

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**SUBJECT: Petition to Promulgate  
an Emergency Rulemaking-  
Regulation No. 26**

**DOCKET NO. 12- -R**

**MINUTE ORDER NO. 12 -**

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On June 8, 2012, the Arkansas Department of Environmental Quality, ("Department" or "ADEQ") filed a Petition to promulgate an Emergency Rule to Amend Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program. The Petition has been designated as Docket No. 12- -R.

The Commission's Regulations Committee met on June 22, 2012, to review the Petition. Having considered the proposed amendment to Regulation No. 26, and other documents, the Arkansas Pollution Control and Ecology Commission finds as follows:

1. The Commission initiated an emergency rulemaking to amend Regulation No. 26, Regulations of the Arkansas Operating Air Permit Program. The changes to Regulation No. 26 are being proposed in response to the United States Environmental Protection Agency's ("EPA") Deferral for CO<sub>2</sub> Emissions from Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration ("PSD") and Title V Programs (76 FR 43490, July 20, 2011).
2. This petition to adopt an emergency rulemaking for Regulation No. 26 was made in response to the federal deferral of permitting requirements for biogenic CO<sub>2</sub> emissions. Failure to implement these revisions would have adverse impacts on the general welfare of the state and requires adoption of an emergency rule by the ADEQ. The implementation of this emergency rule for biogenic CO<sub>2</sub> emission deferral will keep entities from having to comply with permitting requirements which are otherwise more stringent than federal requirements, and could prevent them from being subject to more costly PSD permit fees and compliance as a result of biogenic CO<sub>2</sub> emissions that will be deferred with this rule. Otherwise, the owners or operators of these entities may incur financial liabilities, new debts, and profit and/or productivity loss due to inability to operate vital equipment, all of which could cause undue economic hardship on businesses and individuals in the state. Because this rulemaking adopts a federal requirement, there will be no impacts to the environment in Arkansas that would not have otherwise occurred. With the revised regulation, all facilities or entities that engage in biomass combustion or decomposition of biologically based materials (such as electric utilities burning biomass fuels, municipal solid waste landfills, sewage treatment facilities and food/beverage processors burning agricultural biomass residues) will not be subject to the regulation of carbon dioxide emissions from such combustion. Facilities affected by this amendment will experience reduced regulatory burden since they will not be subject to the biogenic carbon dioxide emissions permitting and will, therefore, experience a positive economic impact, including safeguarding employment in the State. The adoption of this emergency rulemaking will also have a positive impact on Arkansas's environment because it will potentially encourage facilities to use biomass fuels as an alternative to fossil fuels.

EXHIBIT F

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3. The Commission concludes that an imminent peril to the public health, safety, or welfare exists.
4. The Commission finds the proposed regulation is exempt from Act 143 of 2007, as amended by Act 809 of 2009, because the proposed rule is federally mandated or it codifies existing state or federal law.

Therefore, the Commission promulgates, as an emergency rulemaking, an amendment to Regulation No. 26.

**COMMISSIONERS:**

|                                 |                   |
|---------------------------------|-------------------|
| _____ J. Bates                  | _____ D. Samples  |
| _____ L. Bengal                 | _____ L. Sickel   |
| _____ J. Chamberlin (Chair)     | _____ J. Simpson  |
| _____ J. Fox                    | _____ W. Thompson |
| _____ D. Hendrix                | _____ B. White    |
| _____ L. Hitchcock              | _____ R. Young    |
| _____ S. Jorgensen (Vice Chair) |                   |

  
Submitted by: **Mike Bates**

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DATE PASSED

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**Chair, John Chamberlin**