

AEF SPECIFIC COMMENTS ON ADEQ JAN 2020 RULE 26 STRAWMAN DRAFT (SC)

1. Overall Comment. Certain current federal Part 70 provisions: The current federal Part 70 has some new/changed paragraphs vs. the previous Part 70 on which Rule 26 is based. For example, the current federal Part 70 has additional provisions regarding alternative operating scenarios (see Rule 26.402(A)(9) on compliance plans.) Is it advisable at this time to include these changes for EPA approval or is ADEQ planning to review that effort at a later time?

2. Chapter 2 Definitions

(a) “Acid Rain Program” - ADEQ has capitalized the term “Acid Rain Program” throughout. Perhaps it should be defined.

(b) “Administrative permit amendment” - is an added term and defined as a “permit revision.” “Minor permit modification” is an added term and defined as a “change to a Part 70 permit.” ADEQ has also added the terms “permit modification,” and “permit revision,” but not “permit change.” We request that ADEQ consider for consistency that the term “revision” be used in the definition rather than the term “change” since a “permit revision” is defined by ADEQ as a “permit modification” or “administrative permit amendment.”

Similarly, throughout this Rule and for Rules 18 and 29, we request that ADEQ consider the term “change” be replaced with the term “revise” or “revision” to assure consistency throughout the Rules. See for example, Rule 26.301(C) Requirement for a Part 70 permit where ADEQ replaced the term “modifications” with “changes.” Instead we request that ADEQ either retain the term “modifications” or replace with the term “revisions.”

(c) “Major source” – ADEQ has eliminated the terms “such” in this definition which could change the meaning of the definition as it relates back to the terms specifically referred to in the definition such as “stationary source” or “group of stationary sources.” It is legally preferable to maintain the term “such” in this definition and we request that “such” is not deleted. See also General Comment concerning deletion of the term “such” throughout the Rules.

(d) “Minor permit modification” – this is an added defined term by reference to the specific numbered chapters of Rule 26. In the future the chapter numbers may change and in the event that happens, ADEQ will need to revise the definition. It may be more appropriate here to simply define it as “a modification to a Part 70 permit that meets the criteria of this Rule.” We also request that it be defined as a “revision” or “modification” rather than a “change.”

(e) “Permit modification” – ADEQ wishes to define this term pursuant to chapter number rather than the terminology currently in Chapter 10 Permit Modifications. See SC(d) above for our general comment on these changes.

We also request that ADEQ consider changing the definition to “any revision to a Part 70 permit that cannot be accomplished under the provisions of this Rule for administrative permit amendments” and then that sentence can be deleted from Chapter 10 as ADEQ proposes.

(f) “PM10” – is it necessary to include this definition since other pollutants are not defined?

(g) Deletion of term “State” - The definition of “State,” which is currently in Rule 26 and taken verbatim from federal Title V definitions, is proposed to be deleted. However the definition of “State” provides a distinction as to which entities are considered “States” for Title V and the Acid

Rain Program. “Affected states” is a term used throughout Title V and Rule 26. ADEQ appears to be trying to clarify the distinction between the terms “States” and the “State of Arkansas,” which is understandable, but the definitions need to be addressed a little more clearly. Perhaps the federal definition of “State” should not be deleted at this time. Also see GC 8.

3. Chapter 3 Requirement for a Part 70 Permit, Applicability

(a) Rule 26.301 Requirement for a Part 70 Permit.

(1) Rule 26.301(A). ADEQ added the term “owner or operator” to this subsection. ADEQ should consider adopting a definition for “owner or operator” per the federal definition at 42 USC 7411(a)(5) as “any person who owns, leases, operates, controls or supervises a stationary source.”

(2) Rule 26.301(C). We request that the second sentence be revised to substitute the term “changes” with “revisions” and to add the term “administrative permit amendments” since they are not ‘significant modifications,” as follows (changes noted in bold):

“This applies only to significant modifications and does not apply to **revisions** that qualify as minor permit modifications **or administrative permit amendments** or changes allowed under the operational flexibility provisions of a Part 70 permit.”

(b) Rule 26.305 Emissions subject to permitting. Portions of this subsection have been deleted per ADEQ’s comment to reflect vacatur of the GHG Tailoring Rule. However we suggest that the term “recognized air contaminant emissions” not be changed at this time for the reasons set forth in the Definitions comments. We also request ADEQ to consider whether both Rules 18 and 19 should be listed as the procedure for non-federally regulated air pollutants for modification procedures or, in the alternative, for ADEQ to consider listing such procedures.

