

EXHIBIT D (amended petition)

To: Arkansas Pollution Control and Ecology Commission

From: Jamie Ewing, Attorney, Arkansas Department of Environmental Quality

Date: April 9, 2010

RE: Compliance with Act 143 of 2007

On March 11, 2010, ADEQ sent a marked-up copy of the proposed regulation to Ms. Pat Brown of the Arkansas Economic Development Commission. A copy of the attached document was emailed to Ms. Brown. This same explanation and a CD storing the proposed regulation were sent by messenger mail to Ms. Brown. As of today's date, ADEQ has not had any response to the submittal to AEDC. Per Act 143, AEDC was to have responded within 10 days of the submittal.

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Compliance with Act 143 of 2007 (formerly Executive Order 05-04)

Act 143 of 2007 requires that “[b]efore submitting proposed rules for adoption, amendment, or repeal, the agency shall first determine whether the proposed rules affect small businesses.” The agency shall consider “whether a means exists to make the rules less costly for small businesses without compromising the objective of the rules.” If the agency determines that the proposed rule will affect small businesses, the agency must prepare an economic impact statement in accordance with Act 143 of 2007.

The Act is not applicable to rules that are federally mandated. ADEQ determines that Act 143 of 2007 is not applicable to the proposed rule because the amendments to Regulation No. 2 included in the proposed rule are federally mandated.

Pursuant to the Federal Water Pollution Control Act (“Clean Water Act”), 33 U.S.C. §1251 *et seq.*, Arkansas has been delegated the authority to establish and administer water quality standards. The water quality standards are administered through the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §8-4-101 *et seq.* The Clean Water Act requires states to review their water quality standards on a triennial basis and to amend those standards as necessary. As a result of the triennial review process, ADEQ proposes to amend portions of Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas. The amendments that are subject of this rulemaking have been deemed necessary through this federally mandated review.