

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

**IN RE: REQUEST BY VULCAN CONSTRUCTION)
 MATERIALS, LLC TO INITIATE) DOCKET NO. 19-001-R
 RULEMAKING TO AMEND RULE NO. 2)**

**VULCAN CONSTRUCTION MATERIALS, LLC'S MOTION
FOR THE ADOPTION OF PROPOSED AMENDMENTS TO RULE NO. 2**

Vulcan Construction Materials, LLC ("Vulcan") moves for the Adoption of Proposed Amendments to Arkansas Pollution Control and Ecology Commission ("APCEC" or "the Commission") Rule No. 2 to establish site-specific dissolved minerals water quality criteria for an Unnamed Tributary of Brush Creek, a portion of Brushy Creek, and a portion of Stennitt Creek, and remove the designated, but not existing, domestic water supply use for the Unnamed Tributary and the portion of Brushy Creek involved in this rulemaking. In support, Vulcan states the following:

1. By Minute Order No. 19-08, dated June 28, 2019, the Commission granted Vulcan's Petition to Initiate Third-Party Rulemaking to Amend Rule No. 2.
2. Public notice of the rulemaking was published in the *Arkansas Democrat-Gazette* on July 14 and 21, 2019. A public hearing was held at 6:00 p.m. on August 29, 2019, in the Lawrence County Meeting Room, 115 West Walnut Street, Walnut Ridge, Arkansas. The deadline for submitting written public comments was September 11, 2019. In compliance with Minute Order No. 19-08, Vulcan prepared a Statement of Basis and Purpose and a Responsive Summary, which are attached as Exhibit A. The Division of Environmental Quality also prepared a Responsive Summary, which is attached as Exhibit B.
3. A copy of the final proposed amendments to APCEC Rule No. 2 is attached to this motion as Exhibit C.

4. On November 4, 2019, Vulcan's proposed amendments to APCEC Rule No. 2 were reviewed by the Joint Senate and House Committee on Public Health, Welfare, and Labor. On December 18, 2019, the proposed amendments were reviewed and approved by the Administrative Rules Subcommittee of the Arkansas Legislative Council, and, on June 21, 2019, the Arkansas Legislative Council reviewed and approved the proposed amendments. *See* Regulation Tracking Sheet attached as Exhibit D.

5. On May 13, 2019 Vulcan was notified that the proposed amendments had been approved by the Office of the Governor. *See* Exhibit E.

6. A copy of the proposed Minute Order adopting the final proposed amendments to APCEC Rule No. 2 requested by Vulcan in its Petition is attached as Exhibit F.

WHEREFORE, Vulcan Construction Materials, LLC, requests that the Commission adopt the amendments to APCEC Rule No. 2, as set forth in the attached Exhibit C.

Dated: January 9, 2020.

Respectfully submitted,

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By:



Allan Gates, AR Bar No. 72040

Jordan Wimpy, AR Bar No. 2012273


Counsel for Vulcan Construction Materials, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of January, 2020, I served an electronic copy of the foregoing Motion for Adoption of Proposed Amendments to Rule No. 2 on the following by United States Postal Service, postage prepaid and by electronic service:

Michael McAlister, Esq.
Attorney Supervisor, Legal Services
Division of Environmental Quality
5301 Northshore Drive
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Basil Hicks, Esq.
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A handwritten signature in black ink, appearing to read "Allan Gates", written over a horizontal line.

Allan Gates

EXHIBIT A

**VULCAN CONSTRUCTION MATERIALS, LLC'S RESPONSIVE SUMMARY
AND STATEMENT OF BASIS AND PURPOSE**

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

**IN RE: REQUEST BY VULCAN CONSTRUCTION)
 MATERIALS, LLC TO INITIATE) DOCKET NO. 19-001-R
 RULEMAKING TO AMEND RULE NO. 2)**

VULCAN CONSTRUCTION MATERIALS, LLC'S RESPONSIVE SUMMARY

Vulcan Construction Materials, LLC provides this Responsive Summary as required under Arkansas Pollution Control and Ecology Commission Rule No. 8.815:

On May 20, 2019, Vulcan filed a Petition to Initiate Third-Party Rulemaking to Amend APCEC Rule No. 2. The Arkansas Pollution Control & Ecology Commission granted Vulcan's Petition on June 28, 2019. Notice of the proposed rulemaking was published in the Arkansas Democrat-Gazette on July 14 and 21, 2019. A public hearing was held on August 29, 2019, in Walnut Ridge, Arkansas, and the public comment period ended on September 11, 2019. There were no oral comments and no members of the public attended the public hearing.

There was only one written comment filed during the public comment period, a letter from the Arkansas Department of Health ("ADH") dated September 3, 2019. A copy of the letter is attached to this Responsive Summary as Attachment 1. The issues raised in the letter and Vulcan's responses to the issues appear below.

1. The Unnamed Tributary and Brushy Creek are tributaries of the Spring River in the watershed of the Northeast Arkansas Public Water Authority. ADH has consistently maintained that the domestic water supply use designation is appropriate and necessary for all streams within public supply watersheds.

Vulcan acknowledges ADH's policy and does not disagree with the policy as a general proposition. But Vulcan respectfully submits that strict application of the policy to the factual circumstances involved in this rulemaking would be inappropriate because the Unnamed Tributary's contribution to the flow of the Spring River is so small that it cannot realistically affect water quality at the Northeast Arkansas Public Water Authority intake.

2. Mineral pollution contributed to the Spring River by the Unnamed Tributary will have a direct effect on water quality of the water supply for the Northeast Arkansas Public Water Authority.

First, Vulcan acknowledges that the discharge from the Unnamed Tributary flows directly through Brushy Creek and Stennitt Creek to the Spring River. As a consequence, it is technically accurate to say that water quality in the Unnamed Tributary directly affects water quality in the Spring River. The effect is so small, however, that it is insignificant. The discharge from the Unnamed Tributary is less than 0.1% of the flow of the Spring River at the confluence with Stennitt Creek. Even if concentrations of minerals in the Unnamed Tributary

increased or decreased dramatically, the effect on the Spring River would be undetectable. See Attachment 2 to this Responsive Summary.

Second, the comment's use of the future tense, "will have a direct effect," suggests that a new discharge is proposed. That is not the case. Vulcan's Black Rock Quarry has been discharging essentially the same volumes of stormwater with essentially the same concentrations of minerals through the Unnamed Tributary for decades. No new discharge is proposed; only a continuation of the longstanding quarry stormwater discharge.

3. Dissolved chlorides can have deleterious effects upon plumbing corrosion rates even when concentrations are below secondary drinking water standards. This complicates drinking water systems' efforts to minimize consumer exposure to lead and copper and can also increase drinking water treatment costs.

Vulcan is not proposing any change in water quality criteria for chlorides. Water quality samples collected for the UAA showed chloride concentrations in the Unnamed Tributary and Brushy Creek immediately downstream of the UT well below the ecoregion value of 13 mg/L:

Chloride Values from UAA Samples (2015-2016)

	<u><i>Maximum</i></u>	<u><i>Minimum</i></u>	<u><i>Average</i></u>
<i>Sample Station UT-0A</i>	<i>10 mg/L</i>	<i><0.1 mg/L</i>	<i>5 mg/L</i>
<i>Sample Station BC-1A</i>	<i>10 mg/L</i>	<i><0.1 mg/L</i>	<i>3.6 mg/L</i>

4. ADH requests that all documents in the rulemaking be revised to reflect ADH's opposition to the removal of the domestic water supply designated use from the UT and Brushy Creek.

Vulcan acknowledges ADH's opposition. ADH's comment and this response document that fact. But the documents previously filed in the administrative record of the rulemaking cannot be altered.

5. ADH asks that the 2009 ADH letter included as Attachment A in the Final UAA Appendix A be removed because the public water intake described in that letter as planned now exists and is operational.


Vulcan acknowledges that the public water intake mentioned in the 2009 letter is now operational, but it cannot alter documents previously filed in the administrative record. ADH's comment and this response fully document that the public water intake in question is no longer merely proposed.

6. ADH did not oppose the removal of the drinking water designated use from Stennitt Creek in 1999 because there was no downstream drinking water supply in the watershed at that time, and because the revised standard for TDS in the 1999 rulemaking was less than the secondary drinking water standard. ADH now opposes the 1999 removal of the designated drinking water use from Stennitt Creek because there is a downstream public water intake. ADH asks that all documents and exhibits in the rulemaking be revised to reflect ADH's opposition to the

removal of the domestic water supply designated use for the Unnamed Tributary, Brushy Creek, and Stennitt Creek.

ADH's opposition is noted but Vulcan cannot alter documents previously filed in the administrative record of this rulemaking.

