders, earthmovers, or other mobile and portable equipment used exclusively in land clearing, agricultural, or road building operations. **However**, the prime movers used for the transportation of **such** equipment shall not be exempt.

5. Chapter 10: Sampling, Monitoring and Reporting Requirements Rule 18.1005 Public Availability of Emissions Data. ADEQ has changed the term “during normal business hours” for emissions data to be made to the public to “business days between 8 am and 4:30 pm central

time.” Just a comment here that ADEQ will need to revise this Rule in the event the time of the business day ever changes. By keeping the term as is, there would be no need to do so.

6. Chapter 11: Startup/Shutdown, Upset Conditions, Breakdowns, Scheduled Maintenance, Interruption of Fuel Supply

(a) Rule 18.1101 Upsets. ADEQ is proposing to change this subsection from the “source” “shall be deemed in violation” if it exceeds an emission limit to provide that the “source” “is in violation” if it exceeds an emission limit. (ADEQ is proposing to do the same in Rule 19.601 Upset Conditions, but substituting the term “owner or operator” for “source,” so there is a question of consistency in use of these terms in Rules 18 and 19 also.) There is a distinction changing the meaning from “shall be deemed in violation” to “is in violation” in that the party affected may be able to show that the “deemed” event is not actually the case, especially in the context of a violation of an affected source where the Division may forego any enforcement action for a “deemed” violation in the event certain conditions are met. We request that ADEQ retain the term “shall be deemed.”

(b) Rule 18.1105 Emergency Conditions. Currently this section is identical to Rule 19.602 Emergency Conditions. However, in Rule 18.1105, ADEQ changes the term “source” to “stationary source” but then in Rule 18.1105(A) uses the term “permittee” rather than “stationary source.” In Rule 19.602, ADEQ changes the term “source” to “owner or operator of the stationary source,” but then in Rule 19.602(A) uses the term “permittee” rather than “owner or operator of the stationary source.” These terms are not necessarily interchangeable; the change of terms seems inconsistent and unnecessary to do; and use of different terms in these two Rules for the same provision is confusing. For purposes of consistency and clarity, we highly urge that these sections not be revised at this time since currently they are identical to each other.

7. Chapter 14 Rule 18.1402 Confidentiality(B). Rule 18 has a definition for “trade secret” in Chapter 2 so it seems redundant to provide it here again. Also this subsection is worded differently than in Rule 19. We appreciate ADEQ reviewing these sections to maintain consistency between the two as much as possible.

8. Appendix A Insignificant Activities List Group B(44). ADEQ changed the term “pollutants” to “air contaminants” for the exclusion from “emissions from storage or use of water treatment chemicals.” However the exclusion from this activity refers only to “pollutants” regulated by federal law so the term “air contaminants” may not be appropriate here but perhaps better either to revert to the term “pollutants” or change the term to “federally regulated air pollutants.”