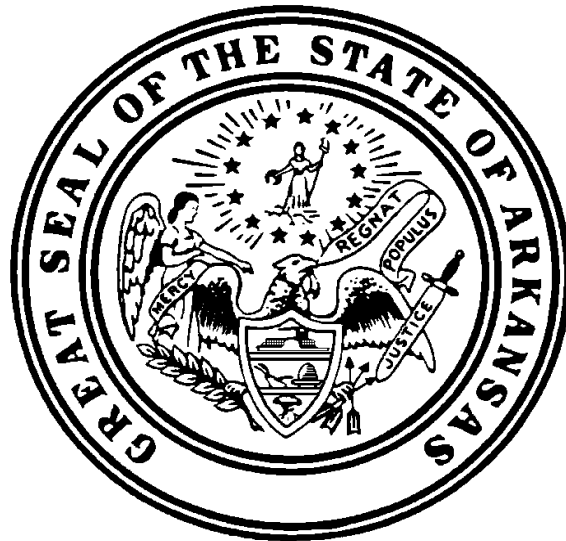


# Arkansas Pollution Control and Ecology Commission

## Regulation 8



## Administrative Procedures

Effective Date: June 12, 2000

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**PART 1. STATEMENT OF PURPOSE AND DEFINITIONS**

## 1.1 PURPOSE AND INTENT

1.1.1 The purpose of Arkansas Pollution Control and Ecology Commission Regulation Number 8 (Administrative Procedures), which is referred to herein as "Regulation" and which may be cited as "Pollution Control and Ecology Regulation 8 (Administrative Procedures)," is to provide administrative procedures to be followed by the Arkansas Pollution Control and Ecology Commission ("Commission"), the Arkansas Department of Environmental Quality ("Department"), and persons involved in proceedings pending before the Commission or the Department pursuant to all statutes under which the Commission or the Department has jurisdiction related to permitting decisions, construction assistance decisions, grants or loans decisions, enforcement actions, emergency actions and rulemaking proceedings.

1.1.2 It is the intent of the Commission that the provisions of this Regulation be liberally construed so as to provide a fair opportunity for a hearing on all matters addressed herein to all persons who have a substantial interest and concern in a specific question which is before the Commission and to expedite the administration of matters pending before the Commission.

## 1.2 DEFINITIONS

As used in this Regulation, unless the context otherwise requires:

- 1.2.1 "Adjudicatory hearing" means any hearing held by the Commission under the laws administered by the Commission or the Department, for the purpose of receiving evidence as to violations of laws or regulations or as to other adjudications of facts or issues for which such a hearing is provided.
- 1.2.2 "Adjudicatory proceeding" means any proceeding described herein other than a rulemaking proceeding.
- 1.2.3 "Administrative enforcement action" means any administrative proceeding instituted by the Department against a person charged with violation of any law, regulation, permit, or order administered by the Department.

- 1.2.4 "Administrative Hearing Officer" means a person designated by the Commission to act as a judge in an adjudicatory hearing as provided in this Regulation.
- 1.2.5 "Administratively complete" means that all information required by statute, regulation, or the application form has been submitted to the Department for the purpose of processing a permit application. An application that is administratively complete is not necessarily technically complete or complete for other purposes.
- 1.2.6 "Affiliated person" includes, but is not limited to:
- (A) Any officer, director, or partner of the applicant;
  - (B) Any person employed by the applicant in a supervisory capacity over operations of the facility which is the subject of the application which may adversely impact the environment, or with discretionary authority over such operations;
  - (C) Any person owning or controlling more than five percent (5%) of the applicant's debt or equity; and
  - (D) Any person who is not now in compliance or has a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction and who through relationship by affinity or consanguinity or through any other relationship could be reasonably expected to significantly influence the applicant in a manner which could adversely affect the environment.
- 1.2.7 "Chairman" means the Chairman of the Arkansas Pollution Control and Ecology Commission.
- 1.2.8 "Civil penalty" means any monetary amount assessed by the Director against a person for violation of a law, regulation, permit, or order administered by the Department and includes any in-kind services accepted by the Director in partial mitigation of a cash penalty.



- 1.2.9 "Commission" means the Arkansas Pollution Control and Ecology Commission.
- 1.2.10 "Commission review" means a proceeding by the Commission to review an action undertaken by the Department including enforcement actions and the issuance of administrative orders, permitting decisions, construction assistance decisions, and grants or loans decisions.
- 1.2.11 "Consent Administrative Order" means an administrative order entered into by consent of the parties, including the Department.
- 1.2.12 "Construction assistance decision" means a final administrative decision by the Director pertaining to the operation of the Revolving Loan Fund program and the E.P.A. Construction Grants program pursuant to the Department's administration of its Construction Assistance program and any final decision by the Director on any disputes arising thereunder.
- 1.2.13 "Default Administrative Order" means a final order issued by the Director to a person who has failed to respond in writing to a Notice of Violation within twenty (20) days of its receipt as required by Subsection 2.3.3.
- 1.2.14 "Department" means the Arkansas Department of Environmental Quality, including the Director and Department staff.
- 1.2.15 "Director" means the Director of the Arkansas Department of Environmental Quality or the Director's designee.
- 1.2.16 "Emergency Order" means an administrative order issued by the Director pursuant to specific authority provided by any law or regulation administered by the Commission or the Department without prior notice or adjudicatory hearing, upon a finding that an emergency or imminent hazard exists.

- 1.2.17 "Grants or loans decision" means a final administrative decision by the Director on all applications for grants or loans and the final decisions by the Director on any disputes related to a grant or a loan.
- 1.2.18 "Minor modification" means a minor modification of a permit as defined by other regulation or as determined to be routine or inconsequential in case-specific circumstances by the Department.
- 1.2.19 "Notice of adjudicatory hearing" means a written notification to the parties of an adjudicatory hearing by the Commission as provided in this Regulation. This term does not apply to a notice of public hearing or publication of notice in a newspaper.
- 1.2.20 "Notice of Violation" means a written notification to a person of alleged violations. The Notice of Violation initiates an administrative enforcement action.
- 1.2.21 "Permitting decision" means a final administrative decision by the Director on all applications for permits, permit renewals, reissuances, revisions, modifications, and transfers; closure/post closure plan approvals and modifications; the calculation of permit fees; exemptions, variances and waivers; certifications or licenses; bond reductions or releases; and specific conditions imposed on permits.
- 1.2.22 "Person" means any individual; corporation; company; firm; partnership; association; trust; joint-stock company or trust; limited liability company; venture; municipal, state, county, or federal government agency, authority or instrumentality; or any other legal entity, however organized.
- 1.2.23 "Presiding Officer" means the person designated by the Commission to hold a public hearing.
- 1.2.24 "Public comment" means any written comment received by the Department during the public comment period or any oral comment received during a public hearing.

- 1.2.25 "Public hearing" means a hearing held pursuant to the laws or regulations administered by the Commission or the Department for the purpose of receiving comments from the public on a permitting decision or on rulemaking. It is not an adjudicatory hearing nor a public meeting.
- 1.2.26 "Public Meeting" means an informal meeting held by the Commission or the Department for the purpose of exchanging information with the public on a permitting decision, on rulemaking, or on any issue of public interest. It is not an adjudicatory hearing nor a public hearing. Any comment made at a public meeting is not made on the record and is therefore not received as a "public comment", as the term is defined herein.
- 1.2.27 "Public notice" means the published notification of any public hearing, permitting decision, construction assistance decision, grants or loans decision, rulemaking, enforcement action or any other matter undertaken by the Commission or the Department as provided in this Regulation.
- 1.2.28 "Recommended Decision of the Administrative Hearing Officer" means the written recommendation, including findings of fact and conclusions of law, made by the Administrative Hearing Officer to the Commission at the conclusion of an adjudicatory hearing or upon a decision granting or denying the relief sought in the matter.
- 1.2.29 "Regulation" or "rule" means any regulation promulgated by the Commission pursuant to the laws it administers.
- 1.2.30 "Rulemaking" or "by rule" means a proceeding to adopt, promulgate, revise or modify any regulation of the Commission.
- 1.2.31 "Secretary" means the designated secretary to the Commission.
- 1.2.32 "Special conditions" means the conditions to a permit issued by the Department in its discretion that are not specifically imposed by law or regulation.

- 1.2.33 "Stay" means the postponement or delay of a decision of the Director.
- 1.2.34 "Third-party rulemaking" means any proposed change in existing regulations submitted by any person other than the Commission or the Department.
- 1.2.35 "Violation" means an instance of noncompliance by a person with a provision of a law, regulation, permit or order administered by the Commission or the Department.

## 2.1 PERMITTING DECISIONS

The procedures set forth in this Regulation apply to all permitting decisions as defined in Section 1.2. However, the requirements of Subsections 2.1.3 through 2.1.9 and 2.1.10(a)(2) do not apply to (1) closure/post closure plan approvals or modifications; (2) the calculation of permit fees; (3) exemptions, variances and waivers; (4) certifications or licenses; or (4) bond reductions or releases. In addition to complying with the requirements of this section, the Department shall follow any other applicable state or federal public notice requirements. Application for a permit and other matters preliminary to the Director's issuance of a final permitting decision not specified in this Regulation shall be as provided in applicable laws and regulations.

2.1.1 Director as Permitting Authority

All permits shall be issued by the Director. Nothing in this Regulation, including the power to reverse or affirm a permitting decision by the Director, shall be construed to authorize the Commission to issue a permit.

2.1.2 Permit Application Procedures

All permit applications shall be filed with the appropriate division of the Department on forms supplied by or approved by the Department. The application forms shall comply with applicable laws and regulations. No application shall be processed as described in the following subsections unless the application is administratively complete.

2.1.3 Definition of New Permit

For the purposes of Section 2.1, "new permit" means a permit obtained for a proposed facility, a transportation permit, or a major modification to a permit. The term does not apply to permits resulting from minor modifications, administrative amendments or transfers of existing permits.