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By: 
Allan Gates, AR Bar No. 72040
Jordan Wimpy, AR Bar No. 2012273

Counsel for Vulcan Construction Materials, LLC

Attachment 1 to Responsive Summary



Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000

Governor Asa Hutchinson

Nathaniel Smith, MD, MPH, Secretary of Health

Via email

September 3, 2019

Mr. Robert E. Blanz, PhD, P.E.
Chief Technical Officer
Office of the Director
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118

RE: Objection to Removal of Domestic Supply Designated Use, unnamed tributary, Brushy Creek
Third-Party Rulemaking Vulcan Materials, Inc. Black Rock Quarry (WWTP)

Mr. Blanz:

This letter serves to note Arkansas Department of Health's (ADH) objection to the removal of the domestic supply designated use for the unnamed tributary (UT) and Brushy Creek, as proposed in the referenced rulemaking.

These creeks are tributaries of the Spring River in the watershed of Northeast Arkansas Public Water Authority (NEPWA), a source of drinking water to almost 4000 Arkansans. The Arkansas Department of Health has consistently maintained that the domestic water supply use designation is appropriate and necessary for all streams within public supply watersheds. Mineral pollution that enters the Spring River will likely have a direct effect upon water quality in this drinking water supply. The water supply intake structure for NEPWA is located three miles downstream of the confluence of Stennitt Creek and Spring River and is within the ADH-designated Source Water Assessment Area. NEPWA is vulnerable to mineral pollution that might occur on those reaches.

Originally, the Secondary Drinking Water Standards for chlorides, sulfates, and total dissolved solids were included in the federal Safe Drinking Water Act based solely upon issues relating to palatability. However, dissolved chlorides can have deleterious effects upon plumbing corrosion rates even when concentrations are below the secondary standards. This complicates drinking water systems efforts to minimize consumer exposure to lead and copper and can also increase drinking water treatment costs.

The federal regulations state, with regards to the protection of downstream designated uses, "In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality

standards provide for the attainment and maintenance of the water quality standards for downstream waters" [40 C.F.R. §131.10(b)].

ADH notes the drinking water designated use was removed for Stennitt Creek, in 1999 through a Third-Party Rulemaking on behalf of Meridian Aggregates; however, the revised standard for total dissolved solids of 465 mg/L. does not exceed the secondary maximum contaminant level (SMCL) of 500 mg/L. At that time, ADH did not oppose the increase because it did not exceed the SMCL and no drinking water intake was located downstream on the Spring River.

ADH requests the following revisions to the proposed rulemaking:

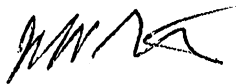
Revise all documents to reflect ADH's opposition to the removal of the domestic supply designated use for UT and Brushy Creek and remove the 2009 ADH letter included in the "Final UAA Appendix A" since the previously planned drinking water intake is now existing.

Revise Exhibit E, Economic Impact/Environmental Benefit Analysis: 2B. ENVIRONMENTAL BENEFIT, to reflect that Stennitt, Brushy Creek and the unnamed tributary are located 3 miles upstream of NEPWA's intake structure and within the ADH-designated Source Water Assessment Area serving a community of about 4000 Arkansans, and that costs associated with any future degradation of the watershed could result in increased treatment costs for this community public water system.

Additionally, ADH requests that all Exhibits and documents within the current proposed rulemaking reflect our opposition to the proposed rulemaking and the removal of the domestic supply designation for the UT, Brushy Creek, and Stennitt Creek.

If public water supply sources—including the Spring River—are to remain high quality drinking water sources, it will require all relevant governmental bodies to include an awareness of and concern for drinking water protection as part of their decision-making processes. The Arkansas Department of Health will continue to be a voice for drinking water source protection and to encourage all stakeholders to adopt regulations protective of drinking water sources in their policy decisions.

Sincerely,



Jeff Stone, P.E.
Director, Engineering Section
Arkansas Department of Health

Cc: Northeast Public Water Authority, Gerald Lawrence, 66 COX DRIVE, Mountain Home AR 72633
Richard McMullen, Ph.D.

Attachment 2 to Responsive Summary

Unnamed Tributary's Contribution to Flow in Downstream Waterbodies

<u>Name of Waterbody</u>	<u>Flow*</u>	<u>UT's % of Flow</u>
Unnamed Tributary at Outfall	0.59 cfs	100%
Brushy Creek below confluence with Unnamed Tributary	1.26 cfs	47%
Brushy Creek above confluence with Stennitt Creek	2.11 cfs	28%
Stennitt Creek below confluence with Brushy Creek	3.98 cfs	15%
Spring River below confluence with Stennitt Creek	721.98 cfs	0.08%

	<u>Sulfate</u>	<u>TDS</u>
If UT increases 3 x the Max:	260 mg/L→780 mg/L	725 mg/L→2,175 mg/L
Impact on Spring River:	4.02 mg/L→4.45 mg/L	220.3 mg/L→221.5 mg/L
	<u>Sulfate</u>	<u>TDS</u>
If UT decreases to ecoregion values:	260 mg/L→22.7 mg/L	725 mg/L→240 mg/L
Impact on Spring River:	4.02 mg/L→3.82 mg/L	220.3 mg/L→219.9 mg/L

*Flow data based on harmonic mean flows as calculated in Mass Budget in Vulcan Revised UAA, Figure 10.3 at p. 10-20

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

**IN RE: REQUEST BY VULCAN CONSTRUCTION)
 MATERIALS, LLC TO INITIATE) DOCKET NO. 19-001-R
 RULEMAKING TO AMEND RULE NO. 2)**

**VULCAN CONSTRUCTION MATERIALS, LLC'S
STATEMENT OF BASIS AND PURPOSE**

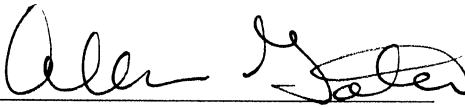
Vulcan Construction Materials, LLC ("Vulcan") submits the following Statement of Basis and Purpose:

1. The Arkansas Pollution Control and Ecology Commission ("APCEC" or "the Commission") is authorized to promulgate rules implementing the powers and duties of the Division of Environmental Quality ("DEQ") and APCEC, including rules prescribing water quality standards. Ark. Code Ann. § 8-4-202(a) and (b).
2. The relevant Arkansas statutes provide that any person has the right to petition the APCEC for any amendment to any rule. On May 20, 2019, Vulcan filed its Petition to Initiate Third-Party Rulemaking to Amend APCEC Rule No. 2. The petition was submitted pursuant to and in compliance with APCEC Rule No. 2, §§ 2.303 and 2.308, APCEC Rule No. 8, § 8.809, and DEQ's Continuing Planning Process. On June 28, 2019, the APCEC entered Minute Order No. 19-08 granting Vulcan's Petition.
3. Through its Petition, Vulcan sought to establish site-specific water quality criteria for dissolved minerals, as follows:
 - Establish site-specific TDS and sulfate water quality criteria for the UT from Vulcan's Outfall 001 to the confluence with Brushy Creek, as follows:
 - TDS - 725 mg/L
 - Sulfate - 260 mg/L

- Establish site-specific TDS and sulfate water quality criteria for Brushy Creek from the confluence with the UT to the confluence with Stennitt Creek, as follows:
 - TDS - 549 mg/L
 - Sulfate - 126 mg/L
 - Establish a site-specific sulfate water quality criterion for Stennitt Creek from the confluence with Brushy Creek to the confluence with the Spring River, as follows:
 - Sulfate - 43.3 mg/L
 - Remove the designated, but not existing, domestic drinking water use for the UT from Vulcan's Outfall 001 to its confluence with Brushy Creek, and for a segment of Brushy Creek from its confluence with the UT to its confluence with Stennitt Creek.
4. Vulcan's Petition is supported by the following information:
- The site-specific TDS and sulfate criteria requested by Vulcan reflect current conditions and allow Vulcan's Black Rock Quarry facility to operate as designed while protecting the aquatic life use, primary and secondary contact recreation use, and industrial and agriculture water designated uses for the UT, Brushy Creek, and Stennitt Creek.
 - Sulfate concentrations measured instream indicate that sulfate concentrations exceed 22.7 mg/L in the UT and Brushy Creek, which represents a "significant modification" of the water quality as compared to the Ozark Highlands ecoregion value for sulfate (17 mg/L).
 - Mass balance calculations carried out for 7Q10 flow conditions, using TDS concentrations at Outfall 001 (95th percentile) and upstream concentrations from recent monitoring, indicate potential exceedance of the DWS criteria for TDS (500 mg/L) in the UT and Brushy Creek.
 - The DWS use for the UT and Brushy Creek is not an existing or attainable use, and the Arkansas Department of Health has no current or future plans for using them as public water supplies.
 - Water quality in the UT, Brushy Creek, and Stennitt Creek supports aquatic life uses based on ADEQ's assessment methodology.
 - Vulcan's existing discharge supports the aquatic life uses, industrial and agricultural water supply uses, as well as primary and secondary contact recreation uses.

