

REGULATION FORMATTING AND DRAFTING GUIDELINES



By the Arkansas Department of Environmental Quality and
Arkansas Pollution Control and Ecology Commission

Updated August 2009

TABLE OF CONTENTS

Introduction	4
Formatting Requirements	4
Software.....	4
Fonts	4
Tabs	4
Deleting language	4
Adding language	4
Use of Justify	4
Use of Bold	4
Page Numbering	4
Table of Contents	5
Definitions	5
Chapter and Section Numbering	5
Pleading Formatting.....	5
Stylistic Requirements	5
Topics	5
Acronyms	5
Statutory Authority	5
Natural Disasters	5
Department definition	5
Effective date language	5
Preparation for Initiation of Rulemaking	6
Economic Impact Statement	6
Scheduling, Routing and Filing	7
Packet Contents for Initiation of Rulemaking	8
Petition to Initiate Rulemaking	8
Regulation Cover Page	8
Secretary of State Numbering	8
Title	8
Seal	8
Cover Dates	8
Legislative Questionnaire	9
Financial Impact Statement	9
AEDC Approval Letter	9
Economic Impact/Env. Benefit Analysis	9
Proposed Minute Order	9
Copies	9
Post-Commission Approval to Initiate	10

Executive Summary.....	10
Copies	10
Public Hearing	10
Response to Comments	10
Legislative Council	10
Petition for Final Approval	11
Packet Contents	11
Email Submission	12
Post-Commission Approval	12
Appendix Index	14

GUIDELINES FOR ADEQ AND THIRD PARTY REGULATION DRAFTERS

I. INTRODUCTION

Any person may petition the Arkansas Pollution Control and Ecology Commission for the issuance, amendment, or repeal of a rule or regulation. The guidelines and samples of forms are set out below. Unless stated otherwise, these guidelines are applicable to both the Arkansas Department of Environmental Quality (ADEQ) and Third Parties.

Third Parties: Any third party having a question concerning the guidelines or forms should contact Michael O'Malley, Administrative Hearing Officer. See Appendix 1 for contact information.

ADEQ Staff: Any ADEQ staff member having questions concerning the guidelines or forms should contact ADEQ's Legal Division's Regulation Coordinator. See Appendix 1 for contact information.

II. FORMATTING REQUIREMENTS

A. The only acceptable word processing software to use is Microsoft Word.

B. Use the fonts: Times New Roman, Arial or Courier New. Use of any other fonts, especially printer fonts, may cause the printed and electronic versions of the regulation to differ in line breaks and/or pagination.

C. Use tabs to set columns and indents, not spaces. Use Break to force a page break, not multiple paragraphs.

D. Regulations Formatting

1. Deleting language. Strike through language to be deleted. For example: The purpose of the regulation is to promote proper use of ~~natural~~ resources.

2. Adding language. Underline any new language. For example: The purpose of the regulation is to promote proper use of the state's natural resources.

3. Justify all paragraphs.

4. Bold all headings.

5. Page numbering. Use Microsoft Word's automatically generated page numbers. Page numbers should be placed at the bottom center of the page. The table of contents should be numbered with small Roman numerals. For example, i, ii, iii, iv, etc. The following page numbers are to be hyphenated relating to the chapters of the regulation. The first number corresponds to the section or chapter number and the second number is the page number within a section. For example, Chapter 1 would be numbered 1-1, 1-2, 1-3, etc. For Appendices, the system would be A-1, A-2, A-3, etc.

6. Table of Contents. Page numbers, paragraph numbers, and paragraph headings should be reflected in a Table of Contents. (See Appendix 2).
 7. Definitions. Definitions do not need to be numbered. Boldface the defined words.
 8. Chapter and Section Numbering. Each section of the regulation must be numbered to reflect the regulation, chapter and section numbers. For example, Regulation 12, Chapter 3, Section 7 would be numbered, Reg.12.307. The headings must reflect the intent of the paragraph. Underline the section title. Do not underline the section number. For example: “Reg.12.307 Deductible” . **DO NOT** place periods at the end of each heading title or subsection number.
- E. Pleading Formatting
All documents filed with the Commission must follow the form requirements contained in Regulation 8.605. See Appendix 3 for example of the caption that must be on documents filed before the Commission for a rulemaking. Please note that the caption only needs to be placed on the main documents, not the exhibits attached to the main document. See Section IV, Subsection C of these Guidelines.

III. STYLISTIC REQUIREMENTS

- A. Limit each paragraph to a single topic or subtopic.
- B. Do not use any acronyms in the regulation. Spell out all references. For example: “Arkansas Department of Environmental Quality,” not “ADEQ.” The Commission must be referred to as the “Arkansas Pollution Control and Ecology Commission.”
- C. Statutory Authority: The Act or statute authorizing the rule or regulation must be cited in the regulation.
- D. Natural Disasters: The phrase “Act of God” must be replaced, if present, with the term “natural disasters.”
- E. The following definition must be included in all regulations: “Department means the Arkansas Department of Environmental Quality, or its successor.”
- F. The following language must be included in the body of all regulations: “This regulation is effective ten (10) days after filing with the Secretary of State, the State Library and the Bureau of Legislative Research.”

IV. PREPARATION FOR INITIATION OF RULEMAKING

A. ECONOMIC IMPACT STATEMENTS

1. Two separate determinations must be made as to the Economic Impact of the Proposed Rulemaking. The first is an evaluation pursuant to Act 143 of 2007:
 - i. All persons who plan to submit a proposed rulemaking before the Arkansas Pollution and Control Commission must submit an Economic Impact Statement (EIS) to the Arkansas Economic Development Commission (AEDC) explaining whether a means exists to make the rule less costly for small business without compromising the objective of the rule, **unless one the of following exemptions applies**:
 - a. The rule is being adopted on an emergency basis;
 - b. The rule is federally mandated; or
 - c. The rule substantially codifies existing state or federal law.
 - ii. The proponent must then do one of the following:
 - a. If one of the above exemptions applies, **ADEQ** must forward to AEDC a letter or memorandum explaining why the EIS is not required. A copy of the proposed regulation must be attached. See Appendix 18 for an example.
 - b. If none of the exceptions apply, **ADEQ** must submit an EIS to AEDC. See Appendix 18 for an example. See Appendix A, Regulation No. 8 for instructions and blank form. A copy of the proposed regulation must be attached.
 - c. If part of the rulemaking is exempted and part is not, **ADEQ** must submit an EIS for those portions not exempted and a letter for those that are. A copy of the proposed regulation must be attached.
 - d. A **Third Party** must forward either an EIS or letter, or both, to the Administrative Hearing Officer for submission to AEDC. A copy of the proposed regulation must be attached.
 - iii. Either the EIS or the letter, or both, should be sent to AEDC at least fifteen (15) business days prior to the date of filing the rulemaking with the Commission. (AEDC has ten (10) business days from the date of receipt to provide a response.)
2. In addition to the Economic Impact Analysis required for AEDC, a separate Economic Impact and Environmental Benefit Analysis must be prepared for **all** Rulemaking Packets pursuant to **Regulation No. 8.812**, unless specifically exempted under the regulation.
 - i. A rulemaking is exempt from the requirement of the economic impact and environmental benefit analysis requirements if:
 - a. The proposed rule incorporates or adopts the language of a federal statute or regulation, or Arkansas state statute or regulation, without