2.1.4 Public Notice of New Permit Application

(a) Public notice of an administratively complete application for a new permit, as defined in Subsection 2.1.3, shall be published in a newspaper of general circulation in the county in which the proposed facility or activity is to be located, or, for a statewide permit, in a newspaper of statewide circulation. The notice shall be in a format provided by or approved by the Department. Proof of publication of the notice shall be kept with the Department's file for the application. The notice shall advise that any interested person may request a public hearing on the proposed permit by giving the Department a written request within ten (10) business days of the publication of the notice.

(b) The notice required by Subsection 2.1.4(a) shall include:

(1) The name and business address of the permit applicant;

(2) The type of action for which permit application has been made;

(3) The division of the Department reviewing the application;

(4) The date the application was filed; and

(5) The city, town or community nearest to the proposed facility.

(c) The applicant shall pay the costs of publication of notice of an application for a new permit. The applicant shall provide proof of payment (i.e., a paid receipt) of all costs of publication.

2.1.5 Request for Public Hearing on Application for New Permit

Any interested person may request a public hearing on a new permit application. The request must be in writing and must state reasons for the necessity of a public hearing. The request must be filed with the appropriate division of the Department within ten (10) business days after publication of the notice of new permit application. The Department shall have discretion whether to hold a public hearing prior to the Director's final permitting decision, unless otherwise required by law or regulation.

2.1.6 Public Notice of Draft Permitting Decision

(a) When the Director proposes to make a permitting decision, notice of the draft permitting decision shall be published in a newspaper of general circulation in the county in which the facility or activity proposed to be permitted is located, or, for a statewide permit, in a newspaper of statewide circulation. If the Department causes the notice to be published, the notice may be combined with other notices of proposed permitting decisions. Proof of publication of the notice shall be kept with the Department's file for the permit.

(b) The notice required by Subsection 2.1.6.(a) shall include:

(1) The name and telephone number of the division of the Department responsible for the draft permitting decision;

(2) The name and business address of the permittee;

(3) The type of action for which the permitting decision is proposed to be issued;

(4) The date of issuance of the draft permitting decision;

(5) A brief summary of the draft permitting decision;

(6) A statement that the draft permitting decision is available for copying at the Department; and

(7) A statement that the submission of written comments by any person will be accepted by the Department during the public comment period.

(c) The applicant shall pay the costs of publication of notice of a draft permitting decision. The applicant shall provide proof of payment (i.e., a paid receipt) of all costs of publication.

#### 2.1.7 Public Comment on Draft Permitting Decision

(a) Any interested persons may submit to the Department written comments, data, views, or arguments on the draft permitting decision during the public comment period. In accordance with Subsection 2.1.13, only those persons who submit public comments on the record shall have standing to appeal the permitting decision to the Commission.

(b) The public comment period shall expire on the thirtieth (30th) day after publication of the notice, unless otherwise required by law or regulation. If the last day of the comment period is a Saturday, Sunday or legal holiday, the public comment period shall expire on the next day that is not a Saturday, Sunday or legal holiday.

(c) The draft permitting decision and other material relevant thereto shall be available for inspection and copying at the Department during the public comment period. Upon payment of the costs for copying and shipping, the Department shall provide copies to any person making a request for copies, including any request by mail.

(d) After consideration of the written comments received within the public comment period, the Department, in its discretion, shall determine the necessity of a public hearing on the draft permitting decision.



2.1.8 Public Hearings

(a) In the event the Department decides to hold a public hearing on an application for a new permit or on a draft permitting decision, the Department shall schedule the hearing and:

(1) Give notice of the date, time and place of the hearing by certified mail, return receipt requested, to the permit applicant, to all persons who have filed a timely written request for a public hearing and to all persons who have submitted public comments on the record; provided, however that in the case of comments submitted for a group or by a petition, the Director may designate a representative to receive the notice;

(2) Give notice of the date, time and place of the hearing by first class mail to all persons who have requested advance notice of the public hearing; provided, however that in the case of comments submitted for a group or by a petition, the Director may designate a representative to receive the notice; and

(3) Give notice of the date, time and place of the hearing by publishing the notice in a newspaper of general circulation in the county in which the proposed facility or activity is to be located, or, for a statewide permit, in a newspaper of statewide circulation.

(b) Oral public comments will be received at the public hearing. A public hearing may continue until all persons wishing to make comments have been heard. However, if additional oral comments would not serve a useful purpose or would be cumulative or unduly time consuming, the Presiding Officer may determine not to receive the additional comments, provided that persons who have informed the Director in writing prior to the hearing of their desire to speak shall be heard. An extension of the period for written public comments, if announced at the public hearing, may be granted for up to twenty (20) days.

### 2.1.9 Public Meetings

The Department, in its discretion, may hold a public meeting for the purpose of informally exchanging information with the public on a permitting decision.

### 2.1.10 Final Permitting Decision

#### (a) Director's Decision

(1) The Director shall announce his final permitting decision in writing. The Director's decision shall be made upon consideration of the completed application, the public comments on the record, if any, and any other materials provided by law or regulation applicable to the application or other matter to be considered in the decision. The Director may impose special conditions upon the issuance of a permit.

(2) The Director's final decision shall include a response to each issue raised in any public comments received during the public comment period, if any. In the case of any discharge limit, emission limit, environmental standard, analytical method or monitoring requirement the record of the proposed action and the response shall include a written explanation of the rationale for the proposal, demonstrating that any technical requirements or standards are based upon generally accepted scientific knowledge and engineering practices. For any standard or requirement that is identical to a duly promulgated and applicable regulation, this demonstration may be satisfied by reference to the regulation. In all other cases the Department must provide its own justification with appropriate reference to the scientific and engineering literature or written studies conducted by the Department.

(b) Issuance of Decision and Effective Date

(1) The date of issuance of a final permitting decision is the date notice of the decision is served upon the applicant or permittee. Service shall be deemed complete when the notice is placed in the mail to the applicant or permittee as provided in Subsection 2.1.10(c).

(2) Each final permitting decision issued by the Director shall contain a certificate of service indicating the date of issuance as provided in Subsection 2.1.10(b)(1). The certificate shall be signed by the person causing the notice to be placed in the mail.

(3) The effective date of a final permitting decision is the date of issuance as provided in Subsection 2.1.10(b)(1), unless a later effective date is specified in the decision.

(c) Notice of Decision

The Department shall mail by first-class mail notice of the final permitting decision to the applicant or permittee and those persons who submitted public comments on the record. The notice to all of these persons shall be placed in the mail on the same date. The notice shall include:

(1) The name and business address of the applicant or permittee;

(2) The permit application identification number;

(3) A brief description of the Director's final permitting decision;

(4) A certificate of service indicating the date the decision was issued, as provided in Subsections 2.1.10(b)(1) and (2); and

(5) A statement that the applicant or permittee and any person submitting public comments on the record may request an adjudicatory hearing and Commission review of the final permitting decision as provided by this Regulation.

(d) Payment of Permit Fees

The Director shall not issue a final permit until the applicant has paid all applicable permit fees.

2.1.11 Permit Transfers

An applicant for a transfer of a permit shall submit a written request for transfer of the permit on a form provided by the Department and submit the information required by Arkansas Code Annotated §8-1-106 at least thirty (30) days in advance of the proposed transfer date. The permit is automatically transferred to the new permittee unless the Director denies the request to transfer within thirty (30) days of the Department's receipt of the disclosure information. This denial shall constitute a final decision of the Director and may be appealed in accordance with the provisions of Section 2.5.

2.1.12 Minor Modifications

The final decision of the Director regarding a minor modification of a permit is effective immediately.

2.1.13 Persons with Standing to Appeal to Commission

(a) Only the applicant or permittee and those persons who submitted public comments on the record, if a public comment period was provided, shall have standing to appeal a final permitting decision to the Commission. If, however, no public comment period is provided for (1) closure/post closure plan approvals or modifications; (2) the calculation of permit fees; (3) exemptions, variances and waivers; (4) certifications or licenses; or (4) bond reductions or releases, any person who reasonably considers himself injured in his person, business or property by any of these decisions shall have standing to appeal.

(b) The applicant or permittee who desires an appeal must file a Request for Commission Review and Adjudicatory Hearing as provided in Subsection 2.1.14. Any other person who desires an appeal must file a Third-Party Request for Commission Review and Adjudicatory Hearing; provided, however, that if a person desires to participate in an existing appeal, a Petition for Intervention is the appropriate pleading. Any Third-Party Request for Commission Review and Adjudicatory Hearing or Petition for Intervention shall comply with the requirements of Subsection 2.5.3.

2.1.14 Request for Commission Review and Adjudicatory Hearing

(a) The applicant or permittee may seek review of the Director's final permitting decision by filing a written Request for Commission Review and Adjudicatory Hearing with the Secretary within thirty (30) days of the date of issuance of the decision.

(b) The Request for Commission Review and Adjudicatory Hearing shall provide:

(1) The subject matter of the request including the name and address of the applicant or permittee, the type of permit appealed, the date of application, the date of the final permitting decision, and the permit number;

(2) A complete and detailed statement identifying the legal issues and factual objections;

(3) Any available evidence, including exhibits or affidavits;

(4) Certification that a copy of the request has been served, in accordance with Subsection 2.5.7, upon all parties as identified in Subsection 2.5.1; and

(5) A request for the issuance, modification, or termination of a stay, if desired, to avoid substantial prejudice as provided in Subsection 2.5.12(b).

2.1.15 Review on Commission Initiative

(a) The Commission may, by majority vote within thirty (30) days of the date of the Director's issuance of a permitting decision, initiate adjudicatory review of the decision, even if the parties thereto do not.

(b) Upon the Commission's decision to initiate review, the applicant or permittee and all persons who submitted public comments on the record shall be served notice by the Commission of its decision to review. Any such person so served, other than the Director and the applicant or permittee, desiring to participate in the proceedings on review must file a response to the notice with the Secretary within twenty (20) days of service.

(c) The proceedings on review shall be held in accordance with the provisions of Section 2.5. In the review the permit applicant or permittee shall be considered an indispensable party.