- Evaluation of TDS and sulfate in the Vulcan discharge indicates that the dissolved minerals will not reach concentrations that will cause acute or chronic toxicity.
- The proposed criteria are based on the preferred methodology, *i.e.* based on the reference macroinvertebrate community tolerance values from published field studies using EPA methodology and using a conservative assumption regarding the relationship between conductivity and dissolved minerals in the receiving streams.
- The recommended criteria are consistent with existing effluent and instream concentrations which support fish and benthic macroinvertebrate communities.
- There is no current economically feasible treatment technology for the removal of minerals to meet the current criteria.
- 40 C.F.R. 131.11(b)(1)(ii) authorizes states to adopt water quality standards that are “modified to reflect site-specific conditions.”
- The basis for removal of the designated use and the establishment of site specific criteria is set forth in 40 C.F.R. 131.10(g).

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Counsel for Vulcan Construction Materials, LLC

EXHIBIT B
DEQ'S RESPONSIVE SUMMARY

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN RE: REQUEST BY)	
VULCAN CONSTRUCTION)	
MATERIALS, LLC – BLACK ROCK QUARRY)	
TO INITIATE RULEMAKING TO AMEND)	DOCKET NO. 19-001-R
REGULATION NO.2)	

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT
DIVISION OF ENVIRONMENTAL QUALITY'S
RESPONSIVE SUMMARY

On June 28, 2019, the Arkansas Pollution Control and Ecology Commission by Minute Order 19-08 granted the petition filed by Vulcan Construction Materials, LLC – Black Rock Quarry (“Vulcan”) to initiate rulemaking to amend APC&EC Regulation No.2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas. A public hearing was held on August 19, 2019, in Lawrence County, Arkansas. No public comments were made at the public hearing. The public comment period ended on September 11, 2019. The Arkansas Department of Health submitted a written comment.

Summary of Comment:

Commenter: Arkansas Department of Health

Arkansas Department of Health (ADH) objected to the removal of the domestic supply designated use for both the unnamed tributary and Brushy Creek as proposed because these creeks are tributaries of the Spring River in the watershed of Northeast Arkansas Public Water Authority (NEPWA), a source of drinking water to almost 4000 Arkansans. ADH stated that the

domestic water supply use designation is appropriate and necessary for all streams within the watershed of a public water supply.

ADH cited to 40 C.F.R. §131.10(b) which states, "In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards for downstream waters."

ADH noted that the drinking water designated use was removed for Stennitt Creek in 1999. ADH stated that it did not oppose the increase because no drinking water intake was located downstream on the Spring River and the proposed revised standard did not exceed the secondary maximum contaminant level.

Response: DEQ acknowledges ADH's position on retaining the domestic water supply use in the unnamed tributary and Brushy Creek. The unnamed tributary flows into Brushy Creek, which flows into Stennitt Creek. Stennitt Creek does not have a domestic water supply designated use from the mouth of Brushy Creek to the confluence with the Spring River. The domestic water supply designated use on Stennitt Creek was removed before NEPWA began using water from the Spring River.

DEQ acknowledges the considerations outlined in 40 C.F.R. § 131.10(b). DEQ has considered the attainment and maintenance of the water quality standards for the segment of the Spring River where NEPWA has a drinking water intake. DEQ has concluded that the domestic water supply designated use is being maintained in that segment of the Spring River. The Use Attainability Analysis submitted by Vulcan states, "[the Mass Balance Results for 7Q10 Conditions] show that discharges from Outfall 001 have minimal impact on TDS and sulfate

concentrations in the Spring River. Discharges from Outfall 001 will not cause exceedances of [domestic water supply] criteria in the Spring River for 7Q10 conditions.”

Respectfully submitted,

By: 

Basil V. Hicks III, Attorney
Arkansas Department Of
Energy and Environment
Division of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0884

EXHIBIT C
FINAL REVISED REGULATION

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 2

REGULATION ESTABLISHING WATER QUALITY STANDARDS FOR SURFACE WATERS OF THE STATE OF ARKANSAS

Adopted by the Arkansas Pollution Control and Ecology Commission: January 24, 2020

Stream

Concentration-mg/L
Chlorides **Sulfates** **TDS**
(Cl⁻) **(SO₄⁼)**

Unnamed trib)			
Unnamed trib to Big Creek	71	60	453
Lost Creek Ditch	20	30	270
Little Red River (including Greers Ferry Reservoir)	20	30	100
Black River	20	30	270
Strawberry River	20	30	270
Spring River	20	30	290
Eleven Point River	20	30	270
Stennitt Creek from Brushy Creek to Spring River	ER	43.3†	456*
Brushy Creek from Unnamed Tributary to Stennitt Creek	ER	126†	549†
Unnamed Tributary from Vulcan Outfall 001 to Brushy Creek	ER	260†	725†
South Fork Spring River	20	30	270
Myatt Creek	20	30	270
Current River	20	30	270
White River (Dam #3 to Missouri state line, including Bull Shoals Reservoir)	20	20	180
Buffalo River	20	20	200
Crooked Creek (Harrison WWTP outfall to Monitoring Station WHI0193)	22.6†	24.4†	269†
Crooked Creek (Monitoring Station WHI0193 to the mouth)	20	20	238†
White River (Missouri state line, including Beaver Reservoir)	20	20	160
White River from Noland WWTP to 0.4 miles downstream (WR-02)	44†	79†	362†
White River from WR-02 to WHI0052	30†	40†	237†
Kings River	20	20	150
West Fork White River	20	20	150
St. Francis River Basin			
St. Francis River (Mouth to 36° N. Lat.)	10	30	330
L'Anguille River	20	30	235
Tyronza River (headwaters to Ditch No. 6 confluence)	20	30	350
Ditch No. 27	ER	480	1200
Ditch No. 6 (mouth to Ditch No. 27 confluence)	ER	210	630
Tyronza River (mouth to Ditch No. 6 confluence)	20	60	350
Little River	20	30	365
Pemiscot Bayou	20	30	380
St. Francis River (36° N. Lat. to 36° 30' N. Lat.)	10	20	180

Ouachita River Basin

Seasonal Ozark Highlands aquatic life use - all streams with watersheds of less than 10 mi² except as otherwise provided in Reg. 2.505

Perennial Ozark Highlands aquatic life use - all streams with watersheds of 10 mi² and larger and those waters where discharges equal or exceed 1-cfs

*As designated in the National Wild and Scenic Rivers System

**Except for those waters with designated use variations supported by Use Attainability Analysis or other investigations.

Site Specific Designated Use Variations Supported by Use Attainability Analysis or Other Investigations

Railroad Hollow Creek - no fishable/swimmable uses (OH-1, #1)

Columbia Hollow Creek - seasonal aquatic life use March-June (OH-1, #2)

Curia Creek - below first waterfall, perennial aquatic life use (OH-4, #3)

Moccasin Creek – below Arkansas Highway 177, perennial aquatic life use (OH-3, #4)

Stennitt Creek- from Brushy Creek to Spring River, no domestic water supply use (OH-4, #6)

Brushy Creek - from Unnamed Tributary to Stennitt Creek, no domestic water supply use (OH-4, #11) †

Unnamed Tributary – from Vulcan Outfall 001 to Brushy Creek, no domestic water supply use (OH-4, #12) †

SPECIFIC STANDARDS: OZARK HIGHLANDS ECOREGION

(Plates OH-1, OH-2, OH-3, OH-4)

	<u>Streams</u>		<u>Lakes and Reservoirs</u>
Temperature °C (°F)*	29 (84.2)		32 (89.6)
Trout waters	20 (68)		
Turbidity (NTU) (base/all)	10/17		25/45
Minerals	see Reg. 2.511		see Reg. 2.511
Dissolved Oxygen**	<u>Pri.</u>	<u>Crit</u>	see Reg. 2.505
<10 mi ² watershed	6	2	
10 to 100 mi ²	6	5	
>100 mi ² watershed	6	6	
Trout waters	6	6	

All other standards (same as statewide)

Site Specific Standards Variations Supported by Use Attainability Analysis

Railroad Hollow Creek: from headwaters to Spavinaw Creek - year-round dissolved oxygen - 2 mg/L (OH-1, #1)

Curia Creek - below first waterfall, critical season dissolved oxygen 6 mg/L (OH-4, #3)

Moccasin Creek - below Highway 177, critical season D.O. 5mg/L (OH-3, #4)

SWEPCO Reservoir - maximum temperature 54°C (limitation of 2.8°C above natural temperature does not apply) (OH-1, #5)

Stennitt Creek - from Brushy Creek to Spring River, total dissolved solids = 456 mg/L, sulfate = 43.3 mg/L (OH-4, #6) †

Brushy Creek from Unnamed Tributary to Stennitt Creek, sulfate = 126 mg/L, total dissolved solids = 549 mg/L (OH-4, #11) †

Unnamed Tributary from Vulcan Outfall 001 to Brushy Creek, sulfate = 260 mg/L, total dissolved solids = 725 mg/L (OH-4, #12) †

Crooked Creek – from Harrison WWTP outfall to ADEQ Monitoring Station WHI0193; chloride 22.6 mg/L, sulfate 24.4 mg/L; TDS 269 mg/L (OH-2, #7) †

Crooked Creek – from ADEQ Monitoring Station WHI0193 to mouth: TDS 238 mg/L (OH-3, #8) †

White River – from Noland WWTP to 0.4 miles downstream (WR-02), chloride = 44 mg/L, sulfate = 79 mg/L, TDS = 362 mg/L (OH-1, #7) †

White River – from WR-02 to WHI0052, chloride = 30 mg/L, sulfate = 40 mg/L, TDS = 237 mg/L (OH-1, #8) †

† Not applicable for clean water act purposes until approved by EPA.