4. Chapter 4 Applications for Part 70 Permits: Rule 26.402(A)(1) Standard Application Form and Required Information. ADEQ deleted the requirement that a list of insignificant activities must be included in the application. However it is our understanding that insignificant activities must be included in the permit for title V purposes according to federal law. Further it is helpful to the applicant to know that the list needs to be included in the application in order for the activities to be listed in the permit for permit shield applicability. We request that this provision be reinserted into the Rule.

5. Chapter 5 Rule 26.505 Ability to Operate a Part 70 Source Prior to Final Permit Action. ADEQ switched this subsection from active voice to passive voice. It seems clearer to maintain active voice and to perhaps change to state “A Part 70 source’s ability to operate prior to initial permit issuance. . . “ rather than how it is stated. Also eliminating the use of the word “such” in this subsection may be problematic and it may be clearer to keep the term “such” since it specifically refers to the “activity” described in the previous portion of the sentence.

6. Chapter 6 Part 70 Permit Review by the Public, Affected States and EPA

(a) Rule 26.602 Public participation. The current Part 70 does not require public notice for minor modifications, but there is also a provision which provides that minor permit modifications afford the public an opportunity for comment. This provision conflicts with Rule 26.602(A)(1)(b) which specifically states that minor permit modifications are exempt from public notice. We request that the term “minor permit modifications” be deleted from the first sentence of Rule 26.602.

(b) Rule 26.605(B) EPA objection to proposed permit. ADEQ is substituting the word “will” for “shall” with regard to EPA’s duty to include a statement if it objects to a proposed permit. The term “shall” is more legally appropriate here as regarding a duty to perform and we request ADEQ not substitute the term.

7. Chapter 7 Part 70 Permit Content Compliance Requirements. Rule 26.702(B) Federally-enforceable requirements. We request a clarification note is provided here as follows: “All state-only permit conditions shall be deemed as such in the applicable permit and shall not be considered federally enforceable.”

8. Chapter 8 Operational Flexibility Provisions. Rule 26.802(A) (1) Changes resulting in no emissions increase. ADEQ changed the wording of the requirement and refers to a “modification” with a capital M as a “Modification.” Is this perhaps a typo?

9. Chapter 9 Rule 26.901 Administrative permit amendment applicability:

(a) Rule 26.901(D) – This subsection provides that a change in ownership or control is an considered an administrative permit amendment as long as there is a “written agreement containing a specific date for transfer . . . “ There have been many practical instances where a specific date for transfer cannot be established in a written agreement prior to the transfer because exact dates sometimes are not known until the date of signing. We request ADEQ consider changing the term “specific” to “proposed.”

(b) Rule 26.901(E) ADEQ poses a question as to whether this condition for administrative permit amendment applicability should refer only to the permitting provisions of Rule 18 rather than both Rules 18 and 19. It may be preferable to keep reference to both Rules considering facilities’ individual permits that may reference both Rules for Specific Conditions regarding non-federally regulated air pollutants.

10. Chapter 10 Permit Modifications, Reopenings

(a) Rule 26.1001 Permit modifications – ADEQ wishes to delete the first sentence of this subsection which states “A permit modification is any revision to a part 70 permit that cannot be accomplished under the program’s provisions for administrative permit amendments.” This however is part of the definition and should not be deleted since it clarifies that a permit modification is any permit revision other than an administrative permit amendment. We recommend that this sentence be deleted from this subsection and included in the Definitions section for “permit modification” rather than here.

(b) Rule 26.1007 Permittee’s ability to make minor permit modification changes – ADEQ wishes to change the term “modification” to “change.” We prefer ADEQ either retaining the term “modification” or the term “revision” for consistency and as explained in previous comments.

(c) Rule 26.1010(E) Significant modification procedures – ADEQ wishes to substitute reference to specific numbered Rule subsections rather than use the term “the minor permit modification procedures.” It would be clearer to a regulated source and the public to keep the term to clarify that a significant modification involves an increase in federally regulated air pollutant emissions that cannot be processed as a minor modification. We recommend not changing the wording of this subsection at this time.