2.1.16 Appeal from Final Commission Decision

The final decision of the Commission on a permitting issue is appealable to circuit court as provided for in Arkansas Code Annotated §§8-4-222 - 8-4-229.

2.1.17 Inapplicability

Nothing herein shall affect the ability of the Director to terminate, suspend or revoke a permit for cause pursuant to the procedures for enforcement actions as specified in Section 2.3.

2.1.18 Non-Compliance Determination

(a) Purpose -- In order to ensure the continued protection of the public health, safety, and welfare and the environment of this state, upon the determination that any applicant for the issuance or transfer of any permit, license, certification or operational authority, based on the standards below, has exhibited a history of non-compliance or a pattern of disregard for state or federal environmental laws or regulations, the Director may deny the applicant's request for the issuance or transfer of any permit, license, certification or operational authority.

(b) Disclosure Statement - All applicants for the issuance or transfer of any permit, license, certification or operational authority under the environmental laws of this state shall submit a disclosure statement to the Department. The disclosure statement shall include but not be limited to the following information:

(1) The full name, business address, and social security number of the applicant and all affiliated persons;

(2) The full name and business address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%) or which is a parent company or subsidiary of the applicant, and a description of the ongoing organizational relationships as they may impact operations within the state;

(3) A description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to environmental regulation;

(4) A listing and explanation of any civil or criminal legal actions by government agencies involving environmental protection laws or regulations against the applicant and affiliated persons in the ten (10) years immediately preceding the filing of the application, including administrative enforcement actions resulting in the imposition of sanctions, permit or license revocations or denials issued by any state or federal authority, actions that have resulted in a finding or a settlement of a violation, and actions that are pending;

(5) A listing of any federal environmental agency and any other environmental agency outside this state that has or has had regulatory responsibility over the applicant;

(6) Any other information the Director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

(c) Exemptions - The following persons or entities are not required to file a disclosure statement:

(1)(A) Governmental entities, consisting only of subdivisions or agencies of the federal government, agencies of the state government, counties, municipalities, or duly authorized regional solid waste authorities as defined by law.

(B) This exemption shall not extend to improvement districts or any other subdivision of government which is not specifically instituted by an act of the General Assembly; and

(2) Applicants for a general permit to be issued by the Department pursuant to its authority to implement the National Pollutant Discharge Elimination System for storm water discharge.

(3) Any applicant that is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company, shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission which provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit such other information as the Director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

(d) Denial - The Director may deny the issuance or transfer of any permit, license, certification or operational authority if the Director finds:

(1) The applicant has misrepresented or concealed any material fact in the application or disclosure statement, or in any other report or certification required herein, or;

(2) The applicant has obtained or attempted to obtain the issuance or transfer of any permit, license, certification or operational authority by deliberate falsification or omission of relevant information from disclosure statements; or

(3) The applicant has a documented and continuing history of criminal convictions, based upon violations of any state or federal environmental laws or regulations; or



(4) The applicant has a documented history of violations of state or federal environmental laws or regulations that evidence an history of non-compliance or a pattern of disregard for state or federal laws or regulations; and has either made no attempt or has failed to remediate the disclosed violation.

(A) In making a determination of whether a documented history of violations of state or federal laws or regulations constitutes an history of non-compliance or a pattern of disregard sufficient to deny a permit, the Director shall consider:

(i) The nature and details of the violations attributed to the applicant;

(ii) The degree of culpability of the applicant;

(iii) The applicant's policy or history of discipline, or both, as the responsible party for violations of state or federal environmental laws or regulations. Any violations of environmental laws or regulations addressed in any consent order in which the applicant is in compliance with the terms of the order shall not be included by the Director for consideration of a determination of a history of non-compliance.

(iv) Whether the applicant has substantially complied with this state's statutes, rules, regulations, permits, and orders applicable to the applicant in this State relative to the activity for which the permit is sought;

(v) Whether the applicant has substantially complied with other states' or jurisdictions' statutes, rules, regulations, permits, and orders applicable to the applicant relative to the activity for which the subject permit is sought;

(vi) Mitigation of the severity of an environmental violation based upon any demonstration of good citizenship by the applicant including, without limitation, prompt payment of administrative civil penalties, civil damages, cooperation with investigations, termination of employment or other relationship with responsible parties or other persons responsible for the activity described in subsection (c) or other demonstration of good citizenship by the applicant that the department finds acceptable;

(vii) Whether the best interests of the public will be served by denial of the permit; and

(viii) Any other information that the Director may require from the applicant.

## 2.2 CONSTRUCTION ASSISTANCE, GRANTS, AND LOANS DECISIONS

### 2.2.1 Applicability

The procedures set forth in this Section apply to all construction assistance decisions and grants or loans decisions as defined in Section 1.2.

### 2.2.2 Preliminary Procedures

All applications for construction assistance and all other matters included within the definitions of "construction assistance decisions" and "grants or loans decisions" in Section 1.2 hereof and all other actions preliminary to the Director's decision including, but not limited to, the form of application, public notice, public hearings, and public comments, shall be as provided for by law or regulation applicable thereto.

### 2.2.3 Issuance of Director's Decision

(a) The Director shall issue a written decision on all construction assistance and grants or loans matters within the time periods specifically required by law or regulation applicable thereto. In the absence of a specified time period, decisions shall be issued no later than thirty (30) days after the Department's receipt of all pertinent written facts and arguments, as determined by the Department.

(b) The applicant, if any, and all persons submitting public comments on the matter, if a comment period was provided, and all other persons required by law to be served with notice of the decision shall be served with notice. Unless otherwise provided by law or regulation, the notice shall state:

(1) A description of the matter on which the decision is made in reasonable detail;

(2) The Director's decision and date of decision; and

(3) A statement that the applicant, any person submitting public comments on the record during the public comment period, if any, and all other persons entitled by law to do so, may request an adjudicatory hearing and Commission review of the Director's decision as provided by Subsection 2.2.4.

2.2.4 Request for Commission Review and Adjudicatory Hearing

(a) The applicant for construction assistance or any grant or loan may seek review of the Director's decision by the Commission by filing a written Request for Commission Review and Adjudicatory Hearing. Any other person who desires an appeal must file a Third-Party Request for Commission Review and Adjudicatory Hearing; provided, however, that if a person desires to participate in an existing appeal, a Petition for Intervention is the appropriate pleading. Any Third-Party Request for Commission Review and Adjudicatory Hearing or Petition for Intervention shall comply with the requirements of Subsection 2.5.3. Any request governed by this subsection must be filed with the Secretary within thirty (30) days after the date the applicant received written notice of the decision.

(b) The Request for Commission Review and Adjudicatory Hearing shall provide:

- (1) The subject matter of the request;
- (2) A complete and detailed statement identifying the legal issues and factual objections;
- (3) Any available evidence, including exhibits or affidavits;
- (4) Certification that a copy of the request has been served, in accordance with Subsection 2.5.7, upon all parties as identified in Subsection 2.5.1; and
- (5) Request for the issuance, modification, or termination of a stay, if desired, as provided in Subsection 2.5.12(b).

(c) The filing of a Request for Commission Review and Adjudicatory Hearing shall initiate a review of the matter by the Commission in accordance with Section 2.5.

### 2.2.5 Review on Commission Initiative

(a) The Commission may, by majority vote within thirty (30) days after the date the applicant received written notice of a construction assistance, grants or loans decision by the Director, initiate adjudicatory review of the decision, even if the parties thereto do not.

(b) Upon the Commission's decision to initiate review, the applicant and all persons who submitted public comments on the record, if a comment period was provided, shall be served notice by the Commission of its decision to review. Any such person so served, other than the Director and the applicant, desiring to participate in the proceedings on review must file a response to the notice with the Secretary within twenty (20) days of service.

(c) The proceedings on review shall be held in accordance with the provisions of Section 2.5. In this review the construction assistance, grant or loan applicant shall be considered an indispensable party.

## 2.3 ENFORCEMENT ACTIONS

### 2.3.1 Applicability

(a) The policy of the Department is to seek compliance with the laws and regulations administered by it through cooperative efforts and to afford suspected violators a reasonable opportunity to resolve violations through informal procedures prior to the initiation of administrative enforcement proceedings unless the circumstances warrant otherwise.

(b) Nothing contained herein shall in any manner abridge or interfere with the Department's ability to initiate civil proceedings in courts of competent jurisdiction to restrain or abate any violation of the laws, regulations, or permits administered by it and to otherwise enforce these laws, regulations, and permits without first having instituted administrative enforcement proceedings hereunder. Further, nothing contained herein shall in any manner abridge or interfere with the Department's ability to seek criminal prosecutions concerning any violation of the laws, regulations, or permits administered by it.

2.3.2 Issuance of Notice of Violation

(a) Except as otherwise provided in Section 2.4, the Director shall not issue an order, except by consent, to any person for violation of the laws, permits, or regulations administered by the Department unless and until the person has been served with a Notice of Violation and has had the opportunity to request an adjudicatory hearing in accordance with Subsection 2.3.3.

(b) Whenever the Director determines that reasonable grounds exist to believe that a violation has occurred which should be addressed by the issuance of a Notice of Violation, the Director shall cause such notice to be served upon all persons alleged to be in violation. The notice shall state:

(1) All alleged violations of which the person is accused;

(2) The civil penalty, if any, proposed by the Director to be assessed for each violation;

(3) Corrective actions, including time frames, which in the Director's judgment must be undertaken to remedy the violations or to otherwise abate or contain any situation causing pollution or the threat thereof;

(4) Any other measure, such as permit suspension or revocation, proposed by the Director to be taken against the alleged violator;

(5) That the alleged violator must file a written response to the Notice of Violation with the Secretary within twenty (20) days of its receipt, or otherwise the allegations therein will be deemed proven and the Director may thereafter issue a Default Administrative Order affirming the allegations as findings of fact, affirming the assessment of civil penalties, and ordering the corrective actions and other matters, as stated in the Notice of Violation; and

(6) That upon filing a written response within the time provided, the alleged violator will be entitled to a Commission review and adjudicatory hearing upon the allegations and other matters stated in the Notice of Violation.