*Increase over natural temperatures may not be more than 2.8°C (5°F).

**At water temperatures $\leq 10^{\circ}\text{C}$ or during March, April and May when stream flows are 15 cfs and greater, the primary season dissolved oxygen standard will be 6.5 mg/L. When water temperatures exceed 22°C , the critical season dissolved oxygen standard may be depressed by 1 mg/L for no more than 8 hours during a 24-hour period.

Plate OH-4 (Ozark Highlands)



LEGEND	
---	Extraordinary Resource Waters
•	Natural and Scenic Waterways
—	Variation by UAA
—	Ecologically Sensitive Waterbodies
■	ESW Caves, Springs, and Seeps
—	Trout Waters

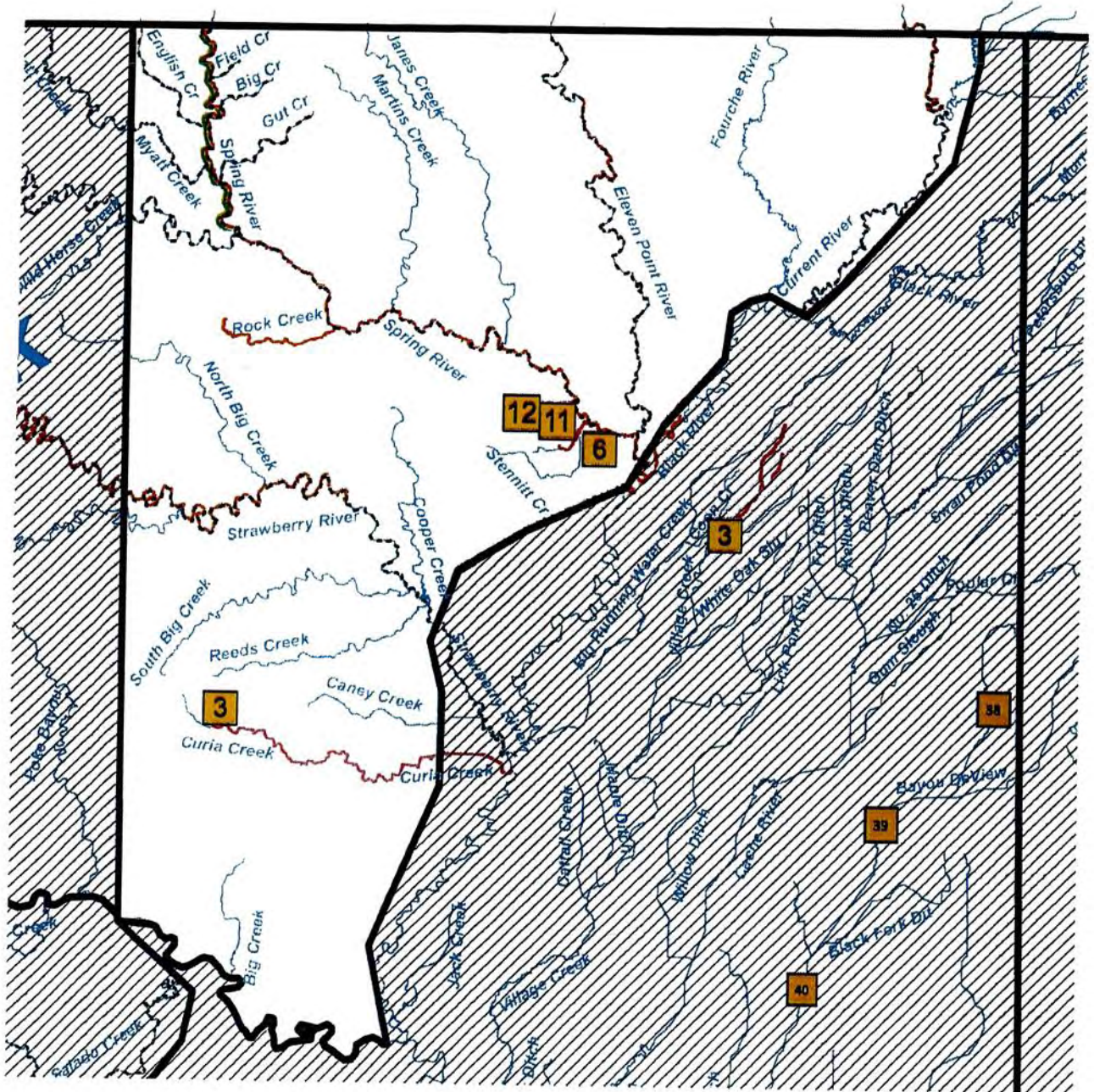


EXHIBIT D
RULE TRACKING SHEET

RULE TRACKING SHEET

Rule No. 2 **Common Name:** Rule Establishing Water Quality Standards for Surface Waters of the State of Arkansas

1. **Review** of draft regulations by key groups.

	<i>Initiated</i>	<i>Completed</i>	<i>Incorporated</i>
EPA	_____	_____	_____
DEQ Legal/Admin.	<u>√</u>	<u>√</u>	<u>√</u>
Industrial/ Environmental Groups	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>

Comments: The amendment of Rule No. 2 is necessary to establish dissolved minerals water quality criteria for the Unnamed Tributary, portions of Brushy Creek, and portions of Stennitt Creek to reflect current conditions, and to remove the designated, but not existing, domestic water supply use for the Unnamned Tributary and portions of Brushy Creek.

2. Proposed regulations presentation to Commission for approval to proceed to public comment period.

Date: June 28, 2019

By: Allan Gates

Comments/Approval: Commission approved the Petition to initiate rulemaking.

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

Publication

Dates of Publication

Arkansas Democrat-Gazette

July 14 and 21, 2019 (Attachment I)

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

Date: August 7, 2019

By: Jordan Wimpy

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

Location

Date

Hearing Officer

Lawrence County Meeting Room, Walnut Ridge, AR

August 29, 2019

Charles Moulton

6. Final day of public comment period: September 11, 2019

7. **Final proposed regulation** and **Responsive Summary** prepared by Petitioner and Department.

Date Completed: October 15, 2019 (Petitioner)

Date Completed: October 16, 2019 (DEQ)

8. Formal presentation to the **Public Health & Welfare Committee** of the Legislative Council.

Date: Nov. 4, 2019

By: Allan Gates, Jordan Wimpy, Michael Grappe (DEQ)

Comments/Approval: Reviewed by Committee, See Attachment 2

9. Formal presentation of proposed final regulation to the **Administrative Rules & Regulations Subcommittee** of the Legislative Council and the **Arkansas Legislative Council** (All Regs).

Date: Dec 18, 2019

By: Allan Gates, Jordan Wimpy, Michael Grappe (DEQ)

Date: Dec. 20, 2019

By: Jordan Wimpy, Michael Grappe (DEQ)

Comments/Approval: Reviewed and approved, See Attachments 3 and 4

11. **Motion to Adopt** filed with **proposed final regulation**.

Date Delivered: January 9, 2020

12. Planned presentation of proposed final regulation to the **Commission** for adoption.

Date: January 24, 2020

By: Allan Gates

Comments/Approval: _____

13. Send two copies of adopted regulation to **Secretary of State** (regulation becomes effective ten days after filing).

Date mailed: _____

14. Formally submit adopted regulation to **EPA**.

Date mailed: _____

PREPARED BY:

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, PLLC
425 W. Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201-3525

By: _____



Allan Gates

ATTACHMENT 1

AFFIDAVIT OF PUBLICATION OF PUBLIC NOTICE

Arkansas Democrat Gazette

STATEMENT OF LEGAL ADVERTISING

MITCHELL WILLIAMS SELIG GATES
425 W CAPITOL AVE
LITTLE ROCK AR 72201

ATTN: Jake Harper

DATE : 07/21/19 INVOICE #: 3214685
ACCT #: L1055177 P.O. #:

REMIT TO:
ARKANSAS DEMOCRAT-GAZETTE, INC.
P.O. BOX 2221
LITTLE ROCK, AR 72203

BILLING QUESTIONS CALL 378-3873

STATE OF ARKANSAS, }
COUNTY OF PULASKI, } ss.