- substantive change;
- b. The proposed rule is limited to matters arising under Regulation No. 8;
- c. The proposed rule makes only de minimis changes to existing rules or regulations, i.e. correction of typographical errors or renumbering of paragraphs; or
- d. the proposed rule is an emergency rule.

ii. If the proponent of the proposed rule believes one of the above exemptions applies, then a statement must be included in the **Petition to Initiate Rulemaking** as to which exemptions apply and why each is applicable.

iii. If none of the exemptions apply, then the proponent should complete the Economic Impact/Environmental Benefit Analysis form that is attached as Appendix 8 to these Guidelines and as Attachment A to Regulation No. 8.

iv. If part of the proposed rulemaking is exempt, the proponent must prepare an economic impact and environmental benefit analysis for those portions not exempt and explain in the Petition to Initiate Rulemaking why remainder of the proposed changes are exempt.

B. SCHEDULING, ROUTING AND FILING

1. **Applicable to ADEQ and Third Parties:** Contact ADEQ Public Outreach and Assistance Division to schedule public notice dates and hearing dates. Scheduled Dates are necessary in order to the draft minute order, which is included in Rulemaking Packet.
2. **Applicable to ADEQ Only:** At least thirty (30) days before the date on which regulation packet is to be filed, regulation packet must then be routed through the Fiscal Division, the Legal Division and the Director's Office for review and approval.
3. **Applicable to ADEQ and Third Parties:** The Commission's filing deadline is approximately two (2) weeks before the scheduled Commission meeting. Check with the Commission secretary for exact deadline date. The proposed regulation packet must be submitted by the filing deadline or it will not be placed on that month's agenda.
4. **Applicable to ADEQ and Third Parties:** Each pleading or other documents to be filed with the Commission must be filed in accordance with Regulation 8.606. Within one (1) business day of filing a document with the Commission Secretary, the person filing must provide to the Commission's Secretary a PDF version of the filing for publication on the Commission's website. The PDF version may be supplied by email, by CD or by other means acceptable to the Commission.

C. PACKET CONTENTS FOR INITIATION OF RULEMAKING

A. **Petition to Initiate Rulemaking** (hereinafter “rulemaking packet” or “packet”) must be filed with the Commission in accordance with Regulation 8.808. The petition must state the reasons for revising the regulation and requesting that the Commission initiate the rulemaking process. The petition must cite to the **specific statute** that gives the Commission the authority to adopt the proposed rule. (Citation to the general act, for example, a citation to the Arkansas Water and Air Pollution Control Act or A.C.A. § 8-4-101, *et. seq.*, is not sufficient.) See Appendix 3.

The Petition shall include the following exhibits:

1. Exhibit A: Proposed Regulation¹ which includes the following:

i. Cover Page

Every rule revision, even a change to only one line, must include a proposed cover page. See Appendix 4. The cover page must include the following:

a. Secretary of State Numbering. The Secretary of State requires that its system for identifying a regulation is to be inserted at the top, right hand corner of the cover page.

For example: Pollution Control and Ecology Commission 014.00-0??; where the last two digits are the regulation’s number. The number that identifies Regulation No. 23 would be 014.00-023 or Regulation No. 2 would be 014.00-002.

b. The cover page should be titled: **Arkansas Pollution Control and Ecology Commission**, with the number of the regulation and the regulation title below.

c. The seal used on the cover page must be the seal of the State of Arkansas.

d. Cover Dates

1. Initial Draft

a. The initial draft should state the month and year in which the draft regulation will first be submitted to the Commission. For example: “Submitted to the PC&E Commission in August 2009.”

b. The cover must include the words “Initial Draft” at the bottom of the cover page above the submitted date. Do not use the watermark feature of Microsoft Word.

2. Final Draft: The date on the cover page of the final draft will be the date of the Commission meeting during which it will consider adoption of the final

¹ In the majority of cases, any change to a regulation requires submittal of the entire regulation to the Commission. However, if the proposed changes to regulation are limited or the regulation being changed is very large, contact Administrative Hearing Officer for special instructions.

proposed regulation. For example: Approved by the Pollution Control & Ecology Commission on December 9, 2009. See Appendix 5.

- ii. Table of Contents;
 - iii. Title of Regulation;
 - iv. Purpose, Scope and Applicability;
 - v. Definitions;
 - vi. Main Body of the Text; and
 - vii. Appendices.
2. Exhibit B: The Legislative Questionnaire (See Appendix 6);
 3. Exhibit C: The Financial Impact Statement (See Appendix 7);
 4. Exhibit D: The Arkansas Economic Development Commission approval letter regarding Act 143 of 2007, as amended by Act 809 of 2009; a memorandum stating that more than ten (10) business days have passed since submittal of a letter or EIS to AEDC (attach copy of letter); or memorandum explaining why the Act is not applicable (See Section IV(A)(1)(iii), *infra.*);
 5. Exhibit E: Economic Impact/Environmental Benefit Analysis required by Regulation 8.812 (See Appendix 8);
 6. Exhibits F - ?: Other exhibits which may include a study, a report, or any other information the petitioner deems relevant.
 7. Exhibit [last letter of total exhibits]: The proposed Minute Order which is always the last exhibit in the rulemaking package. **Third Parties**: See Appendix 9; **ADEQ**: See Appendix 10.

C. COPIES

1. File the original and three (3) copies (single-sided) of the proposed rulemaking packet with the Commission. An electronic version of the packet should also be submitted to the Commission.
2. **ADEQ Only**: After filing the proposed packet with the Commission, email copy of the packet to Regulation Coordinator in Legal Division for publication to the website.
3. **Third Parties Only**: At the time of filing the petition to initiate rulemaking, provide an electronic copy of the filed materials in PDF format to the Commission Secretary for publication to the website. A separate, clearly labeled PDF file must be submitted

to the Commission Secretary for each pleading, document or exhibit.

V. ACTIONS TO TAKE FOLLOWING INITIATION OF RULEMAKING

A. EXECUTIVE SUMMARY

Prepare a one (1) page executive summary of the proposed changes to the regulation.

B. COPIES

1. On the Monday following the Commission Meeting during which the petition to initiate rulemaking was approved, file with the Public Outreach and Assistance Division of ADEQ (POA):

i. For ADEQ Only:

- a. Double-sided copies of the petition and all attachments, the number of which is to be determined by POA; and
- b. Fifty (50) copies of the one-page executive summary.

ii. For Third Parties Only:

- a. One (1) draft public notice;
- b. Double-sided copies of the petition and all attachments, the number of which is to be determined by POA;
- c. Fifty (50) copies of the one-page executive summary; and
- d. A check to cover the cost of publication of public notice. (Check with the Public Outreach and Assistance Division for the exact amount.)

C. PUBLIC HEARING

Two (2) weeks before the scheduled public hearing, contact Public Outreach and Assistance Division of ADEQ regarding preparations for the public hearing.

D. RESPONSE TO COMMENTS

1. **For ADEQ and Third-Parties:** At the end of the public comment period, prepare a Responsive Summary whether or not any comments are received.
2. Make any necessary revisions to the regulation based on the public comments.
Note: If changes are made that are not a logical outgrowth of the proposed regulation, it may require a second public notice and public comment period.

E. LEGISLATIVE COUNCIL

1. Approval must be obtained from the Administrative Rules and Regulations SubCommittee and the Public Health and Welfare Committee of the Arkansas Legislative Council before the proposed regulation may be submitted to the Commission for final adoption.²

² If a regulation involves a mining matter, then approval must be sought from the Administrative Rules and Regulations Subcommittee and the House & Senate Interim Committees on Agriculture and Economic Development Committee.

2. Before a rule may be scheduled for review by the SubCommittee, the following shall have occurred by at least the fifteenth (15th) day of the month preceding the subcommittee meeting (i.e. you want on the September agenda, you have to have everything done by August 15th):
 - i. The public comment period has expired;
 - ii. The public hearing has been held;
 - iii. Two copies of the following have been submitted to the SubCommittee, if applicable:
 - a. A revised markup of the rule indicating any changes occurring after the original filing of the rule;
 - b. A revised summary detailing the changes to the rule occurring after the original filing of the rule; and
 - c. A list of each person commenting on the rule;
 - d. A summary of each comment; and
 - e. How the agency responded to the comment.
 - iv. A revised financial impact statement or statement of controversy if rule revisions or public comments have prompted changes to the agency's original statement.

3. Two separate packets arranged in the following order must be submitted:
 - Cover letter
 - Questionnaire (See Appendix 6)
 - Financial impact and small business impact (if applicable)
 - Summary of the rule
 - Rule
 - Markup of the rule (if applicable)

4. Please note that the above items will be scheduled by the Public Outreach and Assistance Division of ADEQ.

VI. PETITION FOR FINAL APPROVAL

A. PACKET CONTENTS – At least fourteen (14) days before the Commission meeting during which adoption will be sought, ADEQ or the Third Party must submit to the Commission an original and three (3) single-sided copies of a Motion to Adopt Changes. See Appendix 11.

The Motion must have the following exhibits attached:

1. Exhibit A: Statement of Basis and Purpose signed by the preparer (See Appendix 12);
2. Exhibit B: Responsive Summary signed by the preparer (See Appendix 13);
3. Exhibit C: The final revised regulation without strikethroughs or markups. The cover sheet must indicate at the bottom, “Adopted by Arkansas Pollution Control and

Ecology Commission: [insert anticipated date of Commission approving adoption],”
(See Appendix 14);

4. Exhibit D: Regulation Tracking Sheet (See Appendix 15);
5. Exhibit E: Proposed Minute Order adopting the proposed revisions (See Appendix 16). Include names of current Governor and ADEQ Director on the Minute Order. Check Commission website for names of current Commissioners to include on the Minute Order.

B. EMAIL SUBMISSION

1. **For ADEQ and Third Parties**: After filing final packet with the Commission, email a Word copy of the Proposed Minute Order to the Commission Secretary.
2. **For ADEQ Only**: After filing final packet with the Commission, email copy of the final packet to the Legal Division’s Regulation Coordinator for placement on the web.
3. **For Third Parties Only**: When filing the final packet with the Commission, provide a PDF version of the final packet to the Commission Secretary for placement on the Commission’s website. Each pleading, document or exhibit must be submitted to the Commission Secretary as a separate, clearly labeled PDF file. Email or provide a separate CD (disk) in Microsoft Word format of the final packet to ADEQ.

VII. POST COMMISSION APPROVAL

- A. After the Commission has adopted the regulation changes by Minute Order, the Commission Secretary will forward the Minute Order to the Governor’s Office for signature.
- B. Once the Commission Secretary receives the signed Minute Order from the Governor’s office, the Secretary will then mail a copy of the Minute Order along with a letter requesting copies to the person who prepared the Minute Order (See Appendix 16).
- C. Prepare twenty-one (21), double-sided copies of the adopted regulation and one (1) CD (disk) of the adopted regulation and submit to the Commission Secretary.
- D. The Commission Secretary will then prepare and mail the transmittal letters to the appropriate entities which are required to receive the regulation.
- E. The Commission Secretary will then send to the person who prepared the Minute Order, a file-marked copy of the documents submitted to the Bureau of Legislative Research, the Secretary of State, and Arkansas State Library.
- F. The Legal Division’s Regulation Coordinator will receive from the Commission Secretary copies of The Secretary of State Transmittal Sheet and the Commission Minute Order, showing dates and signatures.

- G. Contact the Legal Division's Regulation Coordinator regarding the effective date of the regulation. Prepare regulation with new cover page with the effective date. See Appendix 17. Email final regulation to Regulation Coordinator for posting to website.
- H. The Regulation Coordinator will then convert the Transmittal Sheet and Minute Order to PDF format and attach to the final regulation for posting on the Department's website. Please note that the Transmittal Sheet and Minute Order must be included behind the appendices of the final regulation in any printed or electronic versions of the adopted regulation – any other versions of the regulation should not be used.

REGULATION FORMATTING AND DRAFTING GUIDELINES

APPENDICES

Appendix 1 – Contacts List.....	15
Appendix 2 – Table of Contents	16
Appendix 3 – Petition to Initiate Rulemaking	17
Appendix 4 – Initial Draft Cover Sheet	20
Appendix 5 – Final Draft Cover Sheet	21
Appendix 6 – Legislative Questionnaire.....	22
Appendix 7 – Financial Impact Statement	25
Appendix 8 – Economic Impact/Environmental Benefit Analysis.....	27
Appendix 9 – Third-Party Minute Order to Initiate Rulemaking	30
Appendix 10 – ADEQ Minute Order to Initiate Rulemaking	34
Appendix 11 - Motion to Adopt Changes	37
Appendix 12 – Statement of Basis and Purpose	38
Appendix 13 – Responsive Summary	40
Appendix 14 – Final Cover Sheet	41
Appendix 15 – Regulations Tracking Sheet	42
Appendix 16 – Minute Order Adopting Revisions	44
Appendix 17 – Publication Cover Sheet	45
Appendix 18 – Memorandum	46

APPENDIX 1

Contacts List

Name	Title	Agency	Phone	Email
O'Malley, Michael	Adm. Hearing Officer	APC&EC	(501) 682-7890	<u>omalley@adeq.state.ar.us</u>
Smith, Fran	Regulations Coordinator	ADEQ Legal Div.	(501) 682-0895	<u>smith@adeq.state.ar.us</u>
Goff, Pat	Commission Secretary	APC&EC	(501) 682-7893	<u>pce-filings@adeq.state.ar.us</u>
Szenher, Doug	Program Support Mgr	ADEQ Public Outreach & Assist. Div.	(501) 682-9015	<u>szenher@adeq.state.ar.us</u>
Guthrie, Dawn	Chief	ADEQ Legal Division	(501) 682-0886	<u>guthrie@adeq.state.ar.us</u>
Davis, Donna	Sub-Committee on Adm. Rules and Regs	Legislative Council	(501) 682-1937	<u>donna@arkleg.state.ar.us</u>
Baxter, Kim	Public Health and Welfare Committee	Legislative Council	(501) 537-9180	<u>kimb@arkleg.state.ar.us</u>

APPENDIX 2

TABLE OF CONTENTS

REGULATION NO. 12

STORAGE TANKS.....i

CHAPTER ONE: GENERAL PROVISIONS.....	1-1
Reg.12.101 Purpose and Title.....	1-1
Reg.12.102 Authority.....	1-1
Reg.12.103 Definitions.....	1-1
Reg.12.104 Incorporation of Federal Regulations.....	1-5
Reg.12.105 Records.....	1-6
Reg.12.106 Entry and Inspection of Underground Storage Tank Facilities.....	1-6
Reg.12.107 Entry and Inspection of Aboveground Storage Tank Facilities.....	1-7
Reg.12.108 Notice of Requirements.....	1-7
CHAPTER TWO: REGISTRATION OF STORAGE TANKS.....	2-1
Reg.12.201 Registration Requirement.....	2-1
Reg.12.202 Certificate of Registration.....	2-1
Reg.12.203 Storage Tank Registration Fees.....	2-2
CHAPTER THREE: PETROLEUM STORAGE TANK TRUST FUND CORRECTIVE ACTION REIMBURSEMENT PROCEDURES.....	3-1
Reg.12.301 Purpose.....	3-1
Reg.12.302 Trust Fund Eligibility.....	3-1
Reg.12.303 Trust Fund Coverage for a Release.....	3-2
Reg.12.304 Trust Fund Coverage for Unknown Petroleum Storage Tanks.....	3-3
Reg.12.305 Notice Requirements.....	3-3
Reg.12.306 Amount of Reimbursement.....	3-4
Reg.12.307 Deductible.....	3-4
Reg.12.308 Applying for Reimbursement of Corrective Action Costs.....	3-5
Reg.12.309 Interim Payments.....	3-7
Reg.12.310 Reimbursement Application Review.....	3-8
Reg.12.311 Reasonable Costs.....	3-9
Reg.12.312 Allowable Costs.....	3-10
Reg.12.313 Necessary Costs.....	3-13
Reg.12.314 Records.....	3-13
Reg.12.315 Audits.....	3-14
Reg.12.316 Cost Recovery.....	3-14
Reg.12.317 Trust Fund Availability.....	3-15
Reg.12.318 Obligation to Comply.....	3-15

APPENDIX NO. 3

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 12, STORAGE TANKS) DOCKET NO. 09___-R
REGULATIONS)

PETITION TO INITIATE RULEMAKING TO AMEND REGULATION NO. 12, STORAGE TANKS REGULATIONS

The Arkansas Department of Environmental Quality (hereinafter “ADEQ” or “the Department”), for its Petition to Initiate Rulemaking to Amend Regulation No. 12, Storage Tanks Regulations, states:

1. Act 264 of 2007 was adopted by the Arkansas Legislature to incorporate the requirements of the Federal Energy Policy Act of 2005 regarding underground storage tanks. The Department proposes this rulemaking to make the provisions of Regulation No. 12 conform to the statutory language of the federal and state acts.
2. The proposed regulatory amendments precipitated by the above-referenced Act involve the following:
 - a. Changes to Chapter Seven to define and implement the operator training requirements of Arkansas Act 264 of 2007 and the federal Energy Policy Act of 2005.
3. Act 282 of 2009 was adopted by the Arkansas Legislature to repeal the annual storage tank self-inspection audit requirement for tank owners and operators. The Department proposes this rulemaking to make the provisions of Regulation No. 12 conform to the statutory language of the state act. The proposed regulatory amendments precipitated by the above-referenced Act involve the following:

a. Changes as appropriate in Chapters One and Three to remove regulatory language pertaining to the repealed annual storage tank self-inspection audit requirement.

4. The Department proposes changes to Chapter Three in order to clarify language regarding the eligibility of certain regulated substance storage tanks for coverage by the Petroleum Storage Tank Trust Fund; to establish a timeframe for requesting Advisory Committee review of Department determinations on trust fund eligibility or reimbursement of costs; and to establish a timeframe for submittal of final costs for reimbursement after completion of corrective action for a release.

5. Dawn Guthrie or Joe Hoover from ADEQ will be available to answer questions concerning this proposed rulemaking. A red-lined version of the regulation showing the proposed changes is attached as Exhibit “A” and is hereby incorporated by reference. A copy of the Legislative Questionnaire is attached as Exhibit “B”, and a copy of the Financial Impact Statement for the proposed revision is attached as Exhibit “C”, both of which are incorporated by reference. A copy of AEDC’s letter of review regarding applicability of Act 143 of 2007, as amended by Act 809 of 2009, is attached as Exhibit D and hereby incorporated by reference. A copy of the Economic Impact/Environmental Benefit Analysis is attached hereto as Exhibit “E” and is hereby incorporated by reference. A proposed minute order is attached as Exhibit “F” and is hereby incorporated by reference.

WHEREFORE, ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and adopt the proposed amendments to Regulation No. 12.

Respectfully Submitted,
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY
5301 Northshore Drive
North Little Rock, Arkansas 72118
By: _____
Dawn R. Guthrie

Pollution Control and Ecology Commission # 014.00-012

**ARKANSAS POLLUTION CONTROL
and ECOLOGY COMMISSION**

**REGULATION NO. 12
STORAGE TANKS**



INITIAL DRAFT

Submitted to the PC&E Commission in August, 2009

APPENDIX 5

Pollution Control and Ecology Commission # 014.00-012

ARKANSAS POLLUTION CONTROL and ECOLOGY COMMISSION

REGULATION NO. 12 STORAGE TANKS



Approved by the PC&E Commission: December 9, 2009

APPENDIX 6

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM
COMMITTEE**

DEPARTMENT/AGENCY _____
DIVISION _____
DIVISION DIRECTOR _____
CONTACT PERSON _____
ADDRESS _____
PHONE NO. _____ **FAX NO.** _____ **E-MAIL** _____
NAME OF PRESENTER AT COMMITTEE MEETING _____
PRESENTER E-MAIL _____

INSTRUCTIONS

- A. Please make copies of this form for future use.**
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.**
- C. If you have a method of indexing your rules, please give the proposed citation after “Short Title of this Rule” below.**
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:**

**Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201**

- 1. What is the short title of this rule?
- 2. What is the subject of the proposed rule?
- 3. Is this rule required to comply with a federal statute, rule, or regulation? Yes _____ No _____
If yes, please provide the federal rule, regulation, and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes _____ No _____

If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes _____ No _____ If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes _____ No _____ If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? Yes ___ No ___ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes.

Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.

7. What is the purpose of this proposed rule? Why is it necessary?

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

9. Will a public hearing be held on this proposed rule? Yes _____ No _____

If yes, please complete the following:

Date: _____

Time: _____

Place: _____

10. When does the public comment period expire for permanent promulgation? (Must provide a date.) _____
11. What is the proposed effective date of this proposed rule? (Must provide a date.) _____
12. Do you expect this rule to be controversial? Yes _____ No _____ If yes, please explain.
13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT _____

DIVISION _____

PERSON COMPLETING THIS STATEMENT _____

TELEPHONE NO. _____ **FAX NO.** _____ **EMAIL:** _____

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE

1. Does this proposed, amended, or repealed rule have a financial impact?
Yes _____ No _____

2. Does this proposed, amended, or repealed rule affect small businesses?
Yes _____ No _____

If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash

Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____
(Identify) _____

Other

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT ANALYSIS

Rule Number & Title: Regulation No. 12, Storage Tanks

Petitioner: ADEQ

Contact/Phone/Electronic mail: Joe Hoover, Chief, RST Division; 682-0988;
hoover@adeq.state.ar.us

Analysis Prepared by: Lynda Perry, Programs Branch Mgr., RST Division

Date Analysis Prepared: July 2, 2009

2A. ECONOMIC IMPACT

1. Who will be affected economically by this proposed rule?

State: a) the specific public and/or private entities affected by this rulemaking, indicating for each category if it is a positive or negative economic effect; and b) provide the estimated number of entities affected by this proposed rule.

a) All regulated storage tank owners, public or private, will be positively affected by the repeal of the self-inspection audit form requirement. All underground storage tank (UST) owners, public or private, are required to comply with the UST operator training requirement, but the economic effect is anticipated to be primarily neutral with minimal, if any, economic impact to tank owners. There are no foreseen economic impacts associated with the clarification of procedural timeframes for tank owners covered by the Petroleum Storage Tank Trust Fund, nor should there be any economic effect on tank owners from the clarification of trust fund coverage.

b) There are approximately 3,800 registered owners of regulated underground and aboveground storage tanks that will be covered by the self-audit form repeal and the trust fund changes for clarification. The UST operator training requirement affects approximately 2,500 UST owners and an estimated 8,000 UST operators.

Sources and Assumptions: *RST Database; assumption of an average of 2 operators per UST facility at an estimated 4,000 facilities.*

2. What are the economic effects of the proposed rule? State: 1) the estimated increased or decreased cost for an average facility to implement the proposed rule; and 2) the estimated total cost to implement the rule.

1) Regulation No. 12 revisions deleting the self-audit language and clarifying trust fund procedures and coverage should have a neutral economic effect. The new UST operator training requirements may either have a slightly increased cost or no increased cost at all to UST owners. The only cost proposed is an exam fee of \$25 for Class A and Class B operators, which may be borne

by the individuals seeking certification rather than the tank owners. 2) Estimated total cost to implement the proposed changes is \$50 per facility for a total of \$200,000.

Sources and Assumptions: *RST Database; assumption is for a \$25 exam fee for an average of 2 individuals per facility multiplied by approximately 4,000 UST facilities.*

3. List any fee changes imposed by this proposal and justification for each.

An exam fee of \$25 is proposed under the existing authority of A.C.A. §8-7-802(a)(2)(A) to help defray a small part of the agency's costs of providing monthly Class A and Class B operator testing venues across the state. With the large number of individuals required to become certified under this federal law, it is essential that training and testing be made available out in the state as well as centrally at the agency's North Little Rock headquarters. ADEQ will provide the operator training classes at no cost to individuals.

4. What is the probable cost to ADEQ in manpower and associated resources to implement and enforce this proposed change, and what is the source of revenue supporting this proposed rule?

The projected financial impact to ADEQ to implement the federally mandated operator training requirements is approximately \$15,000-\$16,250 per fiscal year in state matching funds. The revenue source funding this program's implementation is the federal Underground Storage Tank (UST) Program grant awarded to the state by EPA. The other proposed regulatory changes should have no associated costs to ADEQ in manpower or resources.

Sources and Assumptions: *RST budget and grants; assumption of cost based on salary/fringe for one existing staff position.*

5. Is there a known beneficial or adverse impact to any other relevant state agency to implement or enforce this proposed rule? Is there any other relevant state agency's rule that could adequately address this issue, or is this proposed rulemaking in conflict with or have any nexus to any other relevant state agency's rule? Identify state agency and/or rule.

There is no known impact to another state agency nor is there another state agency's rule that could address any of the proposed changes. This rulemaking is not in conflict with, nor has any nexus to, any other relevant state agency's rule.

Sources and Assumptions: *n/a*

6. Are there any less costly, non-regulatory, or less intrusive methods that would achieve the same purpose of this proposed rule?

No.

Sources and Assumptions: *n/a*

2B. ENVIRONMENTAL BENEFIT

1. What issues affecting the environment are addressed by this proposal?

The operator training requirement should have a long-term positive effect on the environment. Providing training and requiring that operators have a minimum level of knowledge prior to operating a UST system should help ensure that compliance measures will be followed and help lessen or prevent releases of stored regulated substances to the environment.

2. How does this proposed rule protect, enhance, or restore the natural environment for the well being of all Arkansans?

Properly trained operators should equate to fewer releases to the environment from regulated underground storage tank systems.

Sources and Assumptions: *EPA guidance for operator training.*

3. What detrimental effect will there be to the environment or to the public health and safety if this proposed rule is not implemented?

There will remain a higher threat of potential releases to the environment from UST systems because of operator error or noncompliance with state and federal UST regulations. Such releases not only carry a threat of environmental harm but can also pose a serious threat to public health and safety due to the nature of the substances stored in USTs.

Sources and Assumptions: *n/a*

4. What risks are addressed by the proposal and to what extent are the risks anticipated to be reduced?

Risk addressed by the proposal: Releases from USTs – anticipated to be reduced to very low by proposed operator certification requirements.

Sources and Assumptions: *n/a*

APPENDIX 9

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT Regulation No. __
(Insert name of regulation)
Third-Party Rulemaking
(Insert name of Petitioner)**

DOCKET NO. 09-__ -R

MINUTE ORDER NO. 09-__

PAGE 1 OF 4

On **(Insert date)**, **(Insert name of Petitioner)**, **(Insert “short name of Petitioner”)** filed a Petition to Initiate Third-Party Rulemaking to Amend Regulation No. ____, **(Insert complete name of regulation)**. Pursuant to Ark. Code Ann. § 8-4-202(c), the Arkansas Pollution Control and Ecology Commission (“Commission”) has sixty (60) days in which to either institute rulemaking proceedings or to give written notice denying the petition for rulemaking. The Petition has been designated as Docket No. 09-__-R.

The Commission’s Regulations Committee met on **(Insert date)** to review the Petition and it recommends that the Commission institute a rulemaking proceeding to consider adopting the proposed amendments to Regulation No. ____. The Regulations Committee also recommends adoption of the following procedures and schedule.

1. **(Short name)** and the Arkansas Department of Environmental Quality (“ADEQ”) shall file an original and one (1) copy and a computer disk in Word of all materials required under this Minute Order. This requirement does not apply to transcripts.

2. Persons submitting written public comments shall submit them to ADEQ and ADEQ will deliver the originals of all comments to the Commission Secretary at the conclusion of the proceeding.

3. **(Short name)** will submit to the ADEQ’s Public Outreach and Assistance Division (“POA”), the following:

a. A proposed public notice to be used in mailing notice to interested persons, for publishing in appropriate industry, trade, or professional publications as the Commission may select. The proposed public notice may, in the ADEQ’s discretion, be approved for use or ADEQ may choose to prepare its own public notice. The public notice shall conform to the requirements of Regulation No. 8.803. The public notice shall be published not later than 45 days prior to the first public hearing. By agreement, **(Short name)** shall pay the costs of the newspaper publications and the costs of the appropriate industry, trade or professional publications chosen by the Commission and shall file only the original proof of publication with the Commission. ADEQ shall be responsible for mailing

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT - Regulation No. __
(Insert name of regulation)
Third-Party Rulemaking**

(Insert name of Petitioner)

DOCKET NO. 09- -R

MINUTE ORDER NO. 09-_____

PAGE 2 OF 4

the public notice to all persons who have requested advance notice of rulemaking proceedings and the cost of the mailing.

b. Fifty (50) copies of the executive summary of the proposed rulemaking.

c. Bound copies of the Petition and all supporting documentation, the number of which is to be determined by POA.

4. **(Select the applicable paragraph and insert.)** A public hearing shall be conducted the week of **(Date)** in **(Name of city or county or exact location of hearing)**, Arkansas. The exact date, time, and location for each hearing will be determined by ADEQ's Public Outreach and Assistance Division.

Or

A public hearing shall be conducted on **(Insert the date, time, location, and city of the hearing.)**

5. The period for receiving all written comments from **(Short name)**, the public, and ADEQ shall conclude ten (10) business days after the date of the public hearing, unless an extension of time is granted.

6. **(Short name)** and ADEQ shall each file, not later than 14 days before the Commission meets to consider adoption of the proposed regulation, a Statement of Basis and Purpose and Responsive Summary as required by Regulation No. 8.815. In addition, **(Short name)** and ADEQ shall file a proposed Minute Order deciding this matter.

7. ADEQ shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and/or from the Joint Interim Committee on Administrative Rules and Regulations.

8. The Regulations Committee and the Commission may consider this matter at their **(Insert Month and Year)** meeting. In the event the appropriate legislative committees do not complete review of the proposed rule by the above date, the Regulations Committee and the Commission will consider the proposed amendments to the regulation after review by the appropriate legislative

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT - Regulation No. ___
(Insert name of regulation)
Third-Party Rulemaking
(Insert name of Petitioner)**

MINUTE ORDER NO. 09-_____

**DOCKET NO. 09-_____ -R
PAGE 3 OF 4**

committees. Members of the Regulations Committee may ask questions of any persons that made oral or written comments and it will make a recommendation to the Commission.

9. At the Commission meeting, the presentation of oral statements and legal arguments will be regulated as follows:

- a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, the one (1) hour oral statement period may be extended.
- b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.
- c. Legal counsel or other designated persons representing **(Short name)** and ADEQ shall be permitted ten (10) minutes in which to address the Commission.
- d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

10. If **(Short name)** desires a transcript of the public hearing, Regulations Committee meeting, and Commission meetings, or if required by the Commission, **(Short name)** agrees to pay all costs for the preparation of a transcript of the public hearings, Regulations Committee meetings and Commission meetings that concern this docket and occur after the adoption of the Minute Order. If a transcript is required, **(Short name)** will employ the court reporter and the court reporter shall deliver the original transcript to the Commission Secretary.

11. **(Select the applicable paragraph.)** The Commission finds the proposed regulation does not affect small businesses and therefore concludes that Act 143 of 2007, as amended by Act 809 of 2009 is not applicable.

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT - Regulation No. ____
(Insert name of regulation)
Third-Party Rulemaking
(Insert name of Petitioner)**

DOCKET NO. 09-____ -R

MINUTE ORDER NO. 09-____

PAGE 4 OF 4

Or

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.

Or

(Draft a finding that applies based on the provisions of Act 143 of 2007, as amended by Act 809 of 2009.)

The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in this docket. The Commission adopts, without modification, the procedural schedule set forth above.

COMMISSIONERS:

_____ [insert names of Commissioners]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]

Chair, (Insert name)

Submitted by: **Insert name** DATE PASSED: _____

APPENDIX 10

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Petition to
Initiate Rulemaking -
Regulation No. 12**

Docket No. 09- -R

MINUTE ORDER NO. 09 -

PAGE 1 OF 3

On August 9, 2009, The Arkansas Department of Environmental Quality ("Department") filed a Petition to Amend Regulation No. 12, Storage Tanks ("Petition"). The Petition has been designated as Docket No. 09- -R.

The Commission's Regulations Committee met on August 26, 2009, to review the Petition. Having considered the Petition, the Regulations Committee recommends the Commission institute a rulemaking proceeding to consider adopting the proposed revisions to Regulation No. 12.

1. The Arkansas Department of Environmental Quality ("Department") shall file an original and two (2) copies and a computer disk in Word of all materials required under this Minute Order.

2. Persons submitting written public comments shall submit their written comments to the Department. Within ten (10) business days following the adoption or denial of the proposed rule, the Department shall deliver the originals of all comments to the Commission Secretary.

3. A public hearing shall be conducted on September 26, 2009, from 1:00 p.m. to 4:00 p.m. at 5301 Northshore Drive, North Little Rock, Arkansas 72118.

4. The period for receiving all written comments shall conclude ten (10) business days after the date of the public hearing pursuant to Regulation No. 8.806.

5. The Department shall file, not later than 14 days before the Commission meets to consider adoption of the proposed rule, a Statement of Basis and Purpose as required by Regulation No. 8.815.

6. The Department shall file, not later than 14 days before the Commission meets to consider adoption of the proposed rule, a proposed Minute Order deciding this matter.

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Petition to
Initiate Rulemaking -
Regulation No. 12**

MINUTE ORDER NO. 09 -

**Docket No. 09- -R
PAGE 2 OF 3**

7. The Department shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and from the Joint Interim Committee on Administrative Rules and Regulations.

8. The Regulations Committee will consider this matter at its December 2, 2009, meeting. Members of the Regulations Committee may ask questions of the Department and any person that made oral or written comments. The Regulations Committee will make a recommendation to the Commission.

9. At its regularly scheduled December 2, 2009, meeting, the presentation of oral statements and legal arguments shall be regulated as follows:

a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. The Chair, in his discretion, may extend the one (1) hour public comment period.

b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.

c. Department legal counsel or other designated Department employee will be permitted ten (10) minutes in which to address the Commission.

d. At the conclusion of all comments, the Chairman will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring comments who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

10. **(Use the applicable paragraph.)** The Commission finds the proposed regulation does not affect small businesses and therefore concludes that Act 143 of 2007, as amended by Act 809 of 2009, is

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Petition to
Initiate Rulemaking -
Regulation No. 12**

Docket No. 09- -R

MINUTE ORDER NO. 09 -

PAGE 3 OF 3

not applicable.

Or

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.

Or

(Draft a finding that applies based on the provisions of Act 143 of 2007, as amended by Act 809 of 2009.)

The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in Docket No. 09 - - R effective August 26, 2009. The Commission adopts, without modification, the procedural schedule set forth above.

COMMISSIONERS:

_____ [insert names of Commissioners]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]

_____ Submitted by: **Insert name** DATE _____
PASSED: _____
Chair, (Insert name)

**BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 12, STORAGE TANK)
REGULATIONS)**

DOCKET NO. 09-____-R

MOTION TO ADOPT CHANGES TO REGULATION NO. 12

Pursuant to APC&EC Regulation No. 8, the Arkansas Department of Environmental Quality submits the following documents before the Commission for its consideration:

- Exhibit A) The Statement of Basis and Purpose signed by the preparer;
- Exhibit B) The Responsive Summary signed by the preparer;
- Exhibit C) The Final Revised Regulation;
- Exhibit D) The Regulations Tracking Sheet; and
- Exhibit E) The Proposed Minute Order adopting the proposed revisions to the Regulation.

WHEREFORE, the Arkansas Department of Environmental Quality prays that the Commission adopt the proposed Minute Order adopting the revisions to APC&EC Regulation No. 12.

Respectfully submitted,
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: _____
[insert name]

APPENDIX 12

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 12, STORAGE TANK) DOCKET NO. 09- -R
REGULATIONS)

STATEMENT OF BASIS AND PURPOSE FOR REGULATION NO. 12, STORAGE TANK REGULATIONS

The Arkansas Pollution Control and Ecology Commission (the “Commission”) is given the power and responsibility to promulgate rules and regulations. Pursuant to Ark. Code Ann. § 8-1-203(b)(1), the Commission is granted the power and responsibility to promulgate rules and regulations implementing the substantive statutes which are administered by the Arkansas Department of Environmental Quality (hereinafter “ADEQ” or “Department”).

On August 9, 2009, ADEQ filed a Petition to Initiate Rulemaking to Amend Regulation No. 12, Storage Tank Regulations. The revisions to the Storage Tank Regulations are the result of state legislative or federal regulatory changes enacted or promulgated since 2004. The proposed amendments to Regulation No. 12 were precipitated by the following:

Arkansas General Assembly Act 193 of 2005, Act 670 of 2005,
Act 671 of 2005, and Act 1678 of 2005.

Amendment of Regulation No. 12 is necessary in order to make the regulation conform with statutory language affected by the above-referenced Acts, and to incorporate changes to federal standards (40 C.F.R. Part 280) made by EPA. Pursuant to Regulation 8, Section 3.6.2(3), all technical standards are based upon those provided by 40 C.F.R. 280, which is incorporated by reference into Regulation No.12.

The areas addressed by the amendments adopted by the Commission are:

1. Legislative and Federal Regulatory Changes.

(A) Amendment of the surety requirement to add letters of credit and cash bonds as allowable forms of financial assurance for licensed installers and testers to comply with Act 193 of 2005;

(B) Changes to Trust Fund provisions to comply with Act 670 of 2005, which requires interim payments to consist of amounts not exceeding ninety percent (90%) of One Million Five Hundred Thousand Dollars (\$1,500,000.00);

(C) Amendment to increase the annual storage tank registration fee from Fifty Dollars (\$50.00) to Seventy-Five Dollars (\$75.00) in compliance with Act 671 of 2005; and

(D) Changes to Trust Fund provisions to comply with Act 1678 of 2005, which provides the Department a right of subrogation in cost recovery matters;

2. Changes proposed by the Department.

(A) Changes to eliminate the issuance of a Certificate of Eligibility, to comport with the requirements of 40 C.F.R. § 280, Subpart H, and Ark. Code Ann. § 8-7-801, *et seq.*; and

(B) Changes to include in the regulation language the provisions of Ark. Code Ann. § 8-7-813(e), which excludes from the registration requirements aboveground storage tanks located on farms, the contents of which are used for agricultural purposes and not held for resale.

The Commission finds that the proposed revisions to Regulation No. 12 facilitate implementation of the substantive statutes administered by the Department, concerning storage tanks. These rules are in the public interest, and are necessary to insure compliance with both state and federal law.

Prepared by:
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: _____
[insert name]

APPENDIX 13

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 12, STORAGE TANK) DOCKET NO. 09- -R
REGULATIONS)

RESPONSIVE SUMMARY FOR REGULATION NO. 12, STORAGE TANK REGULATIONS

Pursuant to A.C.A. § 8-4-202(d)(4)(C) and Regulation No. 8.815, a responsive summary groups public comments into similar categories and explains why the Arkansas Pollution Control and Ecology Commission (“Commission”) accepts or rejects the rationale for each category.

On August 9, 2009, the Arkansas Department of Environmental Quality filed a Petition to Initiate Rulemaking to Amend Regulation No. 12, Storage Tank Regulations. No written comments were received. Commissioner Thomas Schueck conducted a public hearing on September 26, 2009, but no oral comments were made about the proposed rules.

Conclusion:

No written or oral comments were submitted regarding the proposed revisions to Regulation No. 12.

Prepared by:
Arkansas Department of
Environmental Quality

By: _____
[insert name]

APPENDIX 14

Pollution Control and Ecology Commission # 014.00-012

ARKANSAS POLLUTION CONTROL and ECOLOGY COMMISSION

REGULATION NO. 12 STORAGE TANKS



Adopted by the PC&E Commission: January 27, 2009

ADEQ REGULATIONS TRACKING SHEET

Regulation No. 12 Common Name: Storage Tank Regulations

1. **Strawman review** of draft regulations by key groups.

	<u>initiated</u>	<u>completed</u>	<u>incorporated</u>
EPA	<u>/</u>	<u>/</u>	<u>/</u>
ADEQ Legal/Admin.	<u>/</u>	<u>/</u>	<u>/</u>
Industrial/ Environmental Groups	<u>/</u>	<u>/</u>	<u>/</u>

Comments: The amendment of Regulation No. 12 is necessary in order to make the regulation conform with statutory language affected by various Acts passed by the Arkansas General Assembly in 2005 and to incorporate changes to federal standards made by EPA.

2. Proposed regulations presentation to Commission's **Regulations Committee** for approval to proceed to public comment period.

Date: 08/26/2009 *By:* Dawn R. Guthrie

Comments/Approval: Committee recommended adoption of Petition to initiate rulemaking

3. **Legal notice** of proposed regulations and public hearing.

<u>publication</u>	<u>dates of publication</u>
<u>Arkansas Democrat-Gazette</u>	<u>8/31/09, 9/1/09, 9/2/09</u>

4. Provide **Legislative Council** with three copies of proposed regulations and the legislative questionnaire at least ten days prior to the first public hearing.

5. Hold **public hearing(s)** on the proposed regulations.

<u>location</u>	<u>date</u>	<u>hearing chairman</u>
<u>ADEQ Headquarters</u>	<u>September 26, 2009</u>	<u>Commissioner [insert name]</u>

6. Date of final day of public comment period: October 10, 2009, 4:30 p.m.

7. **Final proposed regulation and response to comments** prepared by Department.

Date initiated: 11/14/09 *Date completed:* 11/15/09

8. Formal presentation to the **Public Health & Welfare Committee** of the Legislative Council.
Date: 10/25/09 *By:* [insert name]
Comments/Approval: Approval Received by Committee

9. Formal presentation of proposed final regulation to the **Administrative Rules & Regulations Subcommittee** of the Legislative Council (All Regs).
Date: 01/05/10 *By:* [insert name]
Comments/Approval: Approval Received by Committee

10. Presentation of proposed final regulation to Commission's **Regulations Committee**.
Date: 01/27/10 *By:* [insert name]
Comments/Approval: _____

11. Provide Commission members with copy of proposed final regulation prior to Commission meeting.
Date Delivered: 11/23/09

12. Present proposed final regulation to the **Commission** for adoption.
Date: 01/27/09 *By:* [insert name]
Comments/Approval: _____

13. Send two copies of adopted regulation to **Secretary of State** (regulation becomes effective ten days after filing).
Date mailed: 01/27/010

14. Formally submit adopted regulation to **EPA**.
Date mailed: Upon final promulgation of Regulation

PREPARED BY:
 ARKANSAS DEPARTMENT
 OF ENVIRONMENTAL QUALITY

By: _____
 [insert name]

APPENDIX 16

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**LOCATION-SUBJECT
Adoption of Revisions to
Regulation No. 12,
Storage Tank Regulations**

DOCKET NO. 09- -R

MINUTE ORDER NO. 09 -

PAGE 1 OF 1

Pursuant to public notice and hearing, and in consideration of the fact that no public comments were received, the Arkansas Pollution Control and Ecology Commission hereby adopts changes to Regulation No. 12, Storage Tank Regulations.

PROMULGATED THIS 27TH DAY OF JANUARY, 2010 BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: _____
[insert name], Chairman

ATTEST: _____
[insert name], Director

APPROVED: _____
[insert name], Governor

COMMISSIONERS:

_____ [insert names of Commissioners]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]
_____ [insert name]	_____ [insert name]

_____ Submitted by: **Insert name** DATE PASSED: _____
Chair, (Insert name)

APPENDIX 17

Pollution Control and Ecology Commission # 014.00-012

ARKANSAS POLLUTION CONTROL and ECOLOGY COMMISSION

REGULATION NO. 12 STORAGE TANKS



Adopted by the PC&E Commission: January 27, 2010
Effective Date: February 20, 2010

APPENDIX 18

MEMORANDUM

TO: ADEC

THROUGH: DAWN GUTHRIE
CHIEF, LEGAL DIVISION

JOE HOOVER
CHIEF, LEGAL DIVISION

FROM: VALERIE HAYS
STAFF ATTORNEY, LEGAL DIVISION

DATE: SEPTEMBER 1, 2009

RE: ANALYSIS OF PROPOSED CHANGES FOR REGULATION NO. 12
PURSUANT ACT 143 OF 2007, as amended by ACT 809 OF 2009

Pursuant to Act 143 of 2007, as amended by Act 809 of 2009, a determination must be made whether or not the proposed rules will affect small business.

The proposed changes for Regulation No. 12 include the following:

- a. Implement and define the secondary containment requirements of Arkansas Act 264 of 2007 and the federal Energy Policy Act of 2005;
- b. Implement and define the delivery prohibition requirements of Arkansas Act 264 of 2007 and the federal Energy Policy Act of 2005.
- c. Clarification of when a cost, which has been denied reimbursement from the Trust Fund, may be appealed.
- d. Clarification of certain costs which are eligible for Trust Fund reimbursement.

These provisions may have an effect on small business. However, Act 143 of 2007 exempts from the required analysis rules that “substantially codify existing state or federal law.” Since each change proposed in this rulemaking codifies into the regulation new and existing state and federal law as outlined above, this rulemaking should be exempt from the analysis required in Act 143 of 2007.