### 2.3.3 Response to Notice of Violation

(a) Any person served with a Notice of Violation shall file a written response thereto with the Secretary within twenty (20) days of its receipt. If this person fails to respond within this period of time, the allegations contained in the Notice of Violation will be deemed proven and the Director may thereafter issue a Default Administrative Order affirming the allegations as findings of fact, affirming the assessment of civil penalties, and ordering the corrective actions and other matters, as stated in the Notice of Violation.

(b) A written response to a Notice of Violation shall provide the caption of the action and the docket number assigned to the matter. The response may be in the form of a general denial or may admit one or more of the allegations and deny others, and may contest the proposed civil penalties, if any, or the corrective actions or other matters stated in the Notice of Violation.

(c) A written response to a Notice of Violation shall initiate a review by the Commission in accordance with Section 2.5 unless the matter is resolved by stipulation or settlement of the parties.

### 2.3.4 Finality of Default Administrative Order

A Default Administrative Order is a final order of the Director. Except as provided in Subsection 2.3.5, such order may not be reviewed on its merits by the Commission unless the person to whom the order was issued files a Request for Commission Review and Adjudicatory Hearing and proves that his failure to respond to the Notice of Violation was due to excusable neglect. Only then will the person be allowed an adjudicatory hearing on the merits.

2.3.5 Review on Commission Initiative

(a) The Commission may, by majority vote within thirty (30) days of the effective date of a Consent Administrative Order settling an administrative enforcement action or a Default Administrative Order, initiate adjudicatory review of the order, even if the parties thereto do not.

(b) Upon the Commission's decision to initiate review, the person to whom the order is issued and all persons who submitted public comments on the record shall be served notice by the Commission of its decision to review. Any such person so served, other than the Director and the person to whom the order is issued, desiring to participate in the proceedings on review must file a response to the notice with the Secretary within twenty (20) days of service.

(c) The proceedings on review shall be held in accordance with the provisions of Section 2.5. In the review the person to whom the order is issued shall be considered an indispensable party.

2.3.6 Public Notice of Notices of Violation and Consent Administrative Orders

(a) On or about the 10th day of each month, the Director shall cause a list of all Notices of Violation issued, and all Consent Administrative Orders settling administrative enforcement actions, entered into during the previous month to be published in a newspaper of statewide circulation. The notice shall include:

(1) The identity of the person or facility alleged to be in violation;

(2) The location by city or county of the alleged violation;

(3) A brief description of the environmental media impacted by the alleged violation (i.e. water, air, solid waste, hazardous waste);



(4) The type of administrative enforcement action (i.e., Notice of Violation or Consent Administrative Order);

(5) The amount of the civil penalty, if any, to be assessed;

(6) A statement that the documents for the administrative enforcement action are available for copying at the Department; and

(7) A statement that the submission of written comments by any person will be accepted by the Department.

(b) Notice, as provided in Subsection 2.3.6(a), shall also be given to each member of the Commission.

(c) No public notice shall be required for any Notice of Violation or Consent Administrative Order which has not been executed by the Director.

(d) Subsection 2.4.2(b), rather than this subsection, shall apply to public notice of Emergency Orders.

#### 2.3.7 Public Participation in Administrative Enforcement Actions

(a) Any person who submits written comments within the public comment period on the issuance of a Notice of Violation shall be given notice of any adjudicatory hearing to be held in the matter. In any such hearing, such person shall have the right to intervene upon timely filing a Petition for Intervention in the form provided in Subsection 2.5.3(a)(2). Any other person who reasonably considers himself injured or at risk of injury in his person, business or property may petition for permissive intervention upon timely application as provided in Subsection 2.5.3(a).

(b) Any person who comments on a proposed Consent Administrative Order settling an administrative enforcement action may petition, within thirty (30) days of the effective date of the order, the Commission to set aside the order and provide an adjudicatory hearing. Such person shall file a petition with the Secretary in the form of a Third-Party Request for Commission Review and Adjudicatory Hearing. If the evidence presented by the petitioner is material and was not considered in the issuance of the order, and the Commission finds in light of the new evidence that the order is not reasonable and appropriate, it may set aside the order and provide an adjudicatory hearing in accordance with Section 2.5. If the Commission denies an adjudicatory hearing under this subsection, it shall provide to the petitioner notice of and its reasons for the denial. The denial of such a hearing shall constitute final Commission action.

#### 2.3.8 Effective Date of Consent Administrative Orders

(a) No Consent Administrative Order assessing a civil penalty shall be effective until thirty (30) days after publication of notice of the order as provided in Subsection 2.3.6. However, corrective action may be required to be taken immediately upon execution of such an order if the order so states.

(b) Any Consent Administrative Order containing no assessment of civil penalties shall be effective upon its execution.

#### 2.3.9 Effective Date of Default Administrative Orders

A Default Administrative Order shall be effective upon its issuance by the Director.

### 2.4 EMERGENCY ACTIONS

#### 2.4.1 Applicability

All emergency actions shall comply with the provisions of this Section and with all laws and regulations administered by the Commission or the Department.

#### 2.4.2 Issuance of Emergency Orders

(a) The Director, in his discretion, may issue an Emergency Order when necessary to meet an emergency or situation of imminent hazard. The order may be issued verbally or in writing and shall be effective immediately upon its issuance. If originally issued verbally, a written order shall be issued to confirm the verbal order as soon as reasonably possible thereafter. All written orders shall be served upon the person, if any, to whom they are issued.

(b) Immediately following the issuance of an Emergency Order, the Director shall cause a "Notice of Emergency Order" to be published in a newspaper covering the affected area or in a newspaper of statewide circulation. The notice shall contain a description of the action, the authority for taking the action, and any other information appropriate to ensure that the public is informed about the action.

#### 2.4.3 Request for Commission Review and Adjudicatory Hearing

(a) Any person to whom an Emergency Order is issued may respond thereto by filing a written Request for Commission Review and Adjudicatory Hearing with the Secretary within ten (10) business days of the issuance of the order. The written response to the order shall provide the caption of the action and the docket number assigned to the matter. The response may be in the form of a general denial or may admit one or more of the allegations and deny others and contest the corrective actions or other matters stated in the order.

(b) An adjudicatory hearing shall be held within ten (10) business days of filing the written request with the Secretary, unless otherwise agreed by the person requesting the hearing and the Director. Notice of the time, date, and place of the hearing shall be given to the person requesting the hearing by the Hearing Officer at the earliest opportunity and by any means calculated to give actual notice to that person. The hearing shall be held in accordance with the provisions of Section 2.5, except for the time of the hearing as provided herein.

#### 2.4.4 Review on Commission Initiative

(a) The Commission may, by majority vote within ten (10) business days of the Director's issuance of an Emergency Order, initiate adjudicatory review of the order, even if the parties thereto do not.

(b) Upon the Commission's decision to initiate review, the person to whom the order is issued, if any, shall be served notice by the Commission of its decision to review.

(c) In any such review the person to whom the order is issued, if any, shall be considered an indispensable party.

(d) An adjudicatory hearing shall be held within ten (10) business days of the Commission's decision to initiate review, unless otherwise agreed by the person to whom the order is issued, if any, and the Director. Notice of the time, date, and place of the hearing shall be given by the Administrative Hearing Officer to the person to whom the order is issued at the earliest opportunity and by any means calculated to give actual notice to that person. The hearing shall be held in accordance with the provisions of Section 2.5, except for the time of the hearing as provided herein.

### 2.5 PRACTICE AND PROCEDURE

#### 2.5.1 Parties

The following persons shall, as applicable, be made a party to any adjudicatory proceeding initiated pursuant to this Regulation:

- (1) The Director;
- (2) In the appeal of a permitting decision, the permittee or permit applicant;
- (3) Any person named in and served with a Notice of Violation or an Emergency Order;

(4) In a proceeding following the issuance of a Notice of Violation, any person who has submitted public comments on the record during the public comment period and filed a timely Petition for Intervention with the Secretary;

(5) Any person who has submitted public comment on the record, timely filed, in accordance with Subsection 2.3.7.(b), a petition to set aside a Consent Administrative Order settling an administrative enforcement action, and been granted an adjudicatory hearing on the matter;

(6) Any person who, in accordance with Subsection 2.5.3(a), files a Petition for Intervention which is granted; and

(7) Any person who, in accordance with Subsection 2.5.3(b), files a Third-Party Request for Commission Review and Adjudicatory Hearing which is granted.

#### 2.5.2 Representation of Corporations

In accordance with Arkansas law, any corporate party in an adjudicatory proceeding must be represented by an attorney who shall file with the Secretary all pleadings and other documents for the corporate party in conjunction with that representation.

#### 2.5.3 Permissive Intervention or Third-Party Request for Commission Review and Adjudicatory Hearing

##### (a) Permissive Intervention

(1) (A) Any person who submitted comments during the public comment period may petition in a timely manner for permissive intervention in an adjudicatory hearing on a permitting decision. If for any reason, no public comment period is provided, any person who reasonably considers himself injured in his person, business or property by a permitting decision may timely petition for permissive intervention.

(B) Any person who submitted comments during the public comment period may petition in a timely manner for permissive intervention in an adjudicatory hearing on a construction assistance decision or a grants or loans decision. If no public comment period is provided on these matters, any person who reasonably considers himself injured in his person, business or property by any of these decisions may timely petition for permissive intervention.

(C) Any person who reasonably considers himself injured or at risk of injury in his person, business or property by an Emergency Order or a Notice of Violation may also timely petition for permissive intervention in an adjudicatory hearing on such a matter, regardless of whether that person submitted comments during the public comment period.