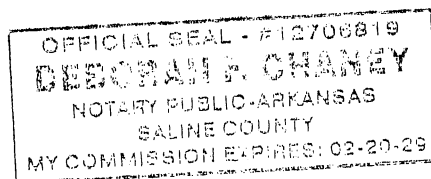
I, Charles A McNeice Jr, do solemnly swear that I am the Business Manager of the Arkansas Democrat-Gazette, a daily newspaper printed and published in said County, State of Arkansas; that I was so related to this publication at and during the publication of the annexed legal advertisement the matter of:

Hearing
pending in the Court, in said County, and at the dates of the several publications of said advertisement stated below, and that during said periods and at said dates, said newspaper was printed and had a bona fide circulation in said County; that said newspaper had been regularly printed and published in said County, and had a bona fide circulation therein for the period of one month before the date of the first publication of said advertisement; and that said advertisement was published in the regular daily issues of said newspaper as stated below.

DATE	DAY	LINAGE	RATE	DATE	DAY	LINAGE	RATE
07/14	Sun	223	1.57				
07/21	Sun	223	1.57				

TOTAL COST ----- 700.22
Billing Ad #: 75009525

Subscribe and sworn to me this 22
day of Aug, 20 19



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Arkansas Democrat Gazette

STATEMENT OF LEGAL ADVERTISING
THIS PAGE USED FOR ADDITIONAL AD COPY SPACE AS NEEDED.
PAGE MAY BE BLANK

NOTICE OF PROPOSED THIRD-PARTY RULEMAKING, PUBLIC HEARING AND PUBLIC COMMENT PERIOD

The Arkansas Pollution Control and Ecology Commission (APC&EC) will hold a public hearing at the Lawrence County Meeting Room on August 29, 2019, to receive comments on a third-party proposal by Vulcan Construction Materials, LLC – Black Rock Quarry (Vulcan) to amend APC&EC Regulation No. 2, the Arkansas Water Quality Standards, in order to establish water quality criteria for an Un-named Tributary (UT) from Vulcan Outfall 001 to Brushy Creek, and Brushy Creek from the UT to Stennitt Creek, and Stennitt Creek from Brushy Creek to the Spring River. Vulcan also proposes to remove the designated, but not existing, domestic water supply use for the UT and a segment of Brushy Creek. The hearing will begin at 6:00 in the Lawrence County Meeting Room at 115 West Walnut Street, Walnut Ridge, Arkansas, 72476.

In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearing. If the hearing is postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period.

The deadline for submitting written comments on the proposed changes is 4:30 p.m. (Central Time), September 11, 2019.

Sections 8.809 through 8.811 of APC&EC Regulation No. 8 (Administrative Procedures), and Arkansas Code Annotated Section 8-4-202(c) provide that outside parties may petition APC&EC to initiate the rulemaking process to adopt or amend regulations under APC&EC's jurisdiction. APC&EC authority to amend Regulation No. 2 is found in Arkansas Code Annotated, Section 8-4-201, et seq.

The fact that APC&EC has agreed to initiate such a third-party rulemaking procedure does not constitute an endorsement of the proposal at this time. The APC&EC will decide whether to adopt the proposed changes after the conclusion of the public comment period for the proposal and after Vulcan and the Arkansas Department of Environmental Quality (ADEQ) respond to all public comments submitted during the open comment period.

Vulcan operates a limestone quarrying operation at the Black Rock site and discharges groundwater and stormwater pumped from the quarry pit to Outfall 001 into a farm stock pond, thence by an overflow weir to the Unnamed Tributary, thence to Brushy Creek, thence to Stennitt Creek pursuant to NPDES Permit No. AR0046922. Vulcan is

requesting the following amendments to Regulation No. 2:

- Establish site-specific TDS and sulfate water quality criteria for the UT from Vulcan's Outfall 001 to the confluence with Brushy Creek, as follows:
 - TDS - 725 mg/L
 - Sulfate - 260 mg/L
- Establish site-specific TDS and sulfate water quality criteria for Brushy Creek from the confluence with the UT to the confluence with Stennitt Creek, as follows:

- TDS - 549 mg/L
- Sulfate - 126 mg/L
- Establish a site-specific sulfate water quality criterion for Stennitt Creek from the confluence with Brushy Creek to the confluence with the Spring River, as follows:

- Sulfate - 43.3 mg/L
- Remove the designated, but not existing, domestic drinking water use for the UT from Vulcan's Outfall 001 to its confluence with Brushy Creek, and for a segment of Brushy Creek from its confluence with the UT to its confluence with Stennitt Creek.

Detailed copies of Vulcan's proposed regulation change, along with supporting documents and summary information, are available for public inspection during normal business hours at ADEQ's Public Outreach and Assistance Division, located at ADEQ's North Little Rock Office, and in ADEQ information depositories located in public libraries at Jonesboro; the main branch of the Little Rock Public Library, 100 Rock Street, and the Arkansas State Library, 900 West Capitol, Suite 100, Little Rock.

In addition, summary information concerning the proposal is available at other ADEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Harrison, Helena, Hope, Jonesboro, Magnolia, Monticello, Mountain Home, Pocahontas, Searcy, Stuttgart, Texarkana, and West Memphis; and in campus libraries at the University of Arkansas Pine Bluff and the University of Central Arkansas at Conway.

Information concerning the proposed changes can also be viewed and downloaded at ADEQ's website at the following URL address:
www.adeq.state.ar.us.

Oral and written comments on the proposed changes to Regulation No. 2 will be accepted at the hearing, but written comments are preferred in the

interest of accuracy. In addition, written or electronic comments should be sent to Jacob Harper, Arkansas Department of Environmental Quality, Public Outreach and Assistance Division, 5301 Northshore Drive, North Little Rock, AR 72118. Electronic mail comments should be sent to the following address:
reg-comment@adeq.state.ar.us.
Published July 14 and 21, 2019.

Becky W. Kaogh, Director,
Arkansas Department of
Environmental Quality
75009525f

ATTACHMENT 2

**AGENDA FROM NOVEMBER 4, 2019 MEETING OF THE
JOINT COMMITTEE ON PUBLIC HEALTH, WELFARE, AND LABOR**

AGENDA
Senate Committee on Public Health, Welfare, and Labor
House Committee on Public Health, Welfare, and Labor
Meeting Jointly

Monday, November 4, 2019

1:30 PM

Room 171, State Capitol
Little Rock, Arkansas

Sen. Missy Irvin, Chair
Sen. David Wallace, Vice-Chair
Sen. Bill Sample
Sen. Ronald Caldwell
Sen. Jimmy Hickey, Jr
Sen. Bart Hester
Sen. Scott Flippo
Sen. Kim Hammer

Rep. Jack Ladyman, Chair
Rep. Deborah Ferguson, Vice-Chair
Rep. Fredrick J. Love
Rep. Jeff Wardlaw
Rep. Chris Richey
Rep. Stephen Magie
Rep. Josh Miller
Rep. Richard Womack
Rep. John Payton
Rep. Mary Bentley

Rep. Michelle Gray
Rep. Justin Gonzales
Rep. Kenneth B. Ferguson
Rep. Justin Boyd
Rep. Karilyn Brown
Rep. Austin McCollum
Rep. Bruce Coleman
Rep. Clint Penzo
Rep. Mark Perry
Rep. Lee Johnson

- A. Call to Order
- B. Comments by the Chairs
 - 1. Senator Missy Irvin
 - 2. Representative Jack Ladyman
- C. Consideration to Adopt the October 7 and 8, 2019 Meeting Minutes **(EXHIBIT C)**
- D. Arkansas Department of Environmental Quality, Office of Water, Review of 3rd Party Rulemaking Regarding PC&E Commission Regulation 2 Establishing Water Quality Standards for Surface Waters of Arkansas. Establishing Water Quality Criteria for a) a segment of the Unnamed Tributary (UT) from Vulcan Outfall 001 to the confluence with Brushy Creek, for a segment of Brushy Creek from its confluence with the UT to its confluence with Stennitt Creek from its confluence with Brushy Creek to its confluence with the Spring River and also b) remove the designated, but not existing, domestic water supply use for the UT and Brushy Creek. **(EXHIBIT D)**
 - 1) Michael Grappe', Chief Program Officer, Arkansas Department of Environmental Quality (ADEQ)
 - 2) Allan Gates, JD, Mitchell/Williams Law Firm
 - 3) Discussion by the Committees
- E. Arkansas Department of Environmental Quality, Office of Land Resources, Review of Rule which repeals a regulation that is obsolete. Regulation 14 Waste Tire Program has been replaced by Regulation 36 called the Tire Accountability Program which was created by Act 317 of 2017 called the Used Tire Recycling and Accountability Act. **(EXHIBIT E)**
 - 1. Michael Grappe', Chief Program Officer, ADEQ
 - 2. Discussion by the Committees

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- F. Department of Human Services, Division of Medical Services, Review of Rule which removes Domiciliary Care from the Arkansas Medicaid State Plan and all corresponding rules. This is an optional program that is not routinely used through Medicaid and there are no active providers enrolled to provide this service. **(EXHIBIT F)**
1. Mark White, Chief of Office of Legislative and Intergovernmental Affairs, Department of Human Services, Chief of Staff
 2. Janet Mann, Director, Division of Medical Services, Department of Human Services (DHS)
 3. Discussion by the Committees
- G. Department of Human Services, Division of Medical Services, Review of Rule regarding State Medicaid Plan Amendment (SPA #18-0013). There are no changes to the Primary Care Case Manager (PCCM) program. The formatting of the PCCM Medicaid State Plan changed, but the information and program remains the same. The PCCM portion was submitted to CMS on January 7, 2019, and was approved along with the Patient-Centered Medical Home (PCMH) on February 28, 2019. Although there are no programmatic changes to the PCCM program, the formatting has changed and is being promulgated. **(EXHIBIT G)**
1. Mark White, Chief of Office of Legislative and Intergovernmental Affairs, Department of Human Services, Chief of Staff
 2. Janet Mann, Director, Division of Medical Services, Department of Human Services
 3. Discussion by the Committees
- H. Department of Human Services, Division of County Operations, Review of Rule which complies with Act 59 of 2019 which prohibits an agency from recovering Achieving a Better Life Experience (ABLE) account proceeds upon the death of a designated beneficiary. The statement in the Medical Services Policy Manual, Section E-600 ABLE Program, which requires the estate recovery to reimburse the Medicaid benefits has been removed. **(EXHIBIT H)**
1. Mark White, Chief of Office of Legislative and Intergovernmental Affairs, Department of Human Services, Chief of Staff
 2. Mary Franklin, Director, Division of County Operations, Department of Human Services
 3. Discussion by the Committees
- I. Department of Human Services, Division of Provider Services and Quality Assurance, Office of Long-Term Care, Review of rule which requires national criminal background checks for employees of long-term care facilities and applicants for employment. **(EXHIBIT I)**
1. Mark White, Chief of Office of Legislative and Intergovernmental Affairs, Department of Human Services, Chief of Staff
 2. Jerald Sharum, Director, Division of Provider Services and Quality Assurance
 3. Discussion by the Committees
- J. Department of Human Services, Division of Medical Services, Review of rule to comply with recommendations of the American Academy of Pediatrics by adding three childhood screenings for Medicaid and ARKids B beneficiaries. **(EXHIBIT J)**
1. Mark White, Chief of Office of Legislative and Intergovernmental Affairs, Department of Human Services, Chief of Staff
 2. Janet Mann, Director, Division of Medical Services, Department of Human Services
 3. Discussion by the Committees
- K. 2018-2019 Vision Screening Report from the Department of Education (A.C.A. 6-18-1803) **(EXHIBIT K)**
1. Cheria Lindsey, BSN, RN, NCSN, State School Nurse Consultant, Division of Elementary and Secondary Education, Department of Education
 2. Discussion by the Committees
- L. Epilepsy Foundation in Arkansas
1. Bridgit Patterson, Program Director
- M. Other Business
- N. Adjournment

ATTACHMENT 3

**AGENDA FROM DECEMBER 18, 2019 MEETING OF THE
ADMINISTRATIVE RULES SUBCOMMITTEE OF THE
ARKANSAS LEGISLATIVE COUNCIL**

REVISED AGENDA
Administrative Rules Subcommittee
of the
Arkansas Legislative Council

Wednesday, December 18, 2019
9:00 AM
Room A, MAC
Little Rock, Arkansas

Sen. Lance Eads, Co-Chair
Sen. Kim Hammer, Vice-Chair
Sen. Missy Irvin
Sen. Jonathan Dismang
Sen. Jane English
Sen. Keith Ingram
Sen. Jim Hendren
Sen. Blake Johnson
Sen. Cecile Bledsoe, ex officio
Sen. Terry Rice, ex officio

Rep. Dan Sullivan, Co-Chair
Rep. Lane Jean, Vice-Chair
Rep. Fredrick J. Love
Rep. Reginald Murdock
Rep. Matthew J. Shepherd
Rep. Jon S. Eubanks
Rep. Bruce Cozart
Rep. DeAnn Vaught
Rep. Jeff Wardlaw, ex officio
Rep. Jim Dotson, ex officio

- A. Call to Order.**
- B. Reports of the Executive Subcommittee.**
- C. Letters Submitted Pursuant to Act 893 of 2019.**
- D. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.**
- 1. DEPARTMENT OF AGRICULTURE, ARKANSAS LIVESTOCK & POULTRY COMMISSION (Mr. Patrick Fisk, Mr. Wade Hodge)**
 - a. Disbursement of State Funds for Fairs and Livestock Shows (p.1)**
 - 2. DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT (Ms. Amanda Rose)**
 - a. Rule 8 – Corporate Governance Annual Disclosure (p.4)**
 - b. Amended Rule 25 – Annual Financial Reporting (p.6)**
 - 3. DEPARTMENT OF COMMERCE, STATE SECURITIES DEPARTMENT (Mr. David Smith)**
 - a. Amendments to the Money Services Rules (p.7)**
 - 4. DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND SECONDARY EDUCATION (Ms. Courtney Salas-Ford, items a, e; Ms. Jennifer Dedman, item b; Ms. Mary Claire Hyatt, item c; Ms. Lori Freno, item d)**

Note: All exhibits for this meeting are available by electronic means and are accessible on the General Assembly's website at www.arkleg.state.ar.us

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- a. **DESE Rules Governing Test Security, Testing Violations, and Alleged Testing Improprieties (p.9)**
 - b. **DESE Rules Governing Public School Choice and Repeals (p.11)**
 - c. **DESE Rules Governing Class Size and Teaching Load (p.16)**
 - d. **DESE Rules Governing the Regulatory Basis of Accounting (p.19)**
 - e. **DESE Rules Governing the Arkansas Educational Support and Accountability Act (AESAA) (p.19)**
- 5. DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY (Mr. Micheal Grappe, Mr. Allan Gates, Mr. Jordan Wimpy)**
- a. **APC&EC Reg. No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas (Vulcan Construction Materials, L.L.C.) (p.22)**
- 6. STATE BOARD OF FINANCE (Mr. Paul Louthian)**
- a. **Arkansas State Treasury Investment Policy (p.29)**
 - b. **Arkansas State Treasury Money Management Trust Policy (p.30)**
- 7. DEPARTMENT OF HUMAN SERVICES, DIVISION OF AGING, ADULT, & BEHAVIORAL HEALTH SERVICES (DAABHS) (Ms. Patricia Gann, item a; Mr. Mark White, item b)**
- a. **Certification in Deaf Mental Health (p.30)**
 - b. **Rule Establishing Reasonable Charges for Costs of Treatment (p.32)**
- 8. DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD CARE & EARLY CHILDHOOD EDUCATION (DCCECE) (Mr. David Griffin)**
- a. **Division of Child Care and Early Childhood Education Minimum Licensing Requirements (p.33)**
- 9. DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILDREN & FAMILY SERVICES (DCFS) (Ms. Christin Harper)**
- a. **Permanency Efforts for Children in Foster Care (p.38)**
 - b. **Referrals of Infants Born With and Affected by Fetal Alcohol Spectrum Disorder or Prenatal Drug Exposure (p.40)**
 - c. **Subsidized Guardianship (p.45)**
 - d. **Ensuring Child Safety and Confidentiality (p.47)**
- 10. DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (DMS) (Ms. Janet Mann)**
- a. **Hospital 3-19 Spinal Muscular Atrophy Newborn Screening (p.51)**

11. **DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH SERVICES (DYS)**
(Ms. Kara Benca)
 - a. **Division of Youth Services Operations Manual (p.53)**
12. **DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, APPRAISER LICENSING AND CERTIFICATION BOARD (Ms. Diana Piechocki)**
 - a. **Reduction in Requirements and Clean-Up 19-0003 (p.57)**
13. **DEPARTMENT OF PARKS, HERITAGE, AND TOURISM, DIVISION OF HERITAGE (Mr. Jim Andrews, Mr. David Bell, item a; Mr. Scott Kaufman, item b)**
 - a. **Guidelines for Museum Hours of Operation (p.60)**
 - b. **Rules Governing the Arkansas Major Historic Rehabilitation Income Tax Credit Act (p.61)**
14. **ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM (Ms. Laura Gilson, Mr. Duncan Baird)**
 - a. **DROP Provisions (p.62)**
15. **COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC FACILITIES AND TRANSPORTATION (Ms. Lori Freno)**
 - a. **CAPSFT Rules Governing the Academic Facilities Distress Program (p.63)**
 - b. **CAPSFT Rules Governing the Facilities Master Plan (p.66)**
 - c. **CAPSFT Rules Governing the Academic Facilities Partnership Program (p.67)**
16. **DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES, OFFICE OF STATE PROCUREMENT (Ms. Ann Purvis)**
 - a. **Changes to Rules Under the AR Procurement Law (p.87)**

E. Proposed Rules Recommending Expedited Process and Procedure for Occupational Licensure Pursuant to Ark. Code Ann. § 17-1-106(c), as Amended by Act 820 of 2019.