(2) The Petition for Intervention shall include:

(A) (i) For an appeal of a permitting decision, the name and address of the applicant or permittee, the type of permit appealed, the date of the application, the date of the final permitting decision, and the permit number;

(ii) For an appeal of a construction assistance decision or grants or loans decision, the name and address of the applicant, the type of decision, the date of the decision, and any identification number assigned to the matter by the Department;

(iii) For a Notice of Violation or an Emergency Order, the caption of the action and the docket number assigned to the matter;

(B) A statement of the interest of the petitioner and how his interest is or may be adversely affected;

(C) A complete and detailed statement identifying the legal issues and factual objections;

(D) Any available evidence, including exhibits or affidavits. If a public comment period was provided and the evidence was not presented, a statement of the reasons for failure to present evidence must be provided; and

(E) Certification that a copy of the Petition for Intervention has been served, in accordance with Subsection 2.5.7, upon all parties as identified in Subsection 2.5.1.

(3) The Administrative Hearing Officer's denial of a Petition to Intervene shall stand unless a written objection is filed with the Secretary within ten (10) business days of the ruling. The Secretary shall place the objection for oral argument before the Commission.

(b) Third-Party Request for Commission Review and Adjudicatory Hearing

(1) The prerequisites for filing a Third-Party Request for Commission Review and Adjudicatory Hearing are as follows:

(A) Any person who desires a review of a permitting decision which has not been appealed by the applicant or permittee and who submitted comments during the public comment period shall file a Third-Party Request for Commission Review and Adjudicatory Hearing with the Secretary within thirty (30) days of the date of issuance of the permitting decision.

(B) Any person who desires a review of a construction assistance decision or grants or loans decision which has not been appealed by the applicant shall file a Third-Party Request for Commission Review and Adjudicatory Hearing with the Secretary within thirty (30) days of the date the applicant received written notice of the decision from the Department.

(C) Any person who desires a review of an Emergency Order which has not been appealed by the alleged violator shall file a Third-Party Request for Commission Review and Adjudicatory Hearing with the Secretary within ten (10) business days of the issuance of the order.

(D) Any person who comments on a proposed Consent Administrative Order settling an administrative enforcement action and who desires a review of the order shall file a Third-Party Request for Commission Review and Adjudicatory Hearing within thirty (30) days of the effective date of the order, in accordance with Subsection 2.3.7(b).

(2) The Third-Party Request for Commission Review and Adjudicatory Hearing shall include:

(A) (i) For an appeal of a permitting decision, the name and address of the applicant or permittee, the type of permit appealed, the date of the application, the date of the permitting decision, and the permit number;

(ii) For an appeal of a construction assistance decision or grants or loans decision, the name and address of the applicant, the type of decision, the date of the decision, and any identification number assigned to the matter by the Department;



(iii) For an Emergency Order or a Consent Administrative Order, the caption of the action and the docket number assigned to the matter;

(B) A statement of the interest of the third-party and how his interest is or may be adversely affected;

(C) A complete and detailed statement identifying the legal issues and factual objections;

(D) Any available evidence, including exhibits or affidavits. If a public comment period was provided and the evidence was not presented, provide a statement of the reasons for failure to present the evidence;

(E) A request for the issuance, modification, or termination of a stay, if desired, to avoid substantial prejudice, as provided in Subsection 2.5.12(b); and

(F) Certification that a copy of the Third-Party Request for Commission Review and Adjudicatory Hearing has been served, in accordance with Subsection 2.5.7, upon all parties as identified in Subsection 2.5.1.

2.5.4 Failure to Comply with Time Limitations and Pleading Requirements

(a) An action brought by any person who fails to file a Request for Commission Review and Adjudicatory Hearing or a Third-Party Request for Commission Review and Adjudicatory Hearing within the time periods prescribed in Subsections 2.1.14, 2.2.4, or 2.5.3(b), as applicable, shall be dismissed, unless good cause is shown for the late filing.

(b) Failure to file a Request for Commission Review and Adjudicatory Hearing, a Third-Party Request for Commission Review and Adjudicatory Hearing, or a Petition for Intervention in the form and manner prescribed in Subsections 2.1.14, 2.2.4, or 2.5.3, as applicable, may result in dismissal.

#### 2.5.5 Filing

(a) All pleadings in any adjudicatory proceeding conducted under this Regulation shall be filed with the Secretary to the Commission.

(b) The effective filing date for a pleading or other document shall be the date it is received by the Secretary or shall be the next day if it is received after regular business hours.

(c) Any person who files a pleading or other document hereunder must provide the Secretary with a minimum of one (1) original and one (1) copy (for the Administrative Hearing Officer). The Secretary shall not file any pleading or other document until an original and one copy is provided. Additional copies required by the person filing the pleading or other document shall be provided to the Secretary at the time of filing.

(d) Notwithstanding the provisions of 2.5.5(c), the Secretary may accept facsimile copies transmitted over telephone lines for filing as pleadings in cases. Only one copy need be transmitted, and the Secretary shall file that copy. Within three (3) business days of the filing, an original and one (1) copy of the pleading or other document must be received by the Secretary.

(e) If copies are to be returned by mail to the person filing a pleading or other document hereunder, the person shall provide to the Secretary a self-addressed, stamped envelope with proper postage.

2.5.6 Form of Pleadings or Other Documents

(a) Any pleading or other document filed in any adjudicatory proceeding brought under this Regulation shall be captioned with:

(1) "BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION";

(2) The names of the parties;

(3) The docket number assigned to the proceeding, if available; and

(4) The permit number, if applicable.

(b) Each pleading or other document shall contain a title which identifies it (e.g., Response to Notice of Violation, Request for Commission Review and Adjudicatory Hearing, Third-Party Request for Commission Review and Adjudicatory Hearing, Petition for Intervention, Motion, or Brief).

(c) The original of any pleading or other document filed shall be signed by the person submitting it or by his attorney and shall state the address and telephone number of the person filing the pleading or other document.

(d) A certificate of service upon all parties identified in Subsection 2.5.1 shall accompany all pleadings and other documents filed by any person in any adjudicatory proceeding hereunder.

(e) The provisions of the subsection do not apply to comments submitted during a public comment period.

#### 2.5.7 Service and Proof of Return

(a) A copy of any Notice of Violation, Request for Commission Review and Adjudicatory Hearing, or Third-Party Request for Commission Review and Adjudicatory Hearing filed with the Secretary must be served upon all parties identified in Subsection 2.5.1 by certified mail, return receipt requested, or by other means provided in Rule 4 of the Arkansas Rules of Civil Procedure. The return receipt or other proof of service must be filed with the Secretary.

(b) A copy of any pleading or other document, other than as provided by Subsection 2.5.7(a), filed with the Secretary shall be served in accordance with Rule 5 of the Arkansas Rules of Civil Procedure upon all parties as identified in Subsection 2.5.1. The pleading or other document shall contain a certificate of service designating the name and address of each party served with a copy of the pleading or other document and the manner (e.g., mail or hand-delivery) in which it was served. The certificate of service shall be signed and dated by the person filing the pleading or other document or his attorney. Service pursuant to Subsection 2.5.7(b) upon a party represented by an attorney is to be made upon the attorney.

(c) Service upon the Director must be made by serving the Department's Legal Division.

2.5.8 Administrative Hearing Officer's Powers

(a) The Administrative Hearing Officer appointed by the Commission shall preside over all adjudicatory hearings.

(b) The Administrative Hearing Officer shall be subject to disqualification for bias, prejudice, interest, or any other cause provided by law, or for any cause for which a judge may be disqualified. Any party of record may petition for the disqualification of the Administrative Hearing Officer promptly after receipt of notice indicating that the individual will serve or upon discovering facts establishing grounds for disqualification.

(c) The Administrative Hearing Officer may exercise the following powers in adjudicatory proceedings:

(1) To set the time and place of preliminary hearings and adjudicatory hearings;

(2) Administer oaths and affirmations;

(3) Delegate authority to the Secretary to sign orders on his behalf;

(4) Issue subpoenas;

(5) Hold conferences to encourage settlement or simplification of issues;

(6) Conduct preliminary hearings and adjudicatory hearings; rule on interlocutory motions, evidentiary matters, discovery, and objections; maintain order; and oversee all other matters necessary to promote the just and efficient administration of these hearings;

(7) Make recommendations to the Commission on dispositive motions and on requests for review of a permitting decision in accordance with Subsection 2.5.13(b); and

(8) Make a Recommended Decision of the Administrative Hearing Officer for the Commission, recommending that it affirm, modify, reverse, or dismiss, in whole or in part, the final decision of the Director which is the subject of the proceeding.

2.5.9 Recording of Adjudicatory Hearings and Court Reporter Costs

(a) All preliminary hearings involving Third-Party Requests for Commission Review and Adjudicatory Hearing, Petitions for Intervention, or dispositive motions, and all adjudicatory hearings conducted hereunder shall be electronically or stenographically recorded by the Department or the Commission.

(b) Any party of record to an adjudicatory hearing may request the Administrative Hearing Officer to arrange for the transcription of the proceeding by a court reporter. The party so requesting shall pay the court reporter for the cost of transcription.

(c) Only a transcription or recording of a proceeding as provided in Subsections 2.5.9(a) and (b) shall constitute the official transcription or recording of the proceeding.

(d) Any party who cancels an adjudicatory hearing or deposition two (2) or fewer working days prior to the proceeding shall pay for any appearance fees charged by the court reporter for the scheduled appearance.

2.5.10 Subpoenas

(a) Any party of record to an adjudicatory hearing may request that the Administrative Hearing Officer issue subpoenas for the attendance of witnesses or subpoenas duces tecum. The Administrative Hearing Officer may, in his discretion, deny issuance of a subpoena to prevent undue delay, oppression, harassment, or other injustice to any party. The Administrative Hearing Officer may give written authorization to the Secretary to issue subpoenas on his behalf.

(b) Upon issuance, the original and one copy of a subpoena will be delivered to the requesting party who shall be responsible for having the subpoena served in accordance with Rule 45 of the Arkansas Rules of Civil Procedure. All costs of service and witness fees shall be the responsibility of the requesting party. The return copy of the subpoena evidencing service shall be filed with the Secretary.

2.5.11 Rules of Civil Procedure

Procedural matters not addressed in this Part shall be governed by the provisions of the Arkansas Rules of Civil Procedure. It is the intent of this subsection to include, not only the Arkansas Rules of Civil Procedure in force on the effective date of this Regulation, but also all subsequent amendments of such rules in force at the time they are invoked.

2.5.12 Effectiveness of Orders During Commission Review

(a) During the pendency of a Commission review:

(1) The denial of a permit shall stand;

(2) The issuance, modification, or revocation of a permit or that part of a permit which is the subject of the appeal shall be stayed, unless otherwise required by state or federal law; and

(3) All other final actions of the Director shall remain in effect and shall be complied with by the parties thereto.

(b) Notwithstanding the provisions of Subsection 2.5.12(a), upon request by any party, the Commission may provide for a stay, modify the terms of a stay, or terminate a stay under appropriate circumstances to avoid substantial prejudice to any party.

(c) A request pursuant to Subsection 2.5.12(b) must be in writing and filed with the Secretary. The Secretary shall promptly inform the Chairman of the filing of a request for a stay or for modification or termination of a stay. The Chairman shall, in his discretion, either (1) grant a temporary stay, modify a stay, or terminate a stay, and such action shall be effective until the next regularly scheduled Commission meeting; or (2) direct the Secretary to place the request on the agenda for the next regularly scheduled Commission meeting; or (3) call a special Commission meeting for the purpose of considering the request. The Commission's decision on the request shall be in the form of a Minute Order and shall state which specific terms or condition(s) are affected by the decision. The decision shall be promptly mailed by the Secretary to all parties of record.

(d) All terms or conditions which are not specifically addressed in the decision rendered pursuant to Subsection 2.5.12(c) shall be stayed or remain effective as provided in Subsection 2.5.12(a).

(e) To the extent conditions of any new permit are stayed pursuant to this subsection, and if no alternative conditions are specified in the written stay decision, a facility holding an existing permit must comply with the conditions of the existing permit which correspond to the conditions being stayed, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed. The burden of proving this incompatibility shall rest with the permittee.

(f) The decision regarding a stay is final and not appealable.



### 2.5.13 Preliminary Hearing

(a) After a Request for Commission Review and Adjudicatory Hearing or a Third-Party Request for Commission Review and Adjudicatory Hearing is filed with the Secretary, a preliminary hearing may be held, if necessary, for the Administrative Hearing Officer to consider the simplification of the issues and other matters as may aid in the disposition of the proceeding.

(b) Notwithstanding the provisions of Subsection 2.5.13(a), a preliminary hearing must be held following the filing of a Request for Commission Review and Adjudicatory Hearing or a Third-Party Request for Commission Review and Adjudicatory Hearing involving a permitting decision. This preliminary hearing shall be held within thirty (30) days of the date of filing the request. At this hearing, the Administrative Hearing Officer shall develop a recommended decision for the Commission regarding the extent to which, if at all, the request should be granted or denied and which parties should be allowed to participate. In reaching this decision, the Administrative Hearing Officer shall determine whether the parties qualify as proper parties under Subsection 2.5.1, whether the issues are properly raised, and whether the pleadings conform with the applicable requirements herein. No person other than the applicant or permittee may raise any issue in the hearing that was not raised during the public comment period on the record, unless the person raising the issue shows good cause why the issue could not, with reasonable diligence, have been discovered and presented during the public comment period.

(c) At any preliminary hearing, the Administrative Hearing Officer shall weigh the equities of any request for expedited review and advance the case on the administrative docket as circumstances permit.

#### 2.5.14 Notice of Hearing

(a) The Administrative Hearing Officer shall schedule the adjudicatory hearing and other proceedings. In the appeal of a permitting decision, the Administrative Hearing Officer shall schedule the hearing and other proceedings so that the matter will be submitted to the Commission for final Commission action within one hundred twenty (120) days after the preliminary hearing, unless the parties of record mutually agree to a longer period of time or the Administrative Hearing Officer establishes a longer period of time for just cause.

(b) The Administrative Hearing Officer shall issue, through the Secretary, a Notice of Hearing to all parties of record. The notice shall be served at least ten (10) business days prior to the scheduled date of the adjudicatory hearing and shall include:

(1) The time, date, and place of the adjudicatory hearing;

(2) A statement that all parties of record are entitled to be present at the hearing, be represented by counsel and present evidence and argument on all issues properly raised by any pleading filed in the proceeding;

(3) A statement that the hearing will be electronically or stenographically recorded; and

(4) A statement that testimony taken at the hearing will be taken under oath.

#### 2.5.15 Settlements

(a) If a matter for which a Request for Commission Review and Adjudicatory Hearing has been filed is resolved by a settlement of the parties prior to the hearing, the Department shall give the Commission notice of the resolution of the matter by filing a copy of the executed settlement agreement with the Secretary. The filing of a settlement agreement which contains language stating that the Request for Commission Review and Adjudicatory Hearing is withdrawn shall, without further Commission action, cause the docket to be immediately closed.

(b) The Administrative Hearing Officer shall make a report on each settled case to the Commission.

(c) The docket closed pursuant to Subsection 2.5.15(a) shall be subject to being reopened upon Commission initiative in accordance with Subsections 2.1.15, 2.2.5, 2.3.5, or 2.4.4, or in response to a petition under Subsection 2.3.7(b) to set aside a Consent Administrative Order settling an administrative enforcement action.

#### 2.5.16 Conduct of Adjudicatory Hearings

##### (a) Presentation of Evidence

The party of record bearing the burden of proof shall present its evidence first with the opportunity for rebuttal after presentation of evidence by the opposing party(ies) of record, unless the Administrative Hearing Officer otherwise directs for the convenience of the parties and witnesses and in the interest of justice.

##### (b) Standard of Review

The standard of review in an adjudicatory hearing is a preponderance of the evidence.

##### (c) Acceptance of Evidence

(1) The Administrative Hearing Officer shall receive into evidence any testimony or other evidence that is admissible under the Arkansas Rules of Evidence, but evidence may be excluded if it is irrelevant, immaterial, or unduly repetitious. The Administrative Hearing Officer shall have discretion to receive any evidence that may assist in a proper determination of the pertinent facts, even though such evidence might not strictly be admissible under the Arkansas

Rules of Evidence. The discretion of the Administrative Hearing Officer to deviate from the customary rules of evidence shall not extend, however, to matters which would impair a privilege established by law.

(2) The Administrative Hearing Officer may in his discretion allow a party to introduce testimony by telephonic means if all the parties to the proceeding agree to the procedural manner in which the testimony shall be offered and recorded.

2.5.17 Recommended Decision of Administrative Hearing Officer

Upon the conclusion of an adjudicatory hearing, unless the matter is resolved by stipulation or settlement by the parties prior to the hearing, the Administrative Hearing Officer shall issue a written Recommended Decision to the Commission for action at a regularly scheduled meeting. The Administrative Hearing Officer shall cause the Recommended Decision to be mailed with a certificate of service to all parties of record.

2.5.18 Commission Review

(a) Commission review of any appealed or contested matter shall be a de novo review of the record compiled by the Administrative Hearing Officer. However, the Commission may vote to consider additional evidence in accordance with Subsection 2.5.20.

(b) The record before the Commission on review shall consist of:

(1) The document constituting the Director's decision;

(2) All pleadings, motions, and intermediate rulings;

(3) All exhibits admitted during the hearing and a transcript of the recording of the hearing, if a transcript has been made; and

(4) The Recommended Decision of the Administrative Hearing Officer, which shall include any proposed findings of fact and conclusions of law.

(c) The decision of the Commission upon review of a matter shall be by majority vote of the Commissioners present; shall be issued in the form of a "Minute Order"; and shall either affirm, modify or reverse, in whole or in part, the Recommended Decision of the Administrative Hearing Officer. Alternatively, the Commission may, by Minute Order, remand the matter with directions to the Administrative Hearing Officer or Director for further proceedings. The Secretary shall serve a copy of the Minute Order upon all parties of record to the proceeding no later than ten (10) business days after the Minute Order is executed by the Commission.

(d) The Commission's vote to affirm or reverse the Recommended Decision shall constitute final Commission action for the purposes of appeal.

#### 2.5.19 Oral Argument Before the Commission

##### (a) Request for Oral Argument

(1) Any party of record may request oral argument on a Recommended Decision before the Commission by filing a written request with the Secretary no later than twenty (20) days after the Recommended Decision has been mailed to all parties.

(2) The request must contain the factual objections and legal issues to be addressed and the relief sought from the Commission.

(b) Copies of Documents for Commissioners

(1) At the same time a party files a request for oral argument, the party shall also provide to the Secretary a sufficient number of copies of the request and of its post-hearing brief and proposed findings of fact and conclusions of law, if any of these materials were filed with the Secretary, for the Secretary to deliver a copy to each of the Commissioners.

(2) At the same time a party files a request for oral argument, the party may, at its discretion, also provide to the Secretary a sufficient number of copies of all or parts of the transcript, of any exhibits admitted into evidence, and of any other pleading filed with the Secretary, for the Secretary to deliver a copy to each of the Commissioners.

(c) Failure to Comply with Time Limitation

Any party failing to file a request for oral argument within the twenty (20)-day period required by Subsection 2.5.19(a)(1) shall not be permitted to present oral argument.

(d) Requirements for Opposing Party(ies)

(1) Any party of record opposing a request for oral argument need not file a request in order to orally respond to the oral argument, but may, at its discretion, file a written response to the request.

(2) If a request for oral argument is filed, the opposing party(ies) of record must provide to the Secretary a sufficient number of copies of its response, its post-hearing brief and proposed findings of fact and conclusions of law, if any of these materials were filed with the Secretary, for the Secretary to deliver a copy to each of the Commissioners.

(3) The opposing party(ies) of record may, at its discretion, provide to the Secretary a sufficient number of copies of all or parts of the transcript, of any exhibits admitted into evidence, and of any other pleading filed with the Secretary, for the Secretary to deliver a copy to each of the Commissioners.

(4) Any pleadings or copies described in Subsection 2.5.19(d) must be filed with or provided to the Secretary no later than ten (10) business days following the filing of the initial request for oral argument pursuant to Subsection 2.5.19(a).

(e) Service Upon Parties

Any party filing any document or providing copies for the Commissioners pursuant to Subsection 2.5.19 must, unless the parties agree otherwise, serve all parties of record with a copy of all such materials in accordance with the procedures for service set forth in Subsection 2.5.7(b).

(f) Appearance on Agenda

If a request for oral argument is filed at any time after 12:00 noon on the twentieth (20) business day preceding the next regularly scheduled Commission meeting, the matter for which oral argument is requested will be removed from the agenda for that meeting and placed on the agenda for the following regularly scheduled Commission meeting.

(g) Exception to Deadlines

Any or all of the deadlines contained in Subsections 2.5.19(a), (d)(4), and (f) may be modified by order of the Administrative Hearing Officer if necessary to assure compliance with any deadline for Commission action contained in any applicable statute.

(h) Time Allowed for Presenting Oral Argument

(1) The party requesting oral argument pursuant to Subsection 2.5.19(a) and all other parties of record supporting the request shall be allowed an oral argument of no more than a combined total of fifteen (15) minutes, unless extended by the Commission. The party(ies) may retain a portion of the fifteen (15)-minute time period for rebuttal.

(2) The opposing party(ies) of record will be permitted no more than a combined total of fifteen (15) minutes to respond, unless extended by the Commission.

(i) Prohibition on New Evidence

No evidence concerning a matter on review that has not previously been included in the record shall be offered to or considered by the Commission during its review, except as provided in Subsection 2.5.20.

(j) Questioning by Commissioners

Following an oral argument, the Chairman shall allow each Commissioner to question the attorneys for each party of record and any persons who presented the oral argument. No other persons shall be questioned by the Commissioners, except for the Administrative Hearing Officer.

2.5.20 Additional Evidence

(a) If a party of record requests an opportunity to supplement the record with additional evidence and is able to satisfactorily demonstrate to a majority of the Commission that the evidence is material to the issues and was unavailable at the time of the adjudicatory hearing despite the best efforts of the party to procure the evidence, then the Commission may remand the matter to the Administrative Hearing Officer to take further testimony and evidence in the matter or direct that the Director reconsider the matter based on the additional evidence before the matter is considered by the Commission.



(b) The requesting party shall file an affidavit with the Secretary describing the circumstances as to why the additional evidence was not available at the time of the adjudicatory hearing and why the information is material to the issues. A copy of the affidavit shall be furnished to all parties of record at least ten (10) business days prior to the date the Commission meets to consider the request.

#### 2.5.21 Prohibition on Ex Parte Communication

(a) No party of record, or representative thereof, to a pending adjudicatory proceeding shall attempt by any means to communicate ex parte with any member of the Commission or the Administrative Hearing Officer regarding that proceeding.

(b) Any flagrant violation of this subsection may constitute grounds for denying the relief sought by the offending party.

(c) Any member of the Commission or the Administrative Hearing Officer who received an ex parte communication in violation of this subsection may be disqualified from the proceeding if necessary to eliminate the effect of the communication. Alternatively, other appropriate action may be taken, such as writing a memorandum disclosing the ex parte communication for the files for the proceeding.

#### 2.5.22 Actions for Declaratory Orders

(a) Any permittee or person subject to regulation by the Commission or the Department may petition the Commission for a declaratory order as to the applicability of any rule, statute, permit, or order enforced by the Commission or the Department. The petition shall be processed in the same manner as a Request for Commission Review and Adjudicatory Hearing.

(b) A declaratory order shall constitute final Commission action for the purposes of appeal.

## 2.6 APPEALS

### 2.6.1 Finality of Decisions

No order of the Director on any enforcement or emergency matter, nor on any permitting decision, construction assistance decision, or grants or loans decision, shall be construed to constitute final agency action on the matter unless and until all procedures and remedies hereunder for hearing and review have been completed or the time periods for initiating those procedures have expired.

### 2.6.2 Filing of Return and Record

Upon service of a Notice of Appeal from a Commission's decision in adjudicatory matter, the Director shall, through counsel, file with the court wherein the appeal is lodged a return, including the record of the proceedings in the matter, which shall include all items specified in Subsection 2.5.18(b) and a copy of the "Minute Order" of the Commission's decision on the matter.

**PART 3. RULEMAKING**

## 3.1 PUBLIC NOTICE

3.1.1 Public Notice Required

Prior to the adoption, amendment or repeal of any regulation, the Commission shall give at least twenty (20) days notice of a public hearing on the proposed rulemaking decision.

3.1.2 Publication of Notice

The notice shall be mailed to all persons requesting advance notice of rulemaking and shall be published in appropriate industry, trade, professional or public interest publications chosen by the Commission and at least twice in a newspaper of statewide circulation.

3.1.3 Contents of Notice

The notice shall include:

- (1) Reference to the legal authority under which the rule is proposed;
- (2) Either the terms or substance of the proposed rule and a description of the subjects and issues involved;
- (3) The time, place and manner for submission of written and oral comments; and
- (4) A statement that copies of the proposed rule are available at the Department and in local depositories.

## 3.2 PUBLIC HEARING

3.2.1 Public Hearing Required

No regulation shall be adopted, amended or repealed by the Commission until after a public hearing is held, except as provided in Section 3.3.

### 3.2.2 Public Hearing Proceedings

The presiding officer at the public hearing shall be any Commissioner or the Commission's designee. At the hearing, any interested person may submit comments, written or oral, on the proposed rulemaking action. Oral comments shall be stenographically or electronically recorded. At any time during a public hearing, the presiding officer may continue the hearing until all oral comments have been heard or may determine not to receive additional oral comments at that hearing if he or she determines that additional comments would not serve a useful purpose or would be repetitious or unduly time consuming.

### 3.2.3 Written Comments

Written comments are preferred. The period for receiving written comments shall begin on the day of publication of public notice and shall extend ten (10) business days beyond the date of the public hearing. The period for written comments may be extended by the presiding officer at the public hearing for up to an additional twenty (20) days.

## 3.3 EMERGENCY RULEMAKING

If the Commission determines that imminent peril to the public health, safety or welfare requires immediate rulemaking action, the Commission may waive or reduce the notice requirements of Sections 3.1 and 3.2. The Commission must document the facts and reasons justifying emergency measures. For the purpose of this Section, the imminent loss of federal funding, certification or authorization for any program administered by the Department shall establish a prima facie case of imminent peril supporting emergency rulemaking. No regulation adopted pursuant to this Section shall be effective for more than ninety (90) days, unless otherwise allowed by law.

### 3.4 THIRD-PARTY PETITION FOR RULEMAKING

#### 3.4.1 Third-Party Petition Authorized

Any person may petition the Commission for the issuance, amendment or repeal of any regulation or part thereof.

#### 3.4.2 Contents of Petition

The petition shall be captioned as a pleading to the Commission and shall contain a detailed explanation of the changes proposed and the reasons the changes are necessary. The petitioner shall attach a mark-up copy of the regulation, or portion thereof, indicating all changes proposed in the petition.

#### 3.4.3 Deadline for Commission Action on Third-Party Petitions

Within sixty (60) days of the date of petition submission, the Commission shall either initiate rulemaking procedures or deny the petition. A decision to initiate rulemaking procedures does not constitute an endorsement of the proposed change to existing rules. If the Commission denies the petition, the reasons therefor shall be stated in writing to the petitioner. This denial shall constitute final Commission action for the purposes of appeal.

#### 3.4.4 Third-Party Rulemaking Procedures

(a) If the Commission initiates rulemaking procedures in response to a third-party petition, the Commission shall cause notice of the proposed regulation to be given as provided by Section 3.1, and shall hold a public hearing as required by Section 3.2.

(b) The Commission may direct the proponent of a third-party rule to compile or produce portions of the rulemaking record required by Subsection 3.6.1. In all cases the proponent of a third-party rule shall prepare a proposed Statement of Basis and Purpose required by Subsection 3.6.2 for the Commission's review prior to its final rulemaking decision.

(c) (1) Prior to the close of the public comment period, the Department shall state its position on any proposed third-party proposal to change regulations in writing for the record.

(2) The Department shall prepare its own proposed Statement of Basis and Purpose at the close of the public comment period pursuant to the guidelines of Subsection 3.6.2. This Statement shall include a proposed responsive summary as required by Subsection 3.6.2(2).

(3) Upon consideration of the petitioner's and the Department's positions and proposed Statements of Basis and Purpose, the Commission may issue its final ruling, or order whatever further rulemaking proceedings it deems appropriate, giving due regard to the right of the public to fair notice as provided by this regulation.

### 3.5 REGULATIONS MORE STRINGENT THAN FEDERAL REQUIREMENTS

#### 3.5.1 Notice of More Stringent Regulations

Any regulation that is more stringent than federal requirements as defined in Subsection 3.5.3 of this regulation shall be identified as such in the public notice described in Section 3.1 of this Part.

#### 3.5.2 Economic Impact/Environmental Benefit Analysis Required

(a) Prior to submitting for public notice a proposed regulation that is more stringent than federal requirements, the Commission shall cause to be prepared an analysis evidencing due consideration of the economic impact and environmental benefit of the regulation upon the state, including those entities that will be subject to the regulation. The analysis shall be prepared by the proponent of the more stringent regulation based upon information reasonably available at the time of public notice. The impact/benefit analysis shall be available for comment during the comment period.

(b) Nothing in Section 3.5 shall be construed as a limitation upon the Commission's discretion to require economic analysis of any proposed rulemaking decision.

#### 3.5.3 Definition of Regulation More Stringent Than Federal Requirements

A regulation that is "more stringent than federal requirements" is a regulatory standard, effluent limit, procedure or other requirement which is more stringent than that which is expressly addressed by a federal regulation or presented as a minimum requirement for state program authorization.

3.5.4 Evaluation of Economic Impact/Environmental Benefit

Following the public comment period, the Commission shall review all comments on the original impact/benefit analysis and include in the Statement of Basis and Purpose for the final rulemaking decision a discussion demonstrating reasoned evaluation of the relative impacts and benefits of the more stringent regulation.

3.6 RULEMAKING RECORD

3.6.1 Record

The Commission shall compile a rulemaking record consisting of, as appropriate:

- (a) Copies of all public notices required by Section 3.1;
- (b) The proposed regulation as published for public notice;
- (c) In the case of third-party or emergency rulemaking, all documents required by Sections 3.3 or 3.4;
- (d) An electronic or stenographic record of all oral comments received during the public hearing and any supporting materials;
- (e) Copies of all written comments and any supporting materials received during the public comment period or public hearing;
- (f) The economic impact/environmental analysis required by Section 3.5, if applicable;
- (g) The Statement of Basis and Purpose described in Subsection 3.6.2;
- (h) The final regulation adopted by the Commission; and
- (i) In the case of the denial of a rulemaking petition pursuant to Section 3.4, the petition for rulemaking and the Commission's written statement setting out the reasons for denial.



### 3.6.2 Statement of Basis and Purpose

Upon adoption of the final regulation, the Commission shall cause to be prepared a concise general statement of the basis and purpose for the regulation. At a minimum, the Statement of Basis and Purpose shall include:

- (1) An explanation of the necessity for the regulation;
- (2) A responsive summary which groups public comments into similar categories and explains why the Commission accepted or rejected the rationale of each category; and
- (3) A demonstration that any technical regulation or standard is based upon generally accepted scientific knowledge or engineering practices, with appropriate references to technical literature or written studies conducted by the Department. If a standard or regulation is identical to a regulation promulgated by the United States Environmental Protection Agency, this subsection shall be satisfied by reference to the Code of Federal Regulations.

### 3.7 CHANGES IN A REGULATION AS A RESULT OF PUBLIC COMMENT

If, as a result of comments, the Commission changes a proposed regulation to the extent that the rule would have an effect not previously expressed in the notice required in Section 3.1, the Commission shall provide another adequate public notice and public comment period. This subsection shall not require a second public notice and public comment period if the final regulation is a logical outgrowth of the regulation proposed in the prior notice.

### 3.8 INCORPORATION BY REFERENCE

The Commission may, through incorporation by reference, adopt as regulations all or portions of the provisions of other laws (i.e., statutes or regulations). Unless a contrary intent is expressly stated, any adoption by specific or descriptive reference to another law shall be construed as though the referenced law were set forth in the Commission regulation line for line, word for word. The effective date of any law adopted by reference shall be the effective date of the Commission regulation, not that of the referenced law. Further, unless a contrary intent is expressly stated, the Commission adopts a referenced law as it exists at the date of Commission promulgation, and subsequent changes in the referenced law do not affect the provisions of regulations adopted by the Commission.

### 3.9 AMENDMENT OF REGULATIONS

When amending portions of an existing regulation, the Commission's deliberations shall be restricted to those proposed amendments described in the public notice. Rulemaking proceedings concerning legally required periodic update of regulations shall be restricted to Department staff proposals. Nothing in this section shall be construed as a limit upon the right of third parties to petition for the amendment of a regulation in separate rulemaking proceedings.

### 3.10 EFFECTIVE DATE OF RULEMAKING DECISIONS

Any rulemaking decision of the Commission is final. Any person who reasonably considers himself injured in his person, business or property by a rulemaking decision may, within thirty (30) days after the rulemaking decision is filed with the Office of the Secretary of State, judicially appeal the decision to the appropriate circuit court, as provided in Arkansas Code Annotated §8-4-222.

### 3.11 INTENT AND CONSTRUCTION

The rulemaking procedures set out in Part 3 are merely minimum procedures that must be followed before the Commission adopts a proposed regulation. Nothing in this Part shall be construed as restricting the authority of the Commission in its rulemaking capacity to direct the proponents or opponents of a proposed rule to submit additional factual data or legal briefs as the Commission deems necessary, or to make individual proponents or opponents of a proposed regulation available for questioning by the Commission. The Commission may enter such orders as may be necessary to efficiently conduct and conclude any rulemaking proceeding.

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**PART 4. OTHER PROVISIONS**

4.1 ADDITIONAL PUBLIC PARTICIPATION REQUIREMENTS

In addition to the provisions in this Regulation regarding public notice or public hearing, the Commission and the Department shall comply with any other applicable state or federal public notice or public hearing requirements.

4.2 COMMITTEES OF THE COMMISSION

4.2.1 General Provisions

(a) The Chairman may appoint one or more committees comprised of Commission members to act in an advisory capacity to the full Commission.

(b) Minutes shall be kept of committee meetings and presented to the full Commission. Tape recordings of committee meetings shall be maintained by the Secretary for a period of not less than one year.

4.2.2 Appeals Committee

The Appeals Committee is to review issues raised in a request for oral argument by a party or parties to the adjudicatory hearing. The Commission Chairman will decide which issues, if any, shall be referred to the Appeals Committee.

4.3 SPECIAL COMMISSION MEETINGS

4.3.1 Calling of Special Meetings

Special Commission meetings may be called at the discretion of the Chairman. Alternatively, if two (2) or more Commissioners submit written requests for such a meeting to the Chairman, the Chairman shall call a special Commission meeting.

#### 4.3.2 Notice

The Chairman shall call a special Commission meeting by delivering written notice to each Commissioner.

#### 4.3.3 Agenda

The Secretary shall prepare an agenda listing the topics for any special Commission meeting and shall deliver it to each Commissioner and the Director.

#### 4.4 INAPPLICABILITY

The provisions of Parts 1 and 2 do not apply to the Department's regulation of surface coal mining and reclamation pursuant to the Arkansas Surface Coal Mining and Reclamation Act of 1979, as amended, Arkansas Code Annotated §15-58-101 et seq., nor to Commission Regulation No. 20 (Arkansas Surface Coal Mining and Reclamation Code), as amended.

#### 4.5 REPEALER

All rules or regulations or parts thereof, adopted pursuant to the laws administered by the Commission or the Department, which are in conflict with the provisions of this Regulation are hereby repealed to the extent of such conflict.

#### 4.6 SEVERABILITY

If any provision of this Regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end, provisions of this Regulation are declared to be separable and severable.

#### 4.7 EFFECTIVE DATE

This Regulation shall be in full force and effect twenty (20) days after it is filed with the Secretary of State.



# ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

## GUIDE TO COMMISSION OPERATIONS

OCTOBER 1995

## Introduction

The "Guide to Commission Operations" serves to make the public aware of various procedures followed by the Arkansas Pollution Control and Ecology Commission. It includes information on how the Commission prepares its meeting agendas, describes agenda topics, and explains the methods for appearing before the Commission. These are informational procedures that have not been adopted as Commission rules or regulations. The Commission may revise the "Guide to Commission Operations" at any time.

1 COMMISSION MEETINGS

1.1 Agenda Topics for Regular Commission Meetings

Routine agenda topics appearing on the Commission's regularly scheduled meeting agenda shall include:

- 1.1.1 Call Meeting to Order.
- 1.1.2 Roll Call.
- 1.1.3 Approval of Minutes.
- 1.1.4 Introduction of Guest(s).
- 1.1.5 Department Reports.
- 1.1.6 Public Comments.
- 1.1.7 Commissioners'/Committees' Reports.
- 1.1.8 Administrative Hearing Officer Decisions.
- 1.1.9 Adjourn.

1.2 Agenda Development and Mailing

1.2.1 The Chairman, Commissioners, Department, and Administrative Hearing Officer shall submit agenda items and supporting materials, if any, to the Secretary not later than fourteen (14) calendar days prior to the Commissioner's regular meeting.

1.2.2 The Secretary shall telefax or mail the tentative agenda to the Chairman for review not later than ten (10) calendar days prior to the regular meeting. The Chairman should provide any revisions to the Secretary within one (1) calendar day of the receipt of the tentative agenda.

1.2.3 The tentative agenda and supporting materials are to be mailed to all Commissioners seven (7) calendar days prior to the Commission's regular meeting.

1.2.4 The deadline for adding new items to the agenda shall be ten (10) calendar days prior to the regular meeting. In the Chairman's discretion, additional agenda items may be added after the deadline.

1.2.5 The Secretary shall notify the Chairman of any request to add an item to the agenda during the ten (10) calendar day period prior to the regular meeting. The Chairman shall have complete discretion in determining whether an item is added to the agenda.

1.2.6 Items which may be added to the agenda at any time without prior approval of the Chairman include: recommended decisions from the Administrative Hearing Officer; request to impose, terminate or modify a stay; and settlements of adjudicatory proceedings.

### 1.3 Request to Appear Before Commission

1.3.1 Any person may seek to appear before the Commission by submitting a written request to the Secretary.

1.3.2 In the written request, the person must identify the topic and reasons for appearing before the Commission and must state what Commission action the person seeks, if any. Any materials for distribution to the Commission should be included in the written request. The request and all supporting material shall not exceed a total of three (3) double-spaced typewritten pages or four (4) handwritten pages.

1.3.3 The Secretary shall provide the Chairman with a copy of the written request. In the Chairman's discretion, the request may be added to the agenda as a specific business matter. In the event the request is not added to the agenda as a specific business matter, the requesting party may address the Commission during the "Public Comment" portion of the agenda.



#### 1.4 Public Comments

1.4.1 Any person may address the Commission during the time allocated on the agenda for "Public Comments." Any person completing a card shall be allowed to address the Commission before any person not completing a card.

1.4.2 The Chairman will usually allow any person to speak for five (5) minutes during the "Public Comments" portion of the meeting but shall have the discretion to extend or reduce the five (5)-minute period of time.

1.4.3 Any person who is a party to or a witness in a pending adjudicatory proceeding, or who is an attorney or other representative for such a person, shall not be allowed to address this Commission during the "Public Comments" portion of the meeting on any issue which is under consideration by the Administrative Hearing Officer or the Commission.