1. **DEPARTMENT OF PUBLIC SAFETY, DIVISION OF ARKANSAS STATE POLICE (Ms. Mary Claire McLaurin, Lt. Michael Moyer)**
 - a. **Amendment to the Division of Arkansas State Police Rules for Licensing and Regulation of Private Investigators, Private Security Agencies, Alarm Systems Companies, Polygraph Examiners, and Voice Stress Analysis Examiners**
 - b. **Amendment to the Division of Arkansas State Police Used Motor Vehicle Dealer Licensing Rules**

F. Adjournment.

SUPPLEMENTAL AGENDA
Administrative Rules Subcommittee
of the
Arkansas Legislative Council
Wednesday, December 18, 2019
9:00 AM
Committee Room A, MAC
Little Rock, Arkansas

A. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309 to be Considered Pending Suspension of the Rules.

1. ARKANSAS DEPARTMENT OF AGRICULTURE, STATE PLANT BOARD
(Mr. Wes Ward, Mr. Scott Bray, Mr. Wade Hodge)

a. Pesticide Classification and Enforcement Rule Amendments (Dicamba)

B. Adjournment.

ATTACHMENT 4

**AGENDA FROM DECEMBER 20, 2019 MEETING OF THE
ARKANSAS LEGISLATIVE COUNCIL**

AGENDA
Arkansas Legislative Council

Friday, December 20, 2019

9:00 AM

Room A, MAC

Little Rock, Arkansas

- A. Call to Order.
- B. Roll Call.
- C. Approval of the Minutes of the Last Meeting, November 15, 2019.
- D. Report of the Executive Subcommittee — Rep. Jeff Wardlaw, Sen. Cecile Bledsoe, Co-Chairs.
- E. Reports of Standing Subcommittees:
 - 1. Administrative Rules: — Rep. Dan Sullivan, Sen. Lance Eads, Co-Chairs;
 - 2. Charitable, Penal & Correctional Institutions — Rep. David Fielding, Sen. Gary Stubblefield, Co-Chairs;
 - 3. Claims Review — Rep. Bruce Cozart, Sen. Bart Hester, Co-Chairs;
 - 4. Game and Fish/State Police — Rep. Josh Miller, Sen. Keith Ingram, Co-Chairs;
 - 5. Higher Education — Rep. David Whitaker, Sen. Breanne Davis, Co-Chairs;
 - 6. Hospital and Medicaid Study — Rep. Fredrick J. Love, Sen. Eddie Cheatham, Co-Chairs;
 - 7. Litigation Reports Oversight — Rep. Lanny Fite, Sen. Bob Ballinger, Co-Chairs;
 - 8. Performance Evaluation and Expenditure Review — Rep. DeAnn Vaught, Sen. Bruce Maloch, Co-Chairs;
 - 9. Policy-Making — Rep. Ken Bragg, Sen. Linda Chesterfield, Co-Chairs;
 - 10. Review: — Rep. Andy Davis, Sen. Scott Flippo;
 - 11. Uniform Personnel Classification and Compensation Plan — Rep. Jim Wooten, Sen. David Wallace, Co-Chairs;
 - 12. Lottery Oversight — Rep. Chris Richey, Sen. Joyce Elliott, Co-Chairs;
 - 13. Highway Commission Review and Advisory — Rep. Ron McNair, Sen. Jonathan Dismang, Co-Chairs;
 - 14. Arkansas Health Insurance Marketplace Oversight — Rep. Deborah Ferguson, Sen. Kim Hammer, Co-Chairs.
 - 15. Occupational Licensing Review — Rep. Womack, Sen. Missy Irvin, Co-Chairs;

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F. Reports of Interim or Special Committees:

G. Review of Communications:

1. **Arkansas Economic Development Commission, Division of Rural Services**, Request for approval of funding for the Arkansas Game and Fish Wildlife Grants for Cycle I of Fiscal Year 2020, submitted pursuant to Section 41 of Act 876 of 2019 Regular Session.
2. **Arkansas Teacher Retirement System:**
 - a. Request, submitted pursuant to A.C.A. § 19-11-1303, for the Legislative Council's retrospective review of the partial equity ownership investments with Thoma Bravo Explore Fund, L.P.
 - b. Request for the Legislative Council's review of investments, submitted pursuant to A.C.A. § 19-11-1302;
 - i. Franklin Park International Fund X, L.P.;
 - ii. Franklin Park Venture Capital Fund XIII, L.P.;
 - iii. Long Wharf Real Estate Partners VI, L.P.
3. **Bureau of Legislative Research**, Report on travel recommendations for members of the General Assembly attending conferences other than SLC, CSG, NCSL, ALEC, or the Energy Council submitted pursuant to Legislative Council travel policy.
4. **Commissioner of State Lands**, Report of property sold from July 2019 through September 2019 by the Commissioner of State Lands Office through the post-auction sale process, submitted pursuant to A.C.A. § 26-37-202(b)(3).
5. **Department of Agriculture, Arkansas Forestry Commission**, Monthly activity report for November 2019 submitted pursuant to Section 33 of Act 544 of the 2019 Fiscal Session.
6. **Department of Commerce, Division of Workforce Services**, Quarterly Reports for the quarter ending September 30, 2019 on the Unemployment Insurance Administration Fund, submitted pursuant to A.C.A. § 19-5-1232, the Workforce Services Training Trust Fund, submitted pursuant to A.C.A. § 19-5-1131, and the Special Fund, submitted pursuant to A.C.A. § 19-5-984.
7. **Department of Corrections:**
 - a. **Arkansas Parole Board**, Monthly performance report on parole applications and outcomes for November 2019, submitted pursuant to A.C.A. § 16-93-210;
 - b. **Division of Community Correction**, Report on the Community Correction Centers' population totals and Parole and Probation Services' caseload information as of December 2, 2019;
 - c. **Division of Correction**, Statewide Population Report as of December 9, 2019.
8. **Department of Finance and Administration:**
 - a. **Division of Budget and Finance**, Monthly General Revenue Report for November 2019;
 - b. **Office of Child Support Enforcement**, Semi-Annual Report on the Child Support Enforcement Program for the period ending June 30, 2019, submitted pursuant to A.C.A. § 25-10-118.

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9. **Department of Human Services, Division of Children and Family Services**, Monthly report of out-of-state placements for November 2019, submitted pursuant to A.C.A. §20-46-106.
10. **Department of Parks, Heritage, and Tourism, Capitol Zoning District Commission**, Monthly activity report for October 2019 and November 2019, submitted pursuant to A.C.A. § 22-3-311.
11. **Department of Public Safety, Division of Arkansas State Police**, Monthly activity report for November 2019 regarding activity and condition of the Uniformed Employee Health Insurance Plan, submitted pursuant to Section 17 of Act 224 of the 2018 Fiscal Session.
12. **Department of Transformation and Shared Services, Division of Building Authority**, Monthly performance report pertaining to capital improvement activities (design review and construction) for November 2019, submitted pursuant to A.C.A. § 22-2-108(13).
13. **Public Service Commission**, Extension of Telecommunications Facilities Fund (ETFF) Quarterly Report for the quarter ending September 2019, submitted pursuant to A.C.A. § 23-17-404(e)(7)(A)(i).
14. **University of Arkansas for Medical Sciences (UAMS)**, Quarterly report on the Arkansas Building Effective Services for Trauma (ARBEST) programs for children and adolescents, for the quarter ending September 30, 2019, submitted pursuant to Section 47 of Act 986 of the 2019 Regular Session.
15. Reports on the "course of action" implemented to ensure compliance with FORUM Act 184 of 2019 from Higher Education Two (2) Year and Four (4) Year Institutions, submitted pursuant to A.C.A. §6-60-1008:

- a. **East Arkansas Community College**

H. New Business:

I. New Interim Study Proposals and/or Interim Resolutions:

1. **Interim Resolution 2019-003, by Senator Gary Stubblefield**, requesting the Arkansas Legislative Council urge the Assessment Coordination Division to amend the new assessment rates for poultry houses and to ensure that proper rulemaking procedures are followed in establishing future guidelines and rates for county assessors; and to encourage the Joint Performance Review committee to study the valuation of poultry houses for purposes of assessing property tax and recommending legislation to establish a method of valuation for poultry houses.

J. Business Carried Over:

Reports on the "course of action" implemented to ensure compliance with FORUM Act 184 of 2019 from Higher Education Two (2) Year and Four (4) Year Institutions, submitted pursuant to A.C.A. §6-60-1008:

- a. **Southern Arkansas University**
- b. **University of Arkansas System**

K. Adjournment.

**REPORT OF THE
ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

December 20, 2019

Co-Chairs:

December 3, 2019 Meeting

The Administrative Rules Subcommittee met on Tuesday, December 3, 2019, at 1:00 p.m., in Room A, MAC.

1. The Subcommittee renewed the rules of the Group 1 agencies scheduled for consideration pursuant to Act 781 of 2017. The Act 781 of 2017 Rules Report for Review Group #1 is attached hereto.

December 18, 2019 Meeting

The Administrative Rules Subcommittee also met on Wednesday, December 18, 2019, at 9:00 a.m., in Room A, MAC.

1. The Subcommittee reviewed and filed the attached letters submitted pursuant to Act 893 of 2019.
2. The Subcommittee reviewed and approved the following rules filed pursuant to Ark. Code Ann. § 10-3-309:

**DEPARTMENT OF AGRICULTURE, ARKANSAS LIVESTOCK &
POULTRY COMMISSION (Mr. Wes Ward)**

- a. Disbursement of State Funds for Fairs and Livestock Shows

**DEPARTMENT OF COMMERCE, STATE INSURANCE DEPARTMENT
(Mr. Ryan James, Ms. Amanda Rose)**

- a. Rule 8 – Corporate Governance Annual Disclosure

b. Amended Rule 25 – Annual Financial Reporting

**DEPARTMENT OF COMMERCE, STATE SECURITIES DEPARTMENT
(Mr. David Smith)**

a. Amendments to the Money Services Rules

**DEPARTMENT OF EDUCATION, DIVISION OF ELEMENTARY AND
SECONDARY EDUCATION (Ms. Courtney Salas-Ford, items a, c, e; Ms.
Jennifer Dedman, item b; Ms. Lori Freno, item d)**

- a. DESE Rules Governing Test Security, Testing Violations, and Alleged Testing Improprieties**
- b. DESE Rules Governing Public School Choice and Repeals**
- c. DESE Rules Governing Class Size and Teaching Load**
- d. DESE Rules Governing the Regulatory Basis of Accounting**
- e. DESE Rules Governing the Arkansas Educational Support and Accountability Act (AESAA)**

**DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF
ENVIRONMENTAL QUALITY (Mr. Micheal Grappe, Mr. Allan Gates)**

- a. APC&EC Reg. No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas (Vulcan Construction Materials, L.L.C.)**

STATE BOARD OF FINANCE (Mr. T.J. Fowler)

- a. Arkansas State Treasury Investment Policy**
- b. Arkansas State Treasury Money Management Trust Policy**

**DEPARTMENT OF HUMAN SERVICES, DIVISION OF AGING, ADULT,
& BEHAVIORAL HEALTH SERVICES (DAABHS) (Mr. Mark White)**

- a. Certification in Deaf Mental Health**
- b. Rule Establishing Reasonable Charges for Costs of Treatment**

DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILD CARE & EARLY CHILDHOOD EDUCATION (DCCECE) (Mr. Mark White, Ms. Ashelyn Abney)

- a. Division of Child Care and Early Childhood Education Minimum Licensing Requirements**

DEPARTMENT OF HUMAN SERVICES, DIVISION OF CHILDREN & FAMILY SERVICES (DCFS) (Mr. Mark White, Ms. Christin Harper)

- a. Permanency Efforts for Children in Foster Care**
- b. Referrals of Infants Born With and Affected by Fetal Alcohol Spectrum Disorder or Prenatal Drug Exposure**
- c. Subsidized Guardianship**
- d. Ensuring Child Safety and Confidentiality**

DEPARTMENT OF HUMAN SERVICES, DIVISION OF MEDICAL SERVICES (DMS) (Mr. Mark White)

- a. Hospital 3-19 Spinal Muscular Atrophy Newborn Screening**

DEPARTMENT OF HUMAN SERVICES, DIVISION OF YOUTH SERVICES (DYS) (Mr. Mark White)

- a. Division of Youth Services Operations Manual**

DEPARTMENT OF LABOR AND LICENSING, DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING BOARDS AND COMMISSIONS, APPRAISER LICENSING AND CERTIFICATION BOARD (Ms. Diana Piechocki)

- a. Reduction in Requirements and Clean-Up 19-0003**

DEPARTMENT OF PARKS, HERITAGE, AND TOURISM, DIVISION OF HERITAGE (Mr. Jim Andrews)

- a. Guidelines for Museum Hours of Operation**
- b. Rules Governing the Arkansas Major Historic Rehabilitation Income Tax Credit Act**

**ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM
(Mr. Duncan Baird)**

- a. DROP Provisions**

**COMMISSION FOR ARKANSAS PUBLIC SCHOOL ACADEMIC
FACILITIES AND TRANSPORTATION (Ms. Lori Freno, Mr. Tim Cain,
Mr. Murray Britton)**

- a. CAPSAFT Rules Governing the Academic Facilities Distress Program**
- b. CAPSAFT Rules Governing the Facilities Master Plan**
- c. CAPSAFT Rules Governing the Academic Facilities Partnership Program**

- 3. The Subcommittee reviewed the following rules recommending an expedited process and procedure for occupational licensure pursuant to Ark. Code Ann. § 17-1-106(c), as amended by Act 820 of 2019:**

**DEPARTMENT OF PUBLIC SAFETY, DIVISION OF ARKANSAS
STATE POLICE (Ms. Mary Claire McLaurin)**

- a. Amendment to the Division of Arkansas State Police Rules for Licensing and Regulation of Private Investigators, Private Security Agencies, Alarm Systems Companies, Polygraph Examiners, and Voice Stress Analysis Examiners**
- b. Amendment to the Division of Arkansas State Police Used Motor Vehicle Dealer Licensing Rules**

- 4. The Subcommittee reviewed and approved the following rule filed pursuant to Ark. Code Ann. § 10-3-309 upon suspension of its Subcommittee Rules:**

**ARKANSAS DEPARTMENT OF AGRICULTURE, STATE PLANT
BOARD (Mr. Wes Ward)**

- a. Pesticide Classification and Enforcement Rule Amendments (Dicamba)**

- 5. The following rule was deferred to the January 15, 2020 meeting of the Administrative Rules Subcommittee:**

**DEPARTMENT OF TRANSFORMATION AND SHARED SERVICES,
OFFICE OF STATE PROCUREMENT**

a. Changes to Rules Under the AR Procurement Law

Respectfully submitted,

Senator Lance Eads, Co-Chair

Representative Dan Sullivan, Co-Chair

EXHIBIT E

APPROVAL FROM THE OFFICE OF THE GOVERNOR

Jordan Wimpy

From: Andres F. Rhodes <andres.rhodes@governor.arkansas.gov>
Sent: Monday, May 13, 2019 12:29 PM
To: Jordan Wimpy
Cc: Allan Gates
Subject: Re: EO 15-02 APC&EC Third-Party Rulemaking re: Vulcan Construction Materials, LLC (1 of 2)

Jordan,

As we discussed in our conversation this morning, the Governor has approved Vulcan Construction Material's proposed third party rule changes amending Regulation 2. Please continue on with the promulgation process.

With best regards,

Andrés F. Rhodes
Associate Legal Counsel
Office of the Governor Asa Hutchinson

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From: Jordan Wimpy <jwimpy@mwlaw.com>
Date: Friday, May 3, 2019 at 4:41 PM
To: "Andres F. Rhodes" <andres.rhodes@governor.arkansas.gov>, Jordan Wimpy <jwimpy@mwlaw.com>
Cc: Allan Gates <AGates@mwlaw.com>
Subject: RE: EO 15-02 APC&EC Third-Party Rulemaking re: Vulcan Construction Materials, LLC (1 of 2)

Dear Andrés –

I hope things have settled down with the end of the Legislative Session.

I am writing about the status of the EO 15-02 review of the proposed Vulcan Third-Party Rulemaking.

If you have the time, we would be happy to visit with you next week to discuss any questions about the proposal or the materials.

Have a great weekend!

Best regards,
Jordan

EXHIBIT F
PROPOSED MINUTE ORDER

SUBMITTED BY: Allan Gates DATE PASSED: