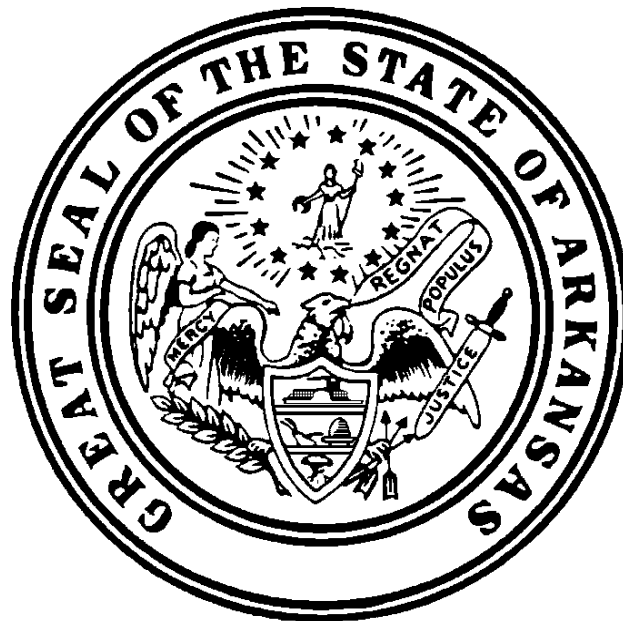


**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION  
REGULATION NO. 8  
ADMINISTRATIVE PROCEDURES**



**MARK-UP DRAFT**

**Submitted to the Arkansas Pollution Control and Ecology Commission  
in January 2018**

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## CHAPTER ONE 1: GENERAL PROVISIONS

### Reg. 8.101 Title

(A) The Arkansas Pollution Control and Ecology Commission (“Commission”) adopts Regulation No. 8 pursuant to ~~Arkansas Code Annotated Section~~ Ark. Code Ann. §§ 8-1-203(b)(1), (2), and (3).

(B) This Regulation shall be known as Regulation No. 8 – Administrative Procedures and may be cited as: Reg. 8.101 *et seq.*

### Reg. 8.102 Purpose and Intent

(A) The purpose of this regulation is to ~~set out~~ establish the administrative procedures that govern the Commission, the Arkansas Department of Environmental Quality (“Department”), and any person appearing in any proceeding or matter before the Commission or the Department.

(B) ~~It is the intent of the~~ The Commission intends for ~~that~~ the provisions of this Regulation to be liberally construed ~~so as~~ to provide a fair opportunity for a hearing on all matters addressed herein to all persons who have standing in a specific question ~~which~~ that is before the Commission and to expedite the administration of matters pending before the Commission.

### Reg. 8.103 Definitions

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

(A) **“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 concerning the adjudication of facts or issues or any other administrative action allowed by statute, regulation, or permit for which a hearing is provided.

(B) ~~“Adjudicatory proceeding” means any administrative action allowed by statute, regulation, or permit specifically brought before the Commission to resolve a dispute.~~

(C) **“Administrative civil penalty”** means any monetary amount assessed by the Director against a person for violation of a statute, regulation, permit, or order administered by the Department, ~~and includes~~ including any in-kind services or cash contribution authorized by the Director as partial mitigation of cash penalties for use in projects or programs designed to advance environmental interests.

(D) **“Administrative enforcement action”** means any administrative proceeding instituted by the Department against a person ~~charged with~~ for violation of any ~~law~~ statute, regulation, permit, or order administered by the Department.

(E) ~~“Administrative Hearing Officer”~~ **“Administrative Law Judge”** means a person designated by the Commission to perform any of the following:

- (1) ~~determine~~ Determine issues of fact and law; ~~and~~

(2) ~~render~~ Render a written Recommended Decision on matters pending before the Commission; ~~and to or~~

(3) ~~take~~ Take any other action consistent with the Commission's statutory and regulatory authority.

(F) ~~“Administrative Permit Amendment”~~ **“permit amendment”** means a minor change ~~to a permit which is not typically considered a permit modification, as defined by applicable statutes or regulations, or a minor change which~~ that does not require public notice and opportunity for comment. ~~For example, including without limitation~~ typographical corrections or other minor corrections initiated by the Department might be considered administrative permit amendments. Some minor changes requested by ~~the~~ a permittee may also qualify as administrative permit amendments. ~~For Air permits, administrative permit amendments are defined in Regulations 18, 19, and 26. The Director, in his or her discretion, may decide whether a proposed revision would be considered an administrative amendment. Permits issued under Commission Regulations 18, 19, and 26 shall follow the definition of administrative permit amendments contained in those regulations.~~

(G) **“Administratively complete”** means that all information required by statute, regulation, or 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.

(H) **“Affiliated person”** means:

(1) Any officer, director, or partner of the applicant;

(2) Any person employed by the applicant in a supervisory capacity over operations of the facility that is the subject of the application ~~which~~ who may adversely impact the environment; or with discretionary authority over ~~such~~ the operations;

(3) Any person owning or controlling more than five percent (5%) of the applicant's debt or equity; or

(4) Any person who:

(a) ~~is~~ Is not ~~now~~ currently in compliance or has a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction; and

(b) ~~who through~~ Through relationship by affinity or consanguinity or through any other relationship could be reasonably expected to significantly influence the applicant in a manner ~~which~~ that could adversely affect the environment.

(I) **“Applicant”** means any person who files ~~an application~~ for any of the following:

(1) ~~a~~ An individual permit or permit renewal; ~~an application for the reissuance of,~~

(2) ~~revision of~~ Revision, modification ~~of,~~ or transfer of a permit;

(3) ~~an application for closure/post-closure~~ Closure or Post-closure plan approval or modification;

- (4) ~~an~~ An application for a permit exemption, variance, or waiver;
- (5) ~~an~~ An application for a certification or license; ~~and~~
- (6) ~~an~~ An application for a bond reduction or release; or
- (7) ~~any~~ Any other application ~~as~~ required by the Department.

“Applicant” also includes a person who files a notice of intent for coverage under a general permit.

~~(J)~~ **“Chairperson” or “Chair”** means ~~a~~ the commissioner elected ~~by the other commissioners~~ to preside over the Arkansas Pollution Control and Ecology Commission.

~~(K)~~ **“Commission”** means the Arkansas Pollution Control and Ecology Commission.

~~(L)~~ **“Commission hearing”** means ~~a proceeding in which the Commission reviews an action taken by the Department which includes but is not limited to, enforcement actions and the issuance of administrative orders, permitting decisions, grant or loan decisions, petroleum storage tank trust fund decisions, tax credit decisions, and other matters.~~

~~(M)~~ **“Commission Secretary”** means the designated secretary to the Commission.

~~(N)~~ **“Consent Administrative Order,” “Permit Appeal Resolution,” and “Settlement Agreement”** all mean an administrative order entered into by agreement of the parties, including the Department.

~~(O)~~ **“Declaratory Order”** means ~~an order~~ a decision of the Commission that resolves controversies or answers questions ~~or doubts~~ concerning the applicability of rules, regulations, statutes, permits, or orders over which the Commission has authority. A Petition for Declaratory Order ~~may~~ shall only be used ~~only~~ to resolve questions ~~or doubts~~ as to the application of rules, regulations, statutes, permits, or orders to the petitioner’s particular circumstances. A Petition for Declaratory Order is not the appropriate means to determine the conduct of another person or to obtain a policy statement of general applicability from the Commission. A ~~petition~~ Petition for Declaratory Order must describe the impact to the petitioner of the rule, regulation, statute, permit, or order.

~~(P)~~ **“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)~~ thirty (30) calendar days of its receipt.

~~(Q)~~ **“Department”** means the Arkansas Department of Environmental Quality, or its successor; ~~including~~ and includes the Director and Department staff.

~~(R)~~ **“Director”** means the executive head of the Arkansas Department of Environmental Quality or the executive head’s delegatee.

~~(S)~~ **“Emergency Order”** means an administrative order issued by the Director ~~pursuant to~~ upon a finding that an emergency or imminent hazard exists and under the specific authority provided by any law or regulation administered by the Commission or the Department, ~~without prior~~ An

Emergency Order does not require prior notice or adjudicatory hearing, upon a finding that an emergency or imminent hazard exists.

**“General permit”** means a statewide permit for a category of facilities or sources that:

- (1) Involve the same or substantially similar types of operations or activities;
- (2) Discharge or release the same type of wastes or engage in the same type of disposal practices;
- (3) Require the same limitations, operating conditions, or standards;
- (4) Require the same or similar monitoring requirements; and
- (5) In the opinion of the Director, may be regulated under a general permit.

~~(T)~~ **“Grant or loan decision”** means a final administrative decision by the Director on any application for a grant or loan or the Director’s final decision on any dispute related to a grant or a loan.

**“History of noncompliance”** means past operations by an applicant or affiliated person that demonstrates a disregard for environmental regulations or a demonstrated pattern of prohibited conduct that could reasonably be expected to result in adverse environmental impact if a permit were issued.

~~(U)~~ **“Implementing agreement”** means a plan, order, memorandum of agreement, or other enforceable document issued by the Department under provisions of the Arkansas Hazardous Waste Management Act of 1979, ~~Arkansas Code Annotated~~ Ark. Code Ann. § 8-7-201 et seq., or the Remedial Action Trust Fund Act, ~~Arkansas Code Annotated~~ Ark. Code Ann. § 8-7-501 et seq., to implement ~~the~~ a voluntary cleanup process described in ~~Arkansas Code Annotated~~ Ark. Code Ann. § 8-7-1104.

**“Individual permit”** means a document issued by the Department that grants authority to a person to act within the specific terms and conditions and does not apply to any other person.

~~(V)~~ **“Major modification”** means a revision of any permit ~~which~~ that is not a minor modification or an administrative permit amendment.

~~(W)~~ **“Minor modification”** means a revision of a permit as defined by ~~any other regulation~~ regulations governing the Department or as determined by the Department to be routine or inconsequential in case-specific circumstances and is not an administrative permit amendment.

~~(X)~~ **“Notice of adjudicatory hearing** **Adjudicatory Hearing**” means a written notification to the parties of an adjudicatory hearing. This term does not apply to a notice of public hearing or publication of notice in a newspaper.

~~(Y)~~ **“Notice of Bond Forfeiture”** means a written notification to a person of alleged violations of any statute, regulation, permit, or order administered by the Department or Commission ~~which~~ constitute that constitutes grounds for forfeiting a bond to the Department. The Notice of Bond Forfeiture initiates an administrative enforcement action.



“Notice of Intent” means a written request for authority to conduct a Department-regulated activity that notifies the Department of the person’s intention to comply with the terms of a general permit in lieu of applying for an individual permit.

~~(Z)~~ **“Notice of Violation”** means a written notification to a person of alleged violations of any statute, regulation, permit, or order administered by the Department or Commission. The Notice of Violation initiates an administrative enforcement action.

~~(AA) “Permit” means an authorization conferred by the Director pursuant to statute or regulation to construct or operate an existing or a proposed facility.~~ **“Permit”** means a document issued by the Director or the Director’s delegatee pursuant to statute or regulation authorizing the permittee to engage in a Department-regulated activity pursuant to the terms and conditions specified. A permit may be an individual permit or a general permit, but does not include a permit by rule. “Permit” does not include any document where a final decision of the Director has not been issued.

**“Permit application”** means a written request on a form approved by the Department for the applicant to engage in an activity or activities regulated by the Department that will be governed by terms and conditions specific to that activity or facility as an individual permit.

**“Permit by Rule”** means the authority granted by Commission regulation to a person who engages in a Department regulated activity and complies with all requirements and conditions in the Commission regulation under which the person is operating.

~~(BB)~~ **“Permitting decision”** means a final administrative decision by the Director or the Director’s delegatee on all applications for: permits, permit renewals, major modifications, minor modifications, ~~administrative permit amendments,~~ permit revocations, ~~interim authority and temporary variances,~~ construction permits, and permit transfers; the issuance of general permits; interim authority and temporary variances issued under Ark. Code Ann. § 8-4-230; closure/post closure or post-closure plan approvals and modifications; the calculation of permit fees; exemptions, variances, and or waivers; certifications or licenses; bond reductions or releases; and or specific conditions imposed on permits.

~~(CC)~~ **“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.

~~(DD)~~ **“Presiding Officer”** means the person conducting a public hearing on behalf of the Commission or the Department.

~~(EE)~~ **“Public comment”** means any written statement received by the Department during ~~the a~~ public comment period by letter, ~~electronic mail or email or facsimile,~~ or any oral statement received on the record during a public hearing.

~~(FF)~~ **“Public hearing”** means a formal meeting held pursuant to the laws or regulations administered by the Commission or the Department for the purpose of receiving on the record

oral or written comments from the public ~~on~~ regarding a permitting decision or ~~on~~ a rulemaking proceeding. A public hearing is not an adjudicatory hearing or a public meeting.

~~(GG)~~ **“Public Meeting meeting”** means an informal ~~meeting~~ forum held by the Commission or the Department for the purpose of exchanging information with the public on a permitting decision, ~~on~~ a rulemaking, or ~~on~~ any issue of public interest. A public meeting is not an adjudicatory hearing or 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.”

~~(HH)~~ **“Public notice”** means ~~the~~ a published notification announcement of any public hearing, permit application, permitting decision, grant or loan decision, rulemaking, enforcement action, or any other matter taken by the Commission or the Department as provided in this Regulation regulation or by law.

~~(II)~~ **“Recommended Decision”** 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 after a decision granting or denying the relief sought in the matter~~ the written opinion presented by the Administrative Law Judge to the Commission regarding the findings of facts, conclusions of law, and suggested resolution of the matter or controversy at issue.

~~(JJ)~~ **“Regulation”** means any rule ~~promulgated~~ adopted by the Commission pursuant to the laws it administers. ~~The term “regulation” includes: rule or suspension of the processing of a type or category of a permit or a declaration of a moratorium on a type or category of a permit.~~

~~(KK)~~ **“Rulemaking”** means a proceeding to promulgate, adopt, amend, or repeal a regulation.

~~(LL)~~ **“Special conditions”** means the conditions ~~to~~ contained in a permit issued by the Department in its discretion that are not specifically imposed by law or regulation.

~~(MM)~~ **“Stay”** means the postponement or delay of a decision of the Director or the Commission.

~~(NN)~~ **“Subpoena”** means a command to appear at a certain time and place to give testimony upon a certain matter. A subpoena duces tecum requires production of books, papers, electronically-stored information, and other things.

~~(OO)~~ **“Third-party rulemaking”** means any ~~submitted~~ rulemaking filed with the Commission by any person other than the Commission or the Department.

~~(PP)~~ **“Violation”** means an instance of noncompliance by a person with ~~a provision of a law, a statute, regulation, permit, or order administered, enforced, or issued by the Department or an order issued~~ by the Commission or the Department.

**“Written” or “writing”** means the product of any method of forming characters on paper, electronic media, or other materials that can be read, printed, stored, retrieved, reproduced, or transmitted.

## **CHAPTER TWO 2: PERMITS NONCOMPLIANCE DETERMINATIONS**

### **Reg. 8.201 Purpose**

(A) To ensure the continued protection of the public health, safety, and welfare and the environment of this state, the Director may deny the issuance, renewal, or transfer of any permit, license, certification, or operational authority if the Director determines that the applicant has a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction based on his or her review of the applicant's disclosure statement and other necessary investigation.

(B) The Director also may deny the issuance, renewal, or transfer if:

(1) An applicant owns or operates other facilities in the state that are not in substantial compliance with or on a legally enforceable schedule that will result in compliance with the environmental laws or regulations of this state; or

(2) An affiliated person with a history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction is capable of significantly influencing the practices or operations of the applicant that could have an impact on the environment.

### **Reg. 8.202 Disclosure Statement Requirement**

Any applicant for the issuance, renewal, or transfer of any permit, license, certification, or operational authority under the statutes, regulations, permits, or orders administered, enforced, or issued by the Department or orders issued by the Commission shall submit a disclosure statement to the Department unless exempted herein or by applicable law.

### **Reg.8.203 Disclosure Statement Contents**

The disclosure statement shall include without limitation the following information:

(1) The full name and business address 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 that 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 list and explanation of any civil or criminal legal actions by government agencies concerning environmental protection laws or regulations against the applicant or affiliated persons in the ten (10) years immediately preceding the filing of the application to include all of the following that are applicable:

(a) Administrative enforcement actions resulting in the imposition of sanctions;

- (b) Permit or license revocations or denials issued by any state or federal authority;
- (c) Actions that have resulted in a finding or a settlement of a violation; or
- (d) 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; and
- (6) Any other information the Director may require that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

**Reg. 8.204 Exemptions from Filing**

The following persons or entities are not required to file a disclosure statement:

- (1)(a) A governmental entity if a subdivision or agency of the federal government, an agency of the state government, a county, a municipality, or a duly authorized regional solid waste authority as defined by law.
- (b) This exemption shall not extend to improvement districts or any other subdivision of government that is not specifically enacted by the General Assembly;
- (2) An applicant 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 or any other person or entity the Commission may exempt by regulation from the submission of a disclosure statement;
- (3) An 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. An applicant under this subdivision (3) shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission that provide information regarding legal proceedings in which the applicant has been involved. The applicant shall submit all other information required by the Director related to the competency, reliability, or responsibility of the applicant, any affiliated persons, or both if applicable;
- (4) For a person or entity seeking the renewal of an expiring permit, license, certification, or operational authorization, the disclosure requirements of this section shall be met if the person or entity:
  - (a) Discloses any change in previously submitted information or verifies that the previously submitted information remains accurate; and
  - (b) Submits the information on forms developed by the Department;
- (5) The Commission may adopt regulations exempting certain permits, licenses, certifications, or operational authorizations from the disclosure requirements and establish reasonable and appropriate disclosure information, if any, required for specific types of permits, licenses, certifications, or operational authorizations based on:

(a) The scope of a permit, license, certification, or operational authorization; and

(b) The person or entity that would receive a permit, permit coverage, license, certification, or operational authorization;

(6)(a) Pursuant to subdivision (5) of this section, the following permits, licenses, certifications, and operational authorizations are exempt from the requirement to submit a disclosure statement:

(i) Hazardous Waste Treatment, Storage, and Disposal Permit Modifications (Class 1, 2, and 3), as defined in Regulation 23;

(ii) Phase 1 Consultants, as defined in Regulation 32;

(iii) Certifications for Hazardous Waste Facility Operators, as defined in Section 264.16(f) of Regulation 23;

(iv) RST License Renewals, as defined in Regulation 12;

(v) Laboratory Certifications, as defined in the State Environmental Laboratory Certification Program Act, Ark. Code Ann. § 8-2-201 *et seq.*;

(vi) Individual Homeowners seeking coverage under an applicable General Permit ARG5500000;

(vii) Wastewater Operator Licenses, as defined in Regulation 3;

(viii) Water Permit Modifications, not including transfers, for permits issued under the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*;

(ix) Solid Waste Permit Modifications for permits issued under Regulation 22;

(x) Solid Waste Management Facility Operator License Renewals, as defined in Regulation 27;

(xi) Air Permit Modifications for permits issued under Regulations 18, 19, and 26;

(xii) Asbestos Certification Renewals, as defined in Regulation 21; and

(xiii) Waste Tire Transporter License Renewals, as defined in Regulations 14 or 36.

(b) The exemption from the requirement to submit a disclosure statement shall not be construed as a limitation on the Director to request any information he or she finds appropriate that may relate to the competency, reliability, or responsibility of the applicant and affiliated persons; and

(7) Nothing in this section, including the exemptions listed herein, shall be construed as a limitation upon the Director to deny an individual permit, permit coverage under a general permit, permit transfer, license, or certification based upon a history of noncompliance to any applicant or for other just cause.

**Reg. 8.205 Denial**

The Director may deny the issuance of any permit, license, certification, modification, variance, coverage, or operational authority or transfer if the Director finds:

(1) The applicant has misrepresented or concealed any material fact in the application, Notice of Intent, disclosure statement, or any other report or certification required by the Department;

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

(3) The applicant has a documented and continuing history of noncompliance with the environmental laws or regulations of this state or any other jurisdiction; or

(4)(a) The applicant or an affiliated person has:

(i) A documented history of violations of state or federal environmental laws or regulations that evidence a history of noncompliance or a pattern of disregard for state or federal laws or regulations; and

(ii) Either made no attempt or failed to remediate the disclosed violations.

(b) To determine whether a documented history of violations of state or federal laws or regulations constitutes a history of noncompliance or a pattern of disregard sufficient to deny an individual permit, coverage under a general permit, license, certification, or a permit transfer, 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 history of violations of state or federal environmental laws or regulations. To determine the applicant's history of non-compliance, the Director shall not consider the applicant's prior violations of environmental laws or regulations if those violations are addressed in a consent administrative order and the applicant is in compliance with that order and the violations are not repeat violations;

(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 on 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 Reg.8.203(4) or other demonstration of good citizenship by the applicant that the department finds acceptable; and
- (vii) Whether the best interests of the public or the environment will be served by denial of the permit, coverage under a general permit, license, certification, or permit transfer.

## CHAPTER TWO 3: INDIVIDUAL PERMITS

### Reg. 8.301 ~~Director as Permitting Authority~~

- (A) The Director or the Director's delegatee shall issue all permits.
- (B) This regulation does not authorize the Commission to issue a permit.

### Reg. 8.201302 ~~Applicability~~

(A) Unless otherwise required by another Commission regulation requires a different procedure for a specific type of individual permit, the following sections of this chapter shall apply applies to all individual permitting decisions. However, the requirements of Reg.8.205304 through Reg.8.209308 and Reg.8.211(A)(2)310(A)(4) do shall not apply to:

- (1) closure/post Closure or post closure plan approvals or modifications;
- (2) the calculation Calculation of permit fees;
- (3) exemptions Exemptions, interim authority, temporary variances, and waivers;
- (4) certifications Certifications or licenses;
- (5) minor Minor modifications of permits;
- (6) bond Bond reductions or releases; or
- (7) Permit transfers; or
- (7)(8) administrative Administrative permit amendments.

(B) In addition to complying with the public notice requirements of this chapter, the Department shall follow any other applicable state or federal requirements regarding public notice requirements.

(C) An application for a an individual permit and other matters preliminary to the Director's issuance of a final permitting decision not specified in this Regulation regulation shall be as provided in applicable laws and regulations.

### Reg. 8.202 ~~Director as Permitting Authority~~

The Director or the Director's delegatee shall issue all permits. 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.

### Reg. 8.203303 ~~Permit Application Procedures~~

(A) An applicant shall file a permit application with the appropriate division office of the Department that regulates the permitted activity on forms supplied by or approved by the Department. This may include electronic forms as that are approved by the Department.

(B) The Department will not process an a permit application unless the application document is administratively complete.



**Reg. 8.204 — 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 disclosure statement and other investigation which he or she deems appropriate, has exhibited a history of non-compliance or a pattern of disregard for state or federal environmental laws or regulations or for other just cause, 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 unless exempted herein or by applicable law. The disclosure statement shall include but not be limited to, the following information:~~
- ~~(1) — The full name business address, and social security number or tax i.d. 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;~~
- ~~(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 or any other person or entity the Commission may, by rule exempt from the submission of a disclosure statement.~~
- ~~(3) Nothing in this section, including the exemptions listed herein, shall be construed as a limitation upon the authority of the director to deny a permit, based upon a history of noncompliance to any applicant or for other just cause.~~
- ~~(4) 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.~~
- ~~(5) For a person or entity seeking a renewal of an expiring permit, license, certification, or operational authorization the disclosure requirements of this section shall be met if the entity:
  - ~~(a) Discloses any change in previously submitted information; or~~
  - ~~(b) Verifies that the previously submitted information remains accurate; and~~
  - ~~(c) Submits the information on forms developed by the Department.~~~~
- ~~(6) The Commission may adopt regulations exempting certain permits, licenses, certifications, or operational authorizations from the disclosure requirements and establish reasonable and appropriate disclosure information, if any, required for specific types of permits, licenses, certifications, or operational authorizations based on:
  - ~~(a) The scope of a permit, license, certification, or operational authorization; and~~
  - ~~(b) The person or entity that would receive a permit, license, certification, or operational authorization.~~~~
- ~~(7)(a) Pursuant to the authority of Reg.8.204(C)(6), the following permits, licenses, certifications, and operational authorizations are exempt from the requirement to submit a disclosure statement:
  - ~~(i) Hazardous Waste Treatment, Storage, and Disposal Permit Modifications (Class 1, 2, and 3), as defined in Regulation 23;~~
  - ~~(ii) Phase 1 Consultants, as defined in Regulation 32;~~~~

- ~~(iii) — Certifications for Operators of Commercial Hazardous Waste Facilities, as defined in Section 264.16(f) of Regulation 23;~~
- ~~(iv) — RST License Renewals, as defined in Regulation 12;~~
- ~~(v) — Laboratory Certifications, as defined in A.C.A. § 8-2-201 et seq.;~~
- ~~(vi) — Individual Homeowners seeking coverage under General Permit ARG5500000;~~
- ~~(vii) — Wastewater Operator Licenses, as defined in Regulation 3~~
- ~~(viii) — Water Permit Modifications for permits issued under the authority of the Arkansas Water and Air Pollution Control Act, A.C.A. § 8-4-101 et seq.;~~
- ~~(ix) — Solid Waste Permit Modifications for permits issued under Regulation 22;~~
- ~~(x) — Solid Waste Landfill Operator License Renewals, as defined in Regulation 27;~~
- ~~(xi) — Air Permit Modifications for permits issued under Regulations 18, 19, and 26; and~~
- ~~(xii) — Asbestos Certification Renewals, as defined in Regulation 21.~~

~~(b) — The exemption from the requirement to submit a disclosure statement shall not be construed as a limitation upon the authority of the Director to request any information he or she deems appropriate that may relate 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;~~
- ~~(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)(a) — The applicant or a person affiliated with the applicant to the point of significantly being able to influence the practices or operations of the applicant, which could have an impact upon the environment, has a documented history of violations of state or federal environmental laws or regulations that evidence a 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 violations.~~

- ~~(b) In making a determination of whether a documented history of violations of state or federal laws or regulations constitutes a 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 history of violations of state or federal environmental laws or regulations. In determining the applicant's history of non-compliance, the Director shall not consider the applicant's prior violations of environmental laws or regulations if those violations are addressed in a consent administrative order and the applicant is in compliance with that order.~~
  - ~~(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 Reg.8.204(B)(4) 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.~~

**Reg. 8.205304 Public Notice of Permit Application**

(A) Public notice of an administratively complete application for a an individual permit shall be published in a newspaper of general circulation in the county ~~in which~~ where the proposed facility or activity is to be located, ~~or, for a statewide permit, in a newspaper of statewide circulation.~~ The Department shall provide or approve the format of the notice.

(B) The public notice shall include:

- (1) The name and business address of the applicant;
- (2) The type of permit for which the application has been made;
- (3) The name of the division reviewing office that reviews the application;
- (4) The date the administratively complete application was filed;

- (5) The city, town, or community nearest to the proposed facility; and
- (6) A statement 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.

(C) The Department shall publish on its website notice of an administratively complete application for an individual permit.

~~(C)~~(D) The applicant for an individual permit shall:

- (1) ~~provide~~ Provide proof of publication of the notice to the Department and the proof of publication shall become part of the application file;
- ~~(D)~~(2) ~~The applicant shall pay~~ Pay the costs of publication of notice of an application for a permit; and
- (3) ~~The applicant shall provide~~ Provide proof of payment (i.e., a paid receipt) of all costs of publication.

### **Reg. 8.206305 Request for Public Hearing on Application for Permit**

(A) Any interested person may request a public hearing on ~~a permit~~ an application for an individual permit.

(B) The request shall be in writing and shall state reasons for the necessity of a public hearing.

(C) The request must be filed with the appropriate ~~division~~ office of the Department within ten (10) business days after publication of the notice of the permit application provided in Reg.8.304.

(D) The Department shall have the discretion to decide whether to hold a public hearing, unless otherwise required by law or regulation.

### **Reg. 8.207306 Public Notice of Draft Permitting Decision**

(A) When the Director issues a draft permitting decision, notice of the draft permitting decision shall be published in a newspaper of general circulation in the county ~~in which~~ where the facility or activity proposed to be permitted is located, ~~or, for a statewide permit, in a newspaper of statewide circulation.~~

(B) When the Department causes the notice to be published, the notice may be combined with other notices of permitting decisions.

(C) The Department shall provide or approve the format of the notice and ~~shall~~ keep the proof of publication of the notice in the permit file.

~~(B)~~(D) The notice shall include:

- (1) The name and telephone number of the ~~division~~ office of the Department responsible for the draft permitting decision;
- (2) The name and business address of the applicant;

- (3) The type of permit 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;
- (7) A statement that the submission of written comments by any person will be accepted by the Department during the public comment period;
- (8) The appropriate mailing and email addresses ~~for receiving~~ to send written comments ~~shall be listed in the public notice~~; and
- ~~(8)~~(9) A statement that any interested person may request a public hearing on the draft permitting decision during the public comment period. ~~or the~~ The Department may combine the notice of public comment period with the notice of public hearing if it is already known that a hearing will be held.

~~(C)~~(E) The applicant for an individual permit shall:

- (1) Pay the costs of publication of a notice of a draft permitting decision to issue a permit; and
- (2) ~~The applicant shall provide~~ Provide proof of publication and proof of payment (i.e., a paid receipt) of all costs of publication.

~~(D)~~(F) All costs of publication for ~~notices~~ any notice of intent to deny a permit or for Department initiated permit modifications shall be the responsibility of the Department.

(G) The Department shall publish on its website notice of a draft permitting decision for an individual permit.

### **Reg. 8.208307 Public Comment on Draft Permitting Decision**

(A) Any interested person may submit to the Department written comments, data, views, or arguments on the draft permitting decision during the public comment period.

(B) ~~Reg.8.214 provides that~~ Pursuant to Reg.8.313, only those persons who submit public comments on the record shall have standing to appeal a permitting decision to the Commission.

~~(B)~~(C) The public comment period shall begin on the day the notice is published and ~~shall expire on the thirtieth (30th)~~ thirty (30) calendar day days after publication of the notice; unless otherwise required by law or regulation. If the last day of the public comment period is a Saturday, Sunday, ~~or~~ legal holiday, or other day when the Department's office is closed, the public comment period shall expire on the next day that is not a Saturday, Sunday, legal holiday, or other day when the Department's office is closed.

~~(C)~~(D) ~~Prior to the close of~~ Before the public comment period expires as provided in Reg.8.208 subsection (C) of this section, the Director may extend the period for written public comments for up to an additional twenty (20) calendar days, through a public notice, if exceptional circumstances warrant.

~~(D)~~(E)(1) Written public comments shall be transmitted to the Department by mail to the address specified in the public notice or email to the email address specified in the public notice. To be accepted, the written public comment must be received by the Department will be accepted if received not later than 4:30 11:59 p.m. on the last day of the public comment period whether transmitted by mail or email. Written public comments may be submitted to the Department by mail or facsimile. Comments may also be submitted by electronic mail if received no later than 4:30 p.m. on the last day of the public comment period. Electronic mail comments must be sent to the electronic mail address specified in the public notice.

~~(E) The Department shall make available for the draft permitting decision and other material relevant to the draft permitting decision for inspection and copying at the Department during the public comment period and shall comply with the relevant provisions of the Arkansas Freedom of Information Act. The Department shall provide copies to any person making a request for copies, including any request by mail, telephone, electronic mail, or facsimile. The Department may charge the actual costs of reproduction, mailing or transmitting the record by facsimile or other electronic means. The Department may require the requester to pay the copy fee in advance if the estimated fee exceeds twenty five dollars (\$25.00).~~

(F) The Department shall:

(1) Make available the draft permitting decision and other materials relevant to the draft permitting decision for inspection and copying at the Department's headquarters during the public comment period;

(2) Provide copies of the draft permitting decision or relevant materials or both to any person making a copy request, whether the request is made by mail, telephone, or email. The Department may:

(a) Charge a copy fee that includes the actual costs of reproducing, mailing, or transmitting the record; and

(b) Require the requester to pay the copy fee in advance if the estimated copy fee exceeds twenty-five dollars (\$25.00); and

(3) Comply with the relevant provisions of the Freedom of Information Act of 1967, Ark. Code Ann. § 25-19-101 et seq.

~~(F)~~(G) The Department shall consider the written comments received during the public comment period, and in its discretion, shall determine whether to conduct a public hearing on the draft permitting decision.

### **Reg. 8.209308 Public Hearings**

(A) If the Department decides to hold a public hearing on an application for a permit or on a draft permitting decision, the Department shall ~~schedule~~ notice and conduct the public hearing and in compliance with this section.

(B)(1) ~~Give~~ The Department shall provide notice of the date, time, and place of the public hearing ~~by first class mail to:~~

(a) ~~the~~ The applicant;

~~(b) to all~~ All persons who have filed a timely written request for a public hearing;

~~(c) to all~~ All persons who have submitted public comments on the record; and

~~(d) to all~~ All persons who have requested advance notice of the public hearing. ~~If comments are submitted for a group or by a petition, the Director may require the group to designate a representative to receive the notice;~~

(2) The notice under this subsection (B) shall be provided using one (1) of the following methods based on the contact information available for the applicant or the person and the discretion of the Director of the Arkansas Department of Environmental Quality:

(a) U.S. mail;

(b) Commercial delivery company; or

(c) Electronic mail.

(3) If comments are submitted for a group or by a petition, the Director may require the group to designate a representative to receive the notice.

~~(b)(C) Give~~ The Department shall publish notice of the date, time, and place of the public hearing ~~by publishing the notice in a newspaper of general circulation in the county in which where the proposed facility or activity is; or is to be located; or for a statewide permit, in a newspaper of statewide circulation.~~

(D) The Department shall publish on its website notice of the date, time, and place of the public hearing.

~~(B)(E)~~ The public hearing will shall be conducted as follows:

(1) The Department ~~will~~ shall receive oral public comments at the public hearing;

(2) ~~A~~ The public hearing ~~may~~ shall continue until all persons wishing to make oral public comments have been heard. ~~The~~ However, the Presiding Officer may establish time limits for each person's public comment at his or her discretion;

(3) The Presiding Officer may decide not to receive ~~additional oral comments~~ an oral comment if the comment will not serve a useful purpose or will be cumulative or unduly time consuming;

~~(4) The Presiding Officer will receive oral public comments from all persons who have informed the Director in writing prior to the hearing of their desire to speak.~~

~~(5)(4)~~ To ensure public comments are accurately recorded, the Department prefers that each person who provides an oral public comments comment also be submitted in writing submit a written public comment; and-

~~(6)(5)~~ If announced at the public hearing, The the Presiding Officer may extend the period for written public comments, ~~if announced at the public hearing, for up to no more than~~ twenty (20) calendar days from the date of the public hearing.



**Reg. 8.210309 Public Meetings**

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

(B) If the Department decides to hold a public meeting on an application for a permit or a draft permitting decision, the Department shall notice the public meeting in compliance with this section.

(C)(1) The Department shall provide notice of the date, time, and place of the public meeting to:

(a) The applicant; and

(b) All persons who have requested advance notice of public meetings.

(2) The notice under this subsection (C) shall be provided using one (1) of the following methods based on the contact information available for the applicant or the person and the discretion of the Director of the Arkansas Department of Environmental Quality:

(a) U.S. mail;

(b) A commercial delivery company; or

(c) Electronic mail.

(3) If comments are submitted for a group or by a petition, the Director may require the group to designate a representative to receive the notice.

(D) The Department shall publish notice of the date, time, and place of the public meeting in a newspaper of general circulation in the county where the proposed facility or activity is or is to be located.

(E) The Department shall publish on its website notice of the date, time and place of the public hearing.

**Reg. 8.211310 Final Permitting Decision on Applications for Individual Permits**

(A) Director's Final Permitting Decision

(1) ~~The~~ At the conclusion of the public comment period, the Director shall issue in writing the final permitting decision ~~in writing~~ on an application for individual permit.

(2) 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.

(3) The Director may impose special conditions upon the issuance of a permit.

~~(2)~~(4) The Director's final permitting decision on an application for individual permit shall include a response to each issue raised in any public comments received during the public comment period, if any.

(5) 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.

(6) If the draft permitting decision was to deny a permit, but after review and consideration of all comments received on the draft decision, the Director's final permitting decision is to issue the permit, then the draft permitting decision shall be withdrawn. The Director's final permitting decision shall be published in the same manner as the public notice requirements set forth in Reg.8.306, a public comment period shall be provided as set forth in Reg.8.307, and the final permitting decision shall meet all the requirements of this section.

(B) Issuance of Final Permitting Decision and Effective Date for Individual Permits

(1) The date of issuance of a final permitting decision is the date notice of the decision is served upon the applicant ~~or permittee~~.

(2) Service is deemed complete when the notice is placed in the mail or emailed to the applicant ~~or permittee~~.

~~(2)~~(3) The Director's final permitting decision shall contain a certificate of service showing the date of issuance. The certificate shall be signed by the person causing the notice to be placed in the mail or emailed.

~~(3)~~(4) The effective date of a final permitting decision is the date of issuance, unless a later effective date is specified in the decision.

(C) Notice of Final Permitting Decision

(1) The Department shall ~~mail by first-class mail notice of~~ provide the applicant the final permitting decision to the applicant or permittee and those persons who submitted public comments on the record, using one (1) of the following methods based on the contact information available and the discretion of the Director:

- (a) U.S. mail;
- (b) A commercial delivery company; or
- (c) Electronic mail.

(2) The Department shall provide notice of the final permitting decision to all persons who have submitted comments using one (1) of the following methods based on the contact information available and the discretion of the Director:

- (a) U.S. mail;
- (b) A commercial delivery company; or
- (c) Electronic mail.

(3) If comments are submitted for a group or by a petition, the Director may require the group to designate a representative to receive the notice.

(4) The notices shall be sent on the same date.

(5) The notice shall include:

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

(2)(b) The permit application identification number;

(3)(c) A brief description of the final permitting decision;

(4)(d) A certificate of service showing the date the decision was issued; and

(5)(e) 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~~ under Chapter ~~Six 8~~ of this ~~Regulation~~ regulation.

(6) The final written permitting decision shall be published on the Department's website.

(D) Payment of Permit Fees and Outstanding Permit, Publication, Annual Review, or Late Fees; The Director shall not issue a final permit until the applicant has paid all applicable permit fees and any outstanding permit, publication, annual review, or late fees owed by the applicant to the Department.

### **Reg. 8.212311 Permit Transfer**

(A) Except for the transfer of hazardous waste permits, an applicant for a permit transfer of a permit shall submit to the Department a at least thirty (30) calendar days before the proposed transfer date the following:

(1) A written request for permit transfer of the permit on a form provided by the Department; and

(2) ~~The applicant also shall submit to the Department the~~ The information required by under Chapter 2 of this regulation at least thirty (30) calendar days in advance of the proposed transfer date.

(B) The permit is automatically transferred to the ~~new permittee~~ applicant requesting the permit transfer unless the Director denies the request to transfer within thirty (30) calendar days of the Department's receipt of the disclosure information.

(C) ~~This~~ The Director's denial of a permit transfer is ~~shall constitute~~ a final permitting decision ~~of the Director and that~~ may be appealed to the Commission.

~~(B)(D)~~ Hazardous waste permits must be transferred in accordance with the requirements of Commission Regulation Number 23 and Reg. 8.204 Chapter 3 of this regulation.

**Reg. 8.213312 Minor Modifications**

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

**Reg. 8.214313 Persons with Standing to Appeal a Permitting, Licensing, or Certification Decision**

(A) Only the applicant ~~or permittee~~ for a permit, license, or certification and those persons who submitted timely public comments on the record, if a public comment period was provided, shall have standing to appeal to the Commission a final permitting decision or a decision to issue or deny a license or certification to the Commission.

(B) A person who reasonably considers himself or herself injured in his or her person, business, or property by any of the following decisions shall have standing to appeal the final decision to the Commission if ~~If no public comment period is provided for the following:~~

- (1) ~~closure/post~~ Closure or post-closure plan approvals or modifications;
- (2) ~~the~~ The calculation of permit fees;
- (3) ~~exemptions,~~ Exemptions, variances, ~~and~~ or waivers;
- (4) ~~certifications~~ Certifications or licenses;
- (5) ~~minor~~ Minor modifications of permits;
- (6) ~~bond~~ Bond reductions or releases; or
- (7) ~~administrative~~ Administrative permit amendments; ~~then any person who reasonably considers himself or herself injured in his or her person, business, or property by any of these decisions shall have standing to appeal the final permitting decision to the Commission.~~

~~(B)(C)~~ (C) An applicant, ~~permittee,~~ for a permit, license, or certification or any other person with standing who ~~desires~~ seeks to appeal a permitting decision or a decision to issue or deny a license or certification must file a Request for Hearing with the Commission Secretary within thirty (30) calendar days of the date of issuance of the Director's final ~~permitting~~ decision.

~~(D)~~ (D) ~~If a person desires to~~ To participate in an existing appeal, ~~that~~ a person must file a Petition for Intervention.

~~(C)(E)~~ (E) ~~Any~~ A Request for Hearing or Petition for Intervention shall comply with the provisions of Chapter ~~Six~~ 8 of this ~~Regulation~~ regulation.

**Reg. 8.215314 Review on Commission Initiative**

(A) The Commission may, ~~by majority vote within thirty (30) calendar days of the date of the Director's issuance of a permitting decision,~~ initiate adjudicatory review of the Director's final permitting decision, even if the parties do not by majority vote within forty-five (45) calendar days of the date of the Director's issuance of a final permitting decision, even if the parties do not.

(B)(1) After the Commission decides to initiate review, the Director, 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: using one (1) of the following methods based on the contact information available and the discretion of the Commission:

- (a) U.S. mail;
- (b) A commercial delivery company; or
- (c) Electronic mail.

(2) Any ~~such~~ person ~~so~~ served, other than the Director and the applicant ~~or permittee~~, ~~desiring~~ who seeks to participate in the proceedings on review must file a response to the notice with the Commission Secretary within ~~twenty (20)~~ thirty (30) calendar days of service.

(C) The proceedings on review shall be held in accordance with the provisions of Chapter ~~Six-8~~ of this ~~Regulation~~ regulation.

(D) During the review, the permit applicant ~~or permittee~~ shall be considered an indispensable party.

### **Reg. 8.246315 Interim Authority And Temporary Variances**

(A) ~~Every director's~~ The Director's decision to grant or deny a temporary variance from the requirements of a permit issued by the Department or interim authority to construct or operate during the application review and permit issuance process pursuant to Ark. Code Ann. § 8-4-230, shall be publicly noticed ~~in accordance with Reg.8.207~~ in a newspaper of general circulation in the state and published on the Department's website within ~~ten (10)~~ five (5) business days of the date of the Director's decision.

(B) Any member of the public may object to the Director's decision within ten (10) business days of the notice. The following requirements and limitations apply to objections made under this subsection:

- (1) Objections ~~will~~ shall only be accepted if submitted in accordance with ~~Reg.8.208(D). Reg.8.307(E);~~
- (2) Only the applicant and those persons who submitted timely objections shall have standing to appeal the Director's decision;
- (3) After consideration of the written objections, the Director may revoke or modify the conditions of the temporary variance or interim authority within thirty (30) calendar days of the date of the decision, for compelling reasons or good cause shown, ~~revoke or modify the conditions of the temporary guidance variance or interim authority;~~
- (4) The Director's revocation or modification of his or her initial decision becomes a final decision for purposes of appeal;
- (5) Upon issuance, notice of the decision shall be sent to the applicant and those persons who submitted timely objections: using one (1) of the following methods based on the contact information available and the discretion of the Director:

- (a) U.S. mail;

(b) A commercial delivery company; or

(c) Electronic mail.

~~(5)~~(6) If the Director's initial decision is not revoked or modified within thirty (30) calendar days of the date of the decision, the decision is ~~deemed final for purposes of appeal~~ a final decision for purposes of appellate review.

(C) The Director may revoke or modify the conditions of any temporary variance or interim authority previously granted for compelling reasons or good cause shown, ~~revoke or modify the conditions of any temporary variance or interim authority previously granted.~~

(D) The Director's revocation or modification of his or her prior decision becomes a final decision for purposes of ~~appeal~~ appellate review.

(E) ~~Upon issuance, notice~~ Notice of the decision shall be sent to the applicant and those persons who submitted timely objections ~~upon issuance of the decision using one (1) of the following methods based on the contact information available and the discretion of the Director:~~

(1) U.S. mail;

(2) A commercial delivery company; or

(3) Electronic mail.

~~(D)~~(F) Any actions taken by the applicant in reliance ~~upon~~ on the grant of a temporary variance or interim authority during the application review and permit issuance process are strictly at the applicant's own risk, and ~~no~~ actions or expenditure by the applicant during this period shall not be construed as accruing equities in the ~~applicant's~~ applicant's favor.

~~(E)~~(G)(1) An applicant ~~that has been denied a temporary variance or interim authority or has had a temporary variance or interim authority revoked during the application review and permit issuance process provided for in this section,~~ may appeal to the Commission the Director's final decision on any of the following upon written request made within ten (10) business days after the Director's decision:

(a) Denial of a temporary variance or interim authority; or

(b) Revocation of a temporary variance or interim authority.

(2) A third party that timely submits objections as provided in this section may appeal to the Commission the Director's final decision upon written request made within ten (10) business days after the Director's decision.

(H) A request for interim authority or temporary variance may not be processed or a Director's decision may not be issued until the applicable fee is paid to the Department.

(I) Unless otherwise agreed to by the party requesting review of the Director's decision, an appeal under subsection (G) of this section shall be considered by the Commission at the next regularly scheduled Commission meeting following submission of the written request, at which time the Commission may in its discretion direct its Administrative Law Judge to schedule and conduct an appropriate hearing within seven (7) business days.

~~(F)~~(J) An appeal of the Director's decision shall be processed as a ~~permit appeal~~ pursuant to Reg.8.603804(A) and ~~(C)~~(D), ~~provided that if:~~

- (1) ~~Any~~ An applicant or person who has submitted timely objections on the record ~~must file files~~ a request for hearing within ten (10) business days ~~of the date of the public notice of the~~ after the Director's final decision is deemed final;
- (2) The decision of the Director shall remain in effect during the appeal;
- (3) The ~~adjudicatory~~ Commission's review shall be completed as expeditiously as possible; and
- (4) A final decision shall be issued by the ~~Arkansas Pollution Control and Ecology Commission~~ within ~~sixty (60)~~ thirty (30) calendar days unless all parties agree to extend the review time.

(K)(1) The Commission may affirm, amend, modify, or revoke the Director's final decision.

- (2) An affirmation of the Director's final decision shall be based on the determination by the Commission that:
  - (a) The Director considered all relevant and applicable factors under Ark. Code Ann. § 8-4-230(b) and (c) in arriving at the final decision; and
  - (b) The public interest will be served by the affirmation of the director's final decision.
- (3) An amendment, modification, or revocation of the Director's final decision shall be based on a determination by the Commission that:
  - (a) The Director's final decision was unduly burdensome, impractical, or unreasonable given the circumstances;
  - (b) The Director failed to adequately consider the applicable factors under Ark. Code Ann. § 8-4-230(b) and (c); or
  - (c) Public interest will be served by the amendment, modification, or revocation of the director's final decision.

(L) A party who submits an objection to the Director's decision under Ark. Code Ann. § 8-4-230(e)(2) and is aggrieved by a Commission decision on a request for a temporary variance or interim authority may appeal as provided in applicable law.

### **Reg. 8.217316 Appeal from Final Commission Decision**

The Commission's final decision on a permitting issue is appealable to circuit court or may be transferred from circuit court to the Court of Appeals upon the filing of a motion pursuant to Ark. Code Ann. § 8-4-223(d). See Arkansas Code Annotated Sections Ark. Code Ann. §§ 8-4-222 — 8-4-229 and Reg.8.701901 through Reg.8.703903.

### **Reg. 8.218317 Inapplicability**

~~Nothing in this Chapter~~ This chapter shall not 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 Chapter Four 6.

## **CHAPTER 4: GENERAL PERMITS**

### **Reg.8.401 Director as Permitting Authority**

- (A) The Director or the Director's delegatee shall issue all permits.
- (B) This regulation shall not be construed to authorize the Commission to issue a permit.

### **Reg.8.402 Applicability**

- (A) Unless another Commission regulation requires a different procedure for a specific type of general permit, this chapter is applicable to all general permit decisions.
- (B) In addition to complying with the public notice requirements of this chapter, the Department shall follow any other applicable state or federal requirements regarding public notice for general permits.

### **Reg.8.403 Economic Impact and Environmental Benefit Analysis for General Permits**

- (A)(1) Before submitting a general permit that has not previously been issued for public comment, the Department shall consider the following effects that the general permit will have on the people of the State of Arkansas, including those entities that may apply for coverage under the general permit:
  - (a) The economic impact;
  - (b) The environmental benefit; and
  - (c) The terms and conditions.
- (2) This section does not apply to:
  - (a) A general permit or terms or conditions that adopt the language of state or federal statutes or regulations without substantive change; or
  - (b) A general permit for which costs are specifically prohibited from being considered by state or federal law or regulation.
- (B) If the terms and conditions of a previously issued general permit are revised upon renewal, the economic impact and environmental benefit of only the proposed changes shall be considered.
- (C) The Department may rely on readily available information for its consideration of the economic impact and environmental benefit of the general permit and its terms and conditions.

### **Reg.8.404 Public Notice of Draft Decision to Issue General Permit**

- (A) When the Director issues a draft permitting decision, notice of the draft permitting decision to issue or not renew a general permit shall be published in a newspaper of statewide circulation at least three hundred sixty-five (365) days before the expiration of the general permit.



(B) When the Department causes the notice to be published, the notice may be combined with other notices of permitting decisions.

(C) The Department shall provide or approve the format of the notice and keep the proof of publication of the notice in the permit file.

(D) The notice shall include:

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

(2) The type of general permit for which the permitting decision is proposed to be issued;

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

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

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

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

(7) The appropriate mailing and email addresses to send written comments; and

(8) A statement that any interested person may request a public hearing on the draft permitting decision during the public comment period. The Department may combine the notice of public comment period with the notice of public hearing if it is already known that a hearing will be held.

(E) The Department shall pay the publication costs for the notice of a draft permitting decision to issue or not renew a general permit.

(F) The Department also shall publish on its website notice of a draft general permitting decision.

#### **Reg.8.405 Public Comment on Draft Permitting Decision**

(A) Any interested person may submit to the Department written comments, data, views, or arguments on the draft permitting decision during the public comment period.

(B) Pursuant to Reg.8.413, only those persons who submit public comments on the record shall have standing to appeal to the Commission a final decision to issue or not renew a general permit.

(C) The public comment period shall begin on the day the notice is published and shall expire thirty (30) calendar days after publication of the notice unless otherwise required by law or regulation. If the last day of the public comment period is a Saturday, Sunday, legal holiday, or other day when the Department's office is closed, the public comment period shall expire on the next day that is not a Saturday, Sunday, legal holiday, or other day when the Department's office is closed.

(D) Before the public comment period expires as provided in subsection (C) of this section, the Director may extend the period for written public comments for up to an additional twenty (20) calendar days through a public notice.

(E) Written public comments shall be transmitted to the Department by mail to the address specified in the public notice or email to the email address specified in the public notice. To be accepted, the written public comment must be received by the Department not later than 11:59 p.m. on the last day of the public comment period whether transmitted by mail or email.

(F) The Department shall:

(1) Make available the draft permitting decision and the record of the draft permitting decision for inspection and copying at the Department's headquarters during the public comment period; and

(2) Provide copies of the draft permitting decision and the record of the draft permitting decision to any person making a copy request, whether the request is made by mail, telephone, or email. The Department may:

(a) Charge a copy fee that includes the actual costs of reproducing, mailing, or transmitting the draft permitting decision and the record of the draft permitting decision; and

(b) Require the requester to pay the copy fee in advance if the estimated copy fee exceeds twenty-five dollars (\$25.00).

(G) The Department shall consider the written comments received during the public comment period and, in its discretion, determine whether to conduct a public hearing on the draft permitting decision.

### **Reg.8.406 Public Hearings**

(A) If the Department decides to hold a public hearing on a draft permitting decision, the Department shall notice and conduct the public hearing.

(B)(1) The Department shall provide notice of the date, time, and place of the public hearing to:

(a) All persons who have filed a timely written request for a public hearing;

(b) All persons who have submitted public comments on the record; and

(c) All persons who have requested advance notice of the public hearing.

(2) The notice under this subsection (B) shall be provided using one (1) of the following methods based on the contact information available for the applicant or the person and the discretion of the Director:

(a) U.S. mail;

(b) A commercial delivery company; or

(c) Electronic mail.

(3) If comments are submitted for a group or by a petition, the Director may require the group to designate a representative to receive the notice.

(C) The Department shall publish notice of the date, time, and place of the public hearing in a newspaper of statewide circulation.

(D) The Department shall publish on its website notice of the date, time, and place of the public hearing.

(E) The public hearing shall be conducted as follows:

(1) The Department shall receive oral public comments at the public hearing;

(2) The public hearing shall continue until all persons wishing to make oral public comments have been heard. However, the Presiding Officer may establish time limits for each person's comment at his or her discretion;

(3) The Presiding Officer may decide not to receive an oral comment if the comment will not serve a useful purpose, be cumulative, or be unduly time consuming;

(4) To ensure public comments are accurately recorded, the Department prefers that each person who provides an oral public comment also submit a written public comment; and

(5) If announced at the public hearing, the Presiding Officer may extend the period for written public comments for no more than twenty (20) calendar days from the date of the public hearing.

#### **Reg.8.407 Public Meetings**

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

#### **Reg.8.408 Final Permitting Decision**

(A) The Director's final permitting decision regarding a general permit to issue or not renew a general permit shall:

(1) Be issued in writing;

(2) Be made after considering the public comments on the record, if any, and any other materials provided by statute or regulation applicable to the general permit or other matter to be considered in the decision;

(3) Include a response to each issue raised in any public comments received during the public comment period; and

(4) 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 on 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 Final Permitting Decision and Effective Date for General Permits:

(1) The date of issuance of a final decision to issue or not renew a general permit is the date that the notice of the decision is published in a newspaper of statewide circulation.

(2) The final decision to issue or not renew a general permit shall be published at least one hundred eighty (180) days before the expiration date of the general permit.

(3) The Director's final permitting decision shall contain a certificate of publication showing the date of issuance. The certificate shall be signed by the person causing the notice to be published.

(4) The effective date of a final decision to issue or not renew a general permit shall be one hundred eighty (180) days after the date of issuance, unless a later effective date is specified in the decision.

(C) Notice of Final Permitting Decision:

(1) The Department shall provide notice of the final permitting decision to those persons who submitted public comments on the record and to any persons who obtained coverage under any prior general permit before it expired using one (1) of the following methods based on the contact information available and the Director's discretion:

(a) U.S. mail;

(b) A commercial delivery company; or

(c) Electronic mail.

(2) If comments are submitted for a group or by a petition, the Director may require the group to designate a representative to receive the notice.

(3) All notices shall be sent on the same date.

(4) The notice shall include:

(a) The permit application identification number;

(b) A brief description of the final permitting decision;

(c) The effective date of the permit;

(d) A statement that any person submitting public comments on the record may request an adjudicatory hearing and Commission review of the final permitting decision as provided under Chapter 8 of this regulation; and

(e) A statement that once the final permitting decision is effective, coverage under the general permit granted to a person who submits a Notice of Intent to the Department is not a final permitting decision subject to Commission review.

(5) The Department also shall publish on its website notice of a final general permitting decision.

(D) Payment of Permit Fees and Outstanding Permit, Publication, Annual Review, or Late Fees: The Director shall not issue coverage under a general permit until the applicant has paid

all applicable permit fees and any outstanding permit, publication, annual review, or late fees owed by the applicant to the Department.

#### **Reg.8.409 Notices of Intent**

(A) An applicant shall file a Notice of Intent with the office of the Department regulating the permitted activity on forms supplied by or approved by the Department. This may include electronic forms as approved by the Department.

(B) The Department shall not process a Notice of Intent unless the document has been completed in full and certified by a duly authorized representative or responsible official.

(C) Notices of Intent received by the Department for coverage under general permits shall be published in a newspaper of statewide circulation once a month and the publication shall contain the following information, unless otherwise required by another Commission regulation:

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

(2) The type of general permit for which a Notice of Intent has been submitted; and

(3) A statement that coverage under the general permit granted to any person who submits a Notice of Intent to the Department is not a final permitting decision subject to Commission review.

(4) The Department also shall publish on its website notice of intent to be covered under a general permit.

#### **Reg.8.410 Requirement for Individual Permits**

(A) The Director may require any person who has been granted coverage under a general permit to apply for and obtain an individual permit.

(B) The Director may require an individual permit under any of the following circumstances including but without limitation:

(1) The person who has been granted coverage under a general permit is not complying with the conditions of the permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control of pollution or protection of the environment;

(3) Circumstances have changed since the time of the request to be covered under a general permit so the applicant is no longer appropriately controlled under the general permit; or

(4) The person who has been granted coverage under the general permit is determined to be a significant contributor of pollutants or a person whose activities are not otherwise appropriately controlled under the general permit.

(C) Any person who is granted coverage under a general permit may be subject to an enforcement action if it is later determined that the person granted coverage did not qualify for the conditions and terms of the general permit.

**Reg.8.411 Transfer of Coverage**

(A) Except for the transfer of hazardous waste permits, an applicant for a transfer of coverage under a general permit shall submit to the Department at least thirty (30) calendar days before the proposed transfer date the following:

- (1) A written request for transfer of coverage on a form provided by the Department;
- (2) The information required by Reg.8.203; and
- (3) Any other information deemed required by any other law or regulation.

(B) The coverage is automatically transferred to the applicant requesting the transfer of coverage unless the Director denies the transfer request within thirty (30) calendar days of the Department's receipt of the disclosure information.

(C) Only those reasons set out in Ark. Code Ann. § 8-1-106(b)(1) and (c) constitute grounds for denial of a transfer of coverage.

(D) A Director's denial of a transfer of coverage is a final permitting decision that may be appealed to the Commission.

(E) Hazardous waste transfer of coverage under a general permit must be transferred in accordance with the requirements of Regulation 23 and Chapter 2 of this regulation.

**Reg.8.412 Persons with Standing to Appeal a Permitting Decision**

(A) Only those persons who submitted timely public comments on the record shall have standing to appeal the Director's final permitting decision to the Commission.

(B) Any person with standing who seeks to appeal the Director's decision to issue or not renew a general permit must file a Request for Hearing with the Commission Secretary within thirty (30) calendar days of the date of the Director's final decision.

(C) To participate in an existing appeal, a qualified person must file a Petition for Intervention.

(D) A Request for Hearing or Petition for Intervention shall comply with the provisions of Chapter 8 of this regulation.

**Reg.8.413 Review on Commission Initiative**

(A) The Commission may initiate adjudicatory review of the Director's final permitting decision by majority vote within forty-five (45) calendar days of the date of the Director's issuance of a final permitting decision.

(B)(1) If the Commission decides to initiate review, the Commission shall serve notice of its decision on the Director and all persons who submitted public comments using one (1) of the following methods based on the contact information available and the discretion of the Commission:

- (a) U.S. mail;

(b) A commercial delivery company; or

(c) Electronic mail.

(2) Any person served, other than the Director, who seeks to participate in the proceedings on review must file a response to the notice with the Commission Secretary within thirty (30) calendar days of service.

(C) The proceedings on review shall be held in accordance with the provisions of Chapter 8 of this regulation.

**Reg.8.414 Appeal from Final Commission Decision**

The Commission's final decision on a permitting issue is appealable to circuit court or may be transferred from circuit court to the Court of Appeals upon the filing of a motion pursuant to Ark. Code Ann. § 8-4-223(d). See Ark. Code Ann. §§ 8-4-222 — 8-4-229 and Reg.8.901 through Reg.8.903.

**Reg.8.415 Inapplicability**

This chapter shall not affect the ability of the Director to terminate, suspend, or revoke coverage under a general permit for cause pursuant to the procedures for enforcement actions as specified in Chapter 6.

## CHAPTER THREE 5: GRANT, LOAN, AND TAX CREDIT DECISIONS

### Reg.8.301501 Applicability

The procedures set forth in Chapter ~~Three~~ 5 apply to all grant, loan, or tax credit decisions.

### Reg.8.302502 Issuance of Director's Decision

(A) The Director shall issue a written decision on all grant, loan, or tax credit matters within the time periods specifically required by law or regulation.

(B) In the absence of a ~~specified~~ another time period specified by law or regulation, decisions shall be issued no later than thirty (30) calendar days after the Department's receipt of all pertinent written facts and arguments, as determined by the Department.

~~(1) The date of issuance of a final decision is the date that notice of the decision is served upon the applicant. Service shall be deemed complete when the notice is placed in the mail or emailed to the applicant.~~

~~(2)(C)~~ The effective date of a final decision is the date of issuance ~~as provided in Reg.8.302(A)(1)~~; unless a later effective date is specified in the decision.

~~(B)(D)~~ Upon issuance, notice of the decision shall be sent to the ~~The applicant, if any,~~ and all those persons submitting who timely submitted public comments on the matter, if a public comment period was provided, and all other persons required by law to be served with notice of the decision ~~shall be served with notice using one (1) of the following methods based on the contact information available and the Director's discretion:~~

(1) U.S. mail;

(2) A commercial delivery company; or

(3) Electronic mail.

(E) Unless otherwise provided by law or regulation, the notice of decision 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 any of the following may request an adjudicatory hearing and Commission review of the Director's decision:

(a) ~~the~~ The applicant;

(b) ~~any~~ Any person submitting public comments on the record during the public comment period, if any; and

(c) ~~all~~ All other persons entitled by law ~~to do so, may request an adjudicatory hearing and Commission review of the Director's decision.~~

(4) The Department also shall publish on its website notice of a final grant, loan, or tax credit decision.



~~(C)~~(F) ~~Any~~ A Request for Hearing ~~must~~ shall be filed with the Commission Secretary within thirty (30) calendar days after the date of issuance of the Director's final decision, ~~as provided in Reg. 8.302(A)(i).~~

~~(D)~~(G) ~~Any~~ A Request for Hearing shall comply with the provisions of Chapter ~~Six~~ 8 of this ~~Regulation~~ regulation.

### **Reg. 8.303503 Review on Commission Initiative**

(A) The Commission may, by majority vote within ~~thirty (30)~~ forty-five (45) calendar days of the date of the Director's issuance of a grant, loan, or tax credit decision, initiate adjudicatory review of the decision, even if the parties do not.

(B)(1) After the Commission decides to initiate review, the Commission shall serve notice of its decision to review on the Director, the applicant, and all persons who submitted public comments on the record, if a public comment period was provided, shall be served notice by the Commission of its decision to review using one (1) of the following methods based on the contact information available and the discretion of the Commission:

(a) U.S. mail;

(b) A commercial delivery company; or

(c) Electronic mail.

(2) Any person served with notice, other than the Director and the applicant, ~~desiring~~ who seeks to participate in the proceedings on review must file a response to the notice with the Commission Secretary within ~~twenty (20)~~ thirty (30) calendar days of service of the decision.

(C) The proceedings on review shall be held in accordance with the provisions of Chapter ~~Six~~ 8.

(D) In a review of the Director's decision, the grant, loan, or tax credit applicant shall be an indispensable party.

## CHAPTER FOUR 6: ENFORCEMENT ACTIONS

### Reg.8.401601 Applicability

(A) The policy of the Department is to seek compliance with the ~~laws and statutes,~~ regulations, ~~permits and orders administered by it administers.~~ The Department may, through cooperative efforts, give suspected violators a reasonable opportunity to resolve violations through informal procedures ~~prior to~~ before the initiation of administrative enforcement proceedings unless the circumstances warrant otherwise.

(B) Nothing ~~contained in Chapter 4~~ this chapter shall in any manner abridge or interfere with the Department's ability to:

(1) ~~initiate~~ Initiate civil proceedings in courts of competent jurisdiction to restrain or abate any violation of the ~~laws statutes,~~ regulations, ~~or permits, or orders administered by it administers~~ and to otherwise enforce these ~~laws statutes,~~ regulations, ~~and permits, or orders~~ without first ~~having instituted~~ initiating administrative enforcement proceedings hereunder; or

(2) ~~Further, nothing contained in this Chapter shall in any manner abridge or interfere with the Department's ability to seek~~ Seek criminal prosecutions concerning any violation of the ~~laws statutes,~~ regulations, or permits administered by it.

### Reg.8.402602 Issuance Of Notice Of Violation

(A) Except as otherwise provided for emergency actions in Chapter ~~7 Five: (Emergency Actions)~~, the Director may not issue an order, except by consent, to any person for violation of the ~~laws statutes, permits, or~~ regulations, ~~permits, or orders~~ administered by the Department unless and until the person has:

(1) ~~been~~ Been served with a Notice of Violation; and

(2) ~~has had~~ Had the opportunity to request an adjudicatory hearing in accordance with the applicable provisions of Chapter ~~Six 8~~ of this ~~Regulation~~ regulation.

(B) ~~Whenever~~ If the Director determines that reasonable grounds exist to believe that a violation has occurred, he or she may issue a Notice of Violation to be served upon all persons alleged to be in violation.

(C) The ~~notice~~ Notice of Violation shall state:

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

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

(3) Corrective actions, if any, including ~~deadlines time frames, which in that the Director's~~ Director has determined judgment must be undertaken imposed to remedy the violations or to abate or contain any situation causing pollution or the threat of pollution;

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

(5) That the alleged violator must file, ~~in accordance with Reg. 8.603(B)(5),~~ a Request for Hearing in accordance with Reg. 8.804(B)(5) on the Notice of Violation with the Commission Secretary within ~~twenty (20)~~ thirty (30) calendar days of its receipt.

(6) If a Request for Hearing is not filed with the Commission Secretary, the allegations will be deemed proven and the Director may issue a Default Administrative Order affirming the allegations as findings of fact, affirming the assessment of administrative civil penalties, and ordering any corrective actions and other matters, as stated in the Notice of Violation; ~~and~~

~~(6)(7)~~ That upon filing a Request for Hearing within the time provided, the alleged violator ~~will~~ shall be entitled to Commission review and adjudicatory hearing on the allegations and other matters stated in the Notice of Violation; ~~and~~

(8) ~~Any~~ A Request for Hearing shall comply with the provisions of Chapter ~~Six~~ 8 of this ~~Regulation~~ regulation.

#### **Reg.8.403603 Finality of Default Administrative Order**

(A) ~~A Default Administrative Order is the Director's final order. A Default Administrative Order is a final order by the Director.~~

(B) Except as provided in ~~Reg. 8.404~~ Reg. 8.604, ~~the order a~~ Default Administrative Order may not be reviewed on its merits by the Commission unless the person to whom the order was issued files a Request for Hearing within ~~30~~ thirty (30) calendar days of the effective date of the Default Administrative Order ~~alleging that alleges excusable neglect~~ shows there is good cause as to the reason for failure to request a hearing on the Notice of Violation was due to excusable neglect.

(C) If the ~~Commission~~ Commission's Administrative Law Judge finds that the failure to file a Request for Hearing on the Notice of Violation was ~~due to excusable neglect~~ for good cause, the party ~~will~~ shall be allowed an adjudicatory hearing.

#### **Reg.8.404604 Review on Commission Initiative**

(A) The Commission may initiate adjudicatory review of the order by majority vote within ~~thirty (30)~~ forty-five (45) calendar 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 do not.

(B)(1) ~~After~~ If the Commission decides to initiate review, the Commission shall serve notice of its decision on the Director, and 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 using one (1) of the following methods based on the contact information available and the discretion of the Commission:

- (a) U.S. mail;
- (b) A commercial delivery company; or
- (c) Electronic mail.

(2) Any person ~~so~~ served with notice, other than the Director and the person to whom the order is issued, ~~desiring~~ who seeks to participate in the proceedings on review must file a response to the notice with the Commission Secretary within ~~twenty~~ (20) thirty (30) calendar days of service.

(C) The proceedings on review shall be held in accordance with the provisions of Chapter ~~Six~~ 8 of this ~~Regulation~~ regulation.

(D) The person to whom the order is issued shall be considered an indispensable party.

**Reg.8.405605 Public Notice of Notices of Violation and Consent Administrative Orders**

(A) On or about the 10th and 25th day of each month, the Director shall cause a list of all Default Administrative Orders, Emergency Orders, and Notices of Violation issued, and all Consent Administrative Orders entered into, but not previously noticed, to be published:

- (1) ~~in~~ In a newspaper of statewide circulation; and
- (2) On the Department's website.

(B) 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 (e.g. water, air, solid waste, hazardous waste, regulated storage tanks, or mining);
- (4) The type of administrative enforcement action (i.e., Notice of Violation or Consent Administrative Order);
- (5) The amount of the proposed administrative civil penalty, if any;
- (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)(C)~~ The notice provided in ~~Reg.8.405(A)~~ subsection (A) of this section shall also be given to ~~each member of~~ the Commission.

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

~~(D)(E)~~ If When an administrative civil penalty is ~~being~~ assessed for a violation, that occurs within the corporate limits of any municipality in Arkansas;

- (1) ~~a~~ A copy of the public notice shall be delivered to the chief executive officer of the municipality ~~in which~~ where the alleged violation occurred along with a copy of any proposed order concerning the violation; and
- (2) ~~the~~ The municipality shall be given a reasonable opportunity to comment on the proposed order consistent with the public notice and comment requirements of the Arkansas Water and Air Pollution Control Act and regulations promulgated thereunder.

**Reg.8.406606 Public Participation in Administrative Enforcement Actions**

(A) Notice of Violation:

(1) ~~Any~~ A person who submits written comments within the public comment period ~~on~~ concerning the issuance of a Notice of Violation shall be given notice of any adjudicatory hearing to be held in the matter using one (1) of the following methods based on the contact information available for the applicant or the person and the Director of the Arkansas Department of Environmental Quality discretion:

- (a) U.S. mail;
- (b) A commercial delivery company; or
- (c) Electronic mail.

(2) If comments are submitted for a group, the Director may require the group to designate a representative to receive the notice.

(3) ~~Any~~ A person given notice shall have the right to intervene upon timely filing a Petition for Intervention.

(4) Any other person who reasonably considers himself or herself injured or at risk of injury in his or her person, business, or property may petition for permissive intervention upon timely application as provided in Reg.8.604805.

(B) Consent Administrative Orders:

(1) ~~Any~~ A person who comments on a proposed Consent Administrative Order ~~settling that settles~~ an administrative enforcement action may petition the Commission to request an adjudicatory hearing to set aside the Consent Administrative Order within thirty (30) calendar days of the ~~effective date~~ publication of notice of the order to set aside the order and provide an adjudicatory hearing.

(2) ~~That person shall file a~~ The petitioner shall file the Request for Hearing with the Commission Secretary.

(3) The Administrative Law Judge may, in his or her discretion, set deadlines or other requirements for the submittal of additional evidence to be considered by the Commission.

(4) The Commission may set aside the order and provide an adjudicatory hearing if:

- (a) ~~If the~~ The evidence presented by the petitioner is material and was not considered in the issuance of the order; and

(b) ~~the~~ 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.~~

(5) If the Commission denies an adjudicatory hearing, it shall give the petitioner notice of its reasons for the denial.

(6) The A denial of a hearing ~~shall constitute~~ is a final Commission action for purposes of appellate review.

**Reg.8.407607 Effective Date of Consent Administrative Orders**

(A) ~~No~~ A Consent Administrative Order ~~assessing~~ that assesses an administrative civil penalty shall not be effective until thirty (30) calendar days after publication of notice of the order. However, corrective action may be required to be taken immediately upon execution of the order if the order ~~so states~~ requires immediate action.

(B) ~~Any~~ A Consent Administrative Order that does not assess administrative civil penalties shall be effective upon its execution.

**Reg.8.408608 Effective Date of Default Administrative Orders**

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

## CHAPTER FIVE 7: EMERGENCY ACTIONS

### Reg.8.501701 Applicability

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

### Reg.8.502702 Issuance of Emergency Orders

(A) The Director, in his or her discretion, may issue an Emergency Order when necessary to meet an emergency or situation of imminent hazard.

~~(B)~~ The order Emergency 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.~~

~~(C)~~ All ~~written~~ emergency orders shall be served upon the person, if any, to whom they are issued pursuant to Rule 5 of the Arkansas Rules of Civil Procedure.

~~(B)~~(D) Immediately following the issuance of ~~an~~ 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.

(F) The ~~notice~~ Notice of Emergency Order shall contain:

(1) a A description of the action,

(2) ~~the~~ The authority for taking the action, and

(3) a Any other information appropriate to ensure that the public is informed about the action.

(G) The Department shall publish on its website notice of the Emergency Order.

### Reg.8.503703 Request for Hearing

(A) ~~Any~~ A person to whom an Emergency Order is issued may file a written Request for Hearing with the Commission Secretary within ten (10) calendar days of the issuance of the order.

~~(B)~~ Any A Request for Hearing shall comply with the provisions of Chapter ~~Six~~ 8 of this ~~Regulation~~ regulation.

~~(B)~~(C) An adjudicatory hearing shall be held within ten (10) calendar days of filing the written request with the Commission Secretary, unless ~~otherwise agreed by~~ the person requesting the hearing and the Director agree to an extension of time.

(D) Notice of the time, date, and place of the hearing shall be given to the person requesting the hearing by the ~~Administrative Hearing Officer~~ Administrative Law Judge at the earliest opportunity and by any means calculated to give actual notice to that person.

**Reg.8.504704 Review on Commission Initiative**

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

(B) If the Commission decides to initiate review, it shall serve notice of its decision on the Director and the ~~person(s)~~ person, if any, to whom the order is issued using one (1) of the following methods based on the contact information available for the person or persons at the discretion of the Commission:

- (a) U.S. mail;
- (b) A commercial delivery company; or
- (c) Electronic mail.

(C) In any 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) calendar days of the Commission's decision to initiate review, unless the person to whom the order is issued, if any, and the Director agree to an extension of time.

(E) The Administrative Law Judge shall give notice of the time, date, and place of the hearing 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 to include without limitation using one (1) of the following methods based on the contact information available for the person at the discretion of the Administrative Law Judge:

- (a) U.S. mail;
- (b) A commercial delivery company; or
- (c) Electronic mail.

(F) The hearing shall be held in accordance with the provisions of Chapter Six ~~§~~ 8 of this ~~Regulation~~ regulation.



## CHAPTER SIX 8: PRACTICE AND PROCEDURE

### **Reg.8.601801 Parties**

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

- (A) The Director;
- (B) In the appeal of a permitting decision, the permittee or permit applicant;
- (C) In a proceeding following the issuance of a final permitting decision, any person who has submitted public comments on the record during the public comment period and timely filed a Request for Hearing with the Commission Secretary;
- (D) Any person named in and served with a Notice of Violation or an Emergency Order;
- (E) 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 Commission Secretary;
- (F) Any person who has submitted public comment on the record, ~~and~~ timely filed a petition to set aside a Consent Administrative Order settling an administrative enforcement action, and ~~has~~ been granted an adjudicatory hearing on the matter;
- (G) Any person who files a Petition for Intervention that is granted; and
- (H) In any other matter ~~in which~~ that the Commission approves review of a Director's decision, any person who files a Request for Hearing and the Commission determines him or her to be injured in his or her person, business, or property.

### **Reg.8.602802 Representation of Corporations**

~~Any~~ A corporation in an adjudicatory proceeding must be represented by an attorney licensed in the State of Arkansas or admitted *pro hac vice*. ~~who~~ The attorney who represents a corporation in an adjudicatory proceeding shall file with the Commission Secretary all pleadings and other documents for the corporation in conjunction with ~~that~~ his or her representation.

### **Reg.8.803 Out-of-State Attorney Representation**

An attorney representing a party shall be licensed to practice law in the State of Arkansas or shall apply by Petition for Admission *Pro Hac Vice* to the Commission.

### **Reg.8.603804 Request for Hearing**

- (A) ~~Filing.~~ Any A person seeking review of a final decision of the Director must file a written Request for Hearing with the Commission Secretary.
- (B) Filing Deadlines;

(1) Permitting Decision – Applicant/Permittee. An applicant or permittee seeking review of a permitting decision must file a Request for Hearing within thirty (30) calendar days after the date of ~~issuance~~ service of the Director’s final decision as provided in ~~Reg.8.211(B)(1)~~ Reg.8.310 or Reg.8.311.

(2) Permitting Decision – Other. Any other person, who has submitted comments on the record, ~~that~~ and who seeks review of a permitting decision must file a Request for Hearing within thirty (30) calendar days after the date of issuance of the Director’s final decision, as provided in ~~Reg.8.211(B)(1)~~ 310 or Reg.8.311.

(3) Grant, Loan, or Tax Credit Decision. ~~Any A~~ person requesting who requests review of a grant or loan decision or a tax credit decision must file a Request for Hearing within thirty (30) calendar days after the date of issuance of the Director’s final decision, as provided in ~~Reg.8.302(A)(1)~~ Reg.8.502(C).

(4) Emergency Order. ~~Any A~~ person seeking who seeks review of an Emergency Order must file a Request for Hearing within ten (10) calendar days after the date of issuance of the Order.

(5) Notice of Violation. ~~Any A~~ person served with a Notice of Violation and who seeks review of it must file a Request for Hearing within ~~twenty (20)~~ thirty (30) calendar days after receipt of the Notice of Violation.

(6) Consent Administrative Order. ~~Any A~~ person who comments on a proposed Consent Administrative Order settling an administrative enforcement action may seek review of the Consent Administrative Order by filing a Request for Hearing that conforms with the requirements of subsection (D) of this section within thirty (30) calendar days of the effective date publication of notice of the Consent Administrative Order.

(7) Notice of Bond Forfeiture. ~~Any A~~ person served with Notice of Bond Forfeiture or a Notice of Violation which who forfeits a bond, must file a Request for Hearing within twenty (20) thirty (30) calendar days after receipt of the Notice of Bond Forfeiture or Notice of Violation, unless a different time period or procedure is specified by an applicable regulation.

(8) Petroleum Storage Tank Trust Fund Decision. ~~Any A~~ person requesting review of a petroleum storage tank trust fund decision must file a Request for Hearing within thirty (30) calendar days after the date of the final decision of the Director.

(9) Other. ~~Any A~~ person seeking who seeks review of a ~~director’s~~ Director’s decision that is not specifically addressed in ~~Reg.8.603 subdivisions~~ (B)(1), (2), (3), (4), (5), (6), (7), or (8) of this section must file a Request for Hearing within thirty (30) calendar days of the date entry of the decision.

~~(10)(C)~~ A Request for Hearing shall be dismissed if it is not filed within the time periods set out in ~~Reg. 8.603(B)(1) through (B)(9)~~ subsection (B) of this section, unless good cause is shown for the late filing.

~~(C)(D)~~ Contents of a Request for Hearing-:

(1) ~~Every~~ A Request for Hearing shall include:

- (a) A statement identifying the permit action or subject matter being appealed;
- (b) The date of the Director's final decision;
- (c) A complete and detailed statement identifying the legal issues and factual objections being appealed;
- (d) If applicable, a request for the issuance, modification, or termination of a stay, ~~if desired,~~ as provided in ~~Reg. 8.612~~Reg. 8.813(B); and
- (e) Certification that a copy of the Request for Hearing has been served on all appropriate parties identified in ~~Reg. 8.601~~ Reg. 8.801.

~~(f)(2)~~ In addition to the ~~requirement of Reg. 603(C)(1)(a) through (e)~~ requirements under subdivision (D)(1) of this section, a Request for Hearing that seeks a review of a Director's decision that is not specifically addressed in ~~Reg. 8.603~~ subdivisions (B)(1), (2), (3), (4), (5), (6), (7), or (8) of this section must contain a statement asking the Commission to initiate review of the decision and the reasons why that person reasonably considers himself or herself injured in his or her person, business, or property.

~~(2)(3)~~ Failure to file a Request for Hearing in the form and manner set out in ~~Reg. 8.603(C)(1)~~ subsection (D) of this section may result in the dismissal of the Request for Hearing.

### **Reg. 8.604805 Permissive Intervention**

(A) ~~Any~~ A person who timely submitted comments during ~~the a public comment periods~~ period may petition in a timely manner for permissive intervention in an adjudicatory hearing that concerns the same matter.

(B) If ~~no~~ a public comment period is not provided, ~~any~~ a person who reasonably considers himself or herself injured in his or her person, business, or property by any decision issued by the Director may also timely petition for permissive intervention in an adjudicatory hearing on the matter.

(C) The contents of a ~~petition~~ Petition for Intervention shall be the same as that set forth in ~~Reg. 8.603(C)(1)(a), (b), (c), (d), and (e)~~ Reg. 8.804(D)(1).

(D) A Petition for Intervention may be denied if it is not filed in the form and manner set out in ~~Reg. 8.603(C)(1)~~ Reg. 8.804(D)(1) and (2).

(E) The ~~denial by an Administrative Hearing Officer's Administrative Law Judge denial~~ denial of a ~~Petition to Intervene~~ for Intervention shall stand unless a written objection is filed with the Commission Secretary within ten (10) business days of the ruling. If the written objection is timely filed, the ~~The~~ Commission Secretary shall place the matter on the Commission's agenda ~~the objection~~ for oral argument at the Commission's next regularly scheduled monthly meeting before the Commission.

### **Reg.8.605806 Form of Pleadings or Other Documents**

(A) ~~Every~~ A pleading, petition, motion, brief, or other document filed in ~~any~~ an adjudicatory hearing or other proceeding before the Commission shall contain the following:

- (1) A caption setting forth the name of the Commission as follows: “BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION”;
- (2) The names of the parties follows: “IN THE MATTER OF ...”;
- (3) The docket number assigned to the case by the Commission Secretary, if available; and
- (4) A permit number, if applicable.

(B) Each pleading or other document shall contain a an identifying title ~~which identifies it~~ (e.g., Request for Hearing, Petition for Intervention, Petition to Initiate Rulemaking, Motion, or Brief).

(C) The original of any pleading or other document shall be signed by the person submitting it or by his or her attorney and shall state that person’s mailing address, telephone number, ~~faesimile number,~~ and ~~electronic mail~~ email address, if any.

(D) All pleadings and other papers filed by any person in any adjudicatory proceeding shall include a A certificate of service showing for all applicable parties identified in Reg.8.601 Reg.8.801 shall accompany all pleadings and other papers filed by any person in any adjudicatory proceeding.

(E) The requirements of ~~Reg.8.605~~ this section do not apply to comments submitted during a public comment period.

### **Reg.8.606807 Filing of Pleadings or Other Documents**

(A) All pleadings and other documents to be filed in any proceeding shall be filed with the Commission Secretary by U.S. mail, a commercial delivery company, or electronic mail.

(1)(a) To file by mail or delivery, the pleadings and other documents should be sent or delivered to the Commission’s address. and, within one business day of the filing, the person filing shall provide by electronic mail a PDF version of the filing for use on the Commission’s web site.

(b) To be considered a timely filing:

(i) A pleading and other documents that are mailed must be post-marked on or before the filing deadline; or

(ii) A pleading and other documents that are hand-delivered must be received by the Commission Secretary during normal business hours on or before the filing deadline.

(c) An original and one (1) copy of the pleading or other document should be filed with the Commission.

(d) If one (1) or more copies of a pleading or other document are to be returned by mail to the person filing, the person who files the pleading or

document shall provide the additional copies to the Commission Secretary. The person filing also shall provide the Commission Secretary a self-addressed, stamped envelope with proper postage for returning the copies.

(2)(a) To file by email, the pleadings and other documents should be emailed in PDF format to the Commission Secretary at PCE-Filings@adeq.state.ar.us.

(b) To be considered a timely filing, the email with PDF attachments must be sent no later than 11:59 p.m. Central Time of the last day allowed for the filing.

(c) The Commission Secretary shall confirm receipt of electronic filings by return email.

(d)(i) Except as provided under subdivision (A)(2)(d)(ii) of this section, a filing by email shall be treated as an original filing and shall not require subsequent hard copies to be submitted.

(ii) If the electronic version is illegible, poorly scanned, compromised, or has other issues, the Commission Secretary may request hard copies or the resubmission of electronic documents.

~~If circumstances warrant, the person filing documents may request a waiver of the requirement to submit the documents in a PDF version.~~

~~(B) A copy of any a Notice of Violation filed with the Commission Secretary shall not be placed on the Commission's docket until a Request for Hearing is filed in accordance with this section and Reg.8.603 Reg.8.804.~~

~~(C) A facsimile or electronic mail sent by midnight central time shall be the effective filing date for a pleading or other document.~~

~~(D) Any person filing a pleading or other document with the Commission Secretary shall file an original and one (1) copy (for the Administrative Hearing Officer). The Commission Secretary shall not file any pleading or other document until an original and one copy is provided.~~

~~(E) Notwithstanding the provisions of Reg.8.606(D), the Commission Secretary may accept facsimile or electronic mail copies for filing. Only one copy need be transmitted, and the Commission 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 Commission Secretary.~~

~~(F) If one or more copies of a pleading or other document are to be returned by mail to the person filing, that person shall provide the additional copies to the Commission Secretary. The person filing also shall provide the Commission Secretary a self addressed, stamped envelope with proper postage for returning the copies.~~

### **Reg.8.607808 Service and Proof of Return Service**

(A) A copy of any Notice of Violation, Request for Hearing, or Petition for Intervention filed with the Commission Secretary must be served upon all applicable parties identified in

Reg.8.601801. ~~by certified mail, return receipt requested, or by other means provided in Rule 4 of the Arkansas Rules of Civil Procedure.~~

(B) A copy of any pleading or other document, ~~other than~~ except as provided by ~~Reg.8.607(A) under subsection (A) of this section,~~ filed with the Commission Secretary shall be served in accordance with Rule 5 of the Arkansas Rules of Civil Procedure upon all parties as identified in Reg.8.601801. If service of a Final or Default Order cannot be completed as defined in Rule 4 of the Arkansas Rules of Civil Procedure, service shall be perfected through a warning order issued by the Administrative Law Judge or the Commission Secretary.

(C) 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~~ how it was served (e.g., mail, ~~or hand-delivery, or email~~) ~~in which it was served.~~

(D) The certificate of service shall be signed and dated by the person filing the pleading or other document or by his or her attorney. Service upon a party represented by an attorney is to be made upon the attorney.

(E) If a party files pleadings or other documents by email, the Commission Secretary or Administrative Law Judge may serve all pleadings, letters, orders, or other documents generated during the pendency of a matter by email.

~~(C)~~(F) Service upon the Director must be made by serving the Chief Managing Attorney of the Department's Legal Division.

### **Reg.8.608809 Administrative Hearing Officer's Powers of The Administrative Law Judge**

(A) The ~~Administrative Hearing Officer~~ Administrative Law Judge shall preside over all adjudicatory hearings.

(B) The ~~Administrative Hearing Officer~~ Administrative Law Judge shall be subject to disqualification from any adjudicatory hearing for bias, prejudice, interest, or any other cause provided by law, or for any cause for which a judge may be disqualified.

(C) Any party of record may petition for the disqualification of the ~~Administrative Hearing Officer~~ Administrative Law Judge promptly after receipt of notice indicating that the individual will serve or upon discovering facts establishing grounds for disqualification. If disqualified, the Commission shall designate an alternative hearing officer to preside over the adjudicatory hearing.

~~(C)~~(D) The ~~Administrative Hearing Officer~~ Administrative Law Judge may exercise the following powers in adjudicatory proceedings:

- (1) ~~To set~~ Set the time and place of preliminary hearings and adjudicatory hearings;
- (2) Administer oaths and affirmations;
- (3) Delegate authority to the Commission Secretary to sign orders on his or her 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~~ any hearings;
- (7) Make recommendations to the Commission on dispositive motions and on a request for hearing of a permitting decision in accordance with ~~Reg.8.613~~ Reg.8.814; ~~and~~
- (8) Prepare and transmit a Recommended Decision to the Commission;
- (9) ~~Conduct, on the Commission's behalf,~~ public hearings involving rulemaking; on the Commission's behalf; and
- (10) Issue warning orders pursuant to Rule 4 of the Arkansas Rules of Civil Procedure.

### **Reg.8.609810 Recording of Adjudicatory Hearings and Court Reporter Costs**

- (A) The ~~Administrative Hearing Officer~~ Administrative Law Judge shall electronically or stenographically record adjudicatory hearings to take evidence, hearings involving dispositive motions, and hearings on a ~~petition to intervene~~ Petition for Intervention. The ~~Administrative Hearing Officer~~ Administrative Law Judge may electronically or stenographically record any other hearings; in his or her discretion; or at the request of ~~any~~ a party.
- (B) ~~Any~~ A party to an adjudicatory hearing may request that the ~~Administrative Hearing Officer~~ Administrative Law Judge ~~to~~ arrange for the electronic or stenographic recording of any hearing and the transcription of the proceeding by a court reporter. The requesting party shall pay all costs charged by the court reporter.
- (C) Only a transcription or recording of a proceeding as provided in ~~Reg.8.609~~ subsections (A) and (B) of this section shall constitute the official transcription or recording of the proceeding.
- (D) ~~Any~~ If a party ~~who~~ cancels an adjudicatory hearing or deposition two (2) or fewer working business days ~~prior to~~ before the hearing or deposition, the party shall pay ~~for~~ any appearance fees charged by the court reporter for the scheduled appearance.

### **Reg.8.610811 Subpoenas**

- (A) ~~Any~~ An attorney of record to an adjudicatory hearing may issue; or any party of record may request that the ~~Administrative Hearing Officer~~ Administrative Law Judge issue; subpoenas.
- (B) The ~~Administrative Hearing Officer~~ Administrative Law Judge may, in his or her discretion, deny issuance of a subpoena to prevent undue delay, oppression, harassment, or other injustice to any party.
- (C) The ~~Administrative Hearing Officer~~ or Administrative Law Judge may give written authorization to the Commission Secretary to issue subpoenas on ~~his~~ behalf of the ~~Administrative Hearing Officer~~ Administrative Law Judge.

~~(B)~~(D) Upon issuance, the original and one (1) copy of a subpoena ~~will~~ shall 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.

(E) All costs of service, witness fees, and mileage fees shall be the responsibility of the requesting party.

### **Reg.8.614812 Rules of Civil Procedure**

Procedural matters not addressed in this ~~Chapter~~ chapter shall be governed by the provisions of the Arkansas Rules of Civil Procedure.

### **Reg.8.612813 Effectiveness of Orders During Commission Review**

(A) ~~During~~ Except as otherwise provided in subsection (B) of this section, the pendency of a Commission review:

- (1) The denial of a permit, license, or certification shall stand;
- (2) The issuance, modification, or revocation of a permit, license, certification, or that part of a permit ~~which~~ that 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 the parties shall comply therewith.

~~(B)(1) Notwithstanding the provisions of Reg.8.612 (A), upon~~ 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)(2) A request pursuant to Reg.8.612 under subsection (B) of this section must be in writing and filed with the Commission Secretary.~~

(3) The ~~Administrative Hearing Officer~~ Administrative Law Judge or the Commission Secretary shall promptly inform the Chairperson of the filing of a request for a stay, ~~or for modification to modify the terms of a stay, or termination of to~~ terminate a stay.

(4) The Chairperson shall, in his or her discretion, either:

~~(1)(a) grant~~ Grant a temporary stay, modify the terms of a stay, or terminate a stay, and ~~such~~ the action shall be effective until the next regularly scheduled Commission meeting; ~~or~~

~~(2)(b) direct~~ Direct the Commission Secretary to place the request on the agenda for the next regularly scheduled Commission meeting; or

~~(3)(c) call~~ Call a special Commission meeting for the purpose of considering the request.

(5) The Commission's written stay decision ~~on the request~~ shall be in the form of a Minute Order and shall state ~~which~~ the specific terms or ~~condition(s)~~ conditions that are affected by the decision. The Commission Secretary shall promptly mail or email the decision to all parties of record identified in Reg.8.604801.



~~(D)~~(6) All terms or conditions ~~which~~ that are not specifically addressed in the Commission's Minute Order shall be stayed or remain ~~effective in effect~~ as provided in Reg.8.612 subsection (A) of this section.

~~(E)~~(7) To the extent conditions of any new permit are stayed, and if no alternative conditions are specified in the written stay decision, a facility holding an existing permit ~~must~~ shall comply with the conditions of the existing permit ~~which~~ that 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~~ that have not been stayed. The burden of proving this incompatibility ~~shall rest~~ rests with the permittee.

~~(F)~~(8) The written stay decision ~~regarding a stay~~ is not ~~appealable~~ a final decision for purposes of appellate review.

### **Reg.8.613814 Preliminary Hearing**

(A) After a Request for Hearing is filed with the Commission Secretary, a preliminary hearing may be held, ~~if necessary,~~ for the ~~Administrative Hearing Officer~~ Administrative Law Judge to consider the simplification of the issues and other matters ~~as may~~ to aid in the disposition of the proceeding.

~~(B)~~ ~~Notwithstanding the provisions of Reg.8.613(A), a preliminary hearing must be held following the filing of a Request for Hearing involving a permitting decision.~~

~~(1)~~~~(B)~~ The A preliminary hearing shall be held within thirty (30) calendar days ~~of~~ from the date of filing ~~the request~~ a Request for Hearing on a permitting decision. The timing of when any other preliminary hearing is held shall be at the discretion of the Administrative Law Judge.

~~(2)~~ ~~Within a reasonable time after the preliminary hearing, the Administrative Hearing Officer shall enter a written 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.~~

~~(3)~~~~(C)~~ The ~~Administrative Hearing Officer~~ Administrative Law Judge shall determine ~~whether~~ if:

(1) ~~the~~ The parties qualify as proper parties under Reg.8.601801; ~~whether~~

(2) ~~the~~ The issues are properly raised; ~~and whether~~

(3) ~~the~~ The ~~pleadings~~ pleading conforms with the applicable requirements in Chapter ~~Six~~ 8 of this ~~Regulation~~ regulation.

~~(4)~~~~(D)~~ Any party aggrieved by the written decision of the ~~Administrative Hearing Officer~~ Administrative Law Judge issued under this ~~subsection~~ section may request Commission review of the decision; within ten (10) business days from the date of the decision, ~~request Commission review of the decision.~~

~~(5)~~~~(E)~~ ~~No~~ A person other than the applicant or permittee ~~may~~ shall not 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 have been discovered and

~~presented during the public comment period, with reasonable diligence, have been discovered and presented during the public comment period.~~

~~(C)~~(F) At any preliminary hearing involving a permitting decision, the ~~Administrative Hearing Officer~~ Administrative Law Judge shall weigh the equities of any request for expedited review and advance the case on the administrative docket as circumstances ~~permit~~ allow.

### **Reg.8.614815 Notice of Hearing**

(A) The ~~Administrative Hearing Officer~~ Administrative Law Judge shall schedule ~~the an~~ an adjudicatory hearing and other proceedings.

(B) In the appeal of a permitting decision, the ~~Administrative Hearing Officer~~ Administrative Law Judge 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) calendar days after the preliminary hearing. However, the parties of record may mutually agree to a longer period of time or the ~~Administrative Hearing Officer~~ Administrative Law Judge may establish a longer period of time for just cause.

~~(B)~~(C) The ~~Administrative Hearing Officer~~ Administrative Law Judge shall issue, ~~through the Commission Secretary,~~ a Notice of Hearing to all parties of record through the Commission Secretary.

(D) The ~~notice~~ Notice of Hearing shall be served at least ten (10) business days ~~prior to~~ before 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.

(E) This section does not apply to hearings on emergency orders, permit variances, or interim authority.

### **Reg.8.615816 Settlements**

(A) If a matter for which a Request for Hearing has been filed is resolved before the hearing by a settlement of among 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 Commission Secretary.

(B) The filing of a an executed settlement agreement ~~which that~~ contains language stating ~~that~~ the Request for Hearing is withdrawn shall, ~~without further Commission action,~~ cause the docket to be immediately closed without further Commission action.

~~(B)~~(C) The ~~Administrative Hearing Officer~~ Administrative Law Judge shall make a report to the Commission on each settled case ~~to the Commission~~.

~~(C)~~(D) The settled case shall be subject to being reopened upon Commission initiative under Reg.8.215(A)314, Reg.8.303503, Reg.8.404604, or Reg.8.504704, or in response to a petition under Reg.8.606(B) to set aside a Consent Administrative Order settling an administrative enforcement action.

~~(D)~~(E) If a permit appeal is ~~settled~~ resolved by an agreement to issue a permitting decision, the permitting decision shall follow all the notice and comment procedures set forth in ~~Reg. 8.207 through Reg.8.211~~ Reg.8.306, and a public comment period shall be provided as set forth in Reg.8.307. Any person who comments on the record during the public comment period for the permit appeal resolution shall receive notice in the same manner as set forth in Reg.8.310(C). A permit appeal resolution shall be effective in the same manner as set forth in Reg.8.310(B).

### **Reg.8.616817 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)~~ party or parties of record; unless the ~~Administrative Hearing Officer~~ Administrative Law Judge ~~directs~~ 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~~ Administrative Law Judge shall receive into evidence any testimony or other evidence that is admissible ~~under the Arkansas Rules of Evidence.~~

(2) Where evidence is excluded by the ~~Administrative hearing officer~~ Administrative Law Judge, the party offering the evidence may make a ~~proffer of the evidence~~ an offer of proof under ~~subsection (a)(2) of~~ Rule 103(a)(2) of the Arkansas Rules of Evidence.

(3) The ~~Administrative Hearing Officer~~ Administrative Law Judge shall have discretion to receive any evidence that may assist in a proper determination of the pertinent facts, even ~~though such~~ if the evidence might not strictly be admissible under the Arkansas Rules of Evidence.

(4) The discretion of the ~~Administrative Hearing Officer~~ Administrative Law Judge to deviate from the customary rules of evidence shall not extend to matters ~~which~~ that would impair a privilege established by law.

~~(2)~~(5) The ~~Administrative Hearing Officer~~ Administrative Law Judge may in his or her 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.

(3) ~~Each party is responsible for providing the Commission Secretary with a PDF version of that party's documentary exhibits which are admitted into evidence at an~~

adjudicatory hearing. If circumstances warrant, a party may request a waiver of the requirement to submit the documentary exhibits in a PDF version.

**Reg.8.617818 ~~Recommended Decision Of Administrative Hearing Officer~~ Administrative Law Judge**

(A) At 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~~ Administrative Law Judge shall issue a written Recommended Decision to the Commission for action at a regularly scheduled meeting.

(B) The ~~Administrative Hearing Officer~~ Administrative Law Judge shall cause the Recommended Decision to be mailed or emailed with a certificate of service to all parties of record.

**Reg.8.618819 ~~Commission Review~~**

(A) ~~The Commission shall review of any appealed or contested matter shall be a de novo review of the record compiled by the Administrative Hearing Officer~~ Administrative Law Judge. However, the Commission may vote to consider additional evidence subject to the provisions of Reg.8.620821.

(B) The record compiled by the Administrative Law Judge for the Commission's review and consideration before the Commission on review shall ~~consist of~~ include:

- (1) ~~The document constituting the Director's decision;~~
- (2) All pleadings, motions, and intermediate rulings;
- (3) All exhibits admitted during the hearing and a any transcript or recording of the hearing; and
- (4) The Recommended Decision of the ~~Administrative Hearing Officer~~ Administrative Law Judge ~~which shall include~~ that includes any proposed findings of fact and conclusions of law.

(C) The Commission's decision shall be by majority vote of a quorum ~~that~~ and shall be issued ~~in the form of a~~ by "Minute Order."

(D) The Commission's decision may:

- (1) ~~affirm~~ Affirm the Recommended Decision;
- (2) ~~modify~~ Modify the Recommended Decision; or
- (3) ~~reverse.~~ Reverse the Recommended Decision.

~~Alternatively, the Commission may reverse and remand all or part of the Director's permitting decision or action to the Director.~~

(E) If the Commission reverses and remands part of the recommended decision ~~or enforcement action~~ to the ~~Director~~ Administrative Law Judge for reconsideration, the Commission shall remand with instructions on how the ~~Director~~ Administrative Law Judge is to proceed.

~~(D)~~(F) The Commission 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 using one (1) of the following methods based on the contact information available:

- (1) U.S. mail;
- (2) A commercial delivery company; or
- (3) Electronic mail.

~~(E)~~(G) The Commission's vote to affirm, modify, or reverse the Recommended Decision ~~shall constitute~~ is a final Commission action decision for the purposes of ~~appeal~~ appellate review.

### **Reg.8.619820 Oral Argument Before the Commission**

#### (A) Request for Oral Argument:

(1) Any party of record may request the Commission to ~~hear an~~ schedule and hold oral argument on a Recommended Decision by filing a written request with the Commission Secretary no later than twenty (20) calendar days after the Recommended Decision has been mailed or emailed to all parties.

(2) The contents of the ~~request~~ Request for Oral Argument shall be in the following order:

- (a) A clear and concise statement of each factual objection and alleged legal error ~~contained~~ in the Recommended Decision;
- (b) An argument addressing each factual objection and alleged legal error and citations of decisions supporting each argument, if applicable;
- (c) The specific relief sought from the Commission;
- (d) ~~The request must contain a~~ A proposed Minute Order setting forth proposed findings of fact and conclusions of law on which the Commission ~~is basing~~ would base its final decision if a decision is made in favor of the requesting party; and-
- (e) Any document, exhibit, or transcript page from the record may be attached as an ~~addendum~~ exhibit to the request. Each ~~addendum~~ exhibit must be clearly labeled as "Addendum Exhibit No. \_\_\_".

~~(B)~~—A party ~~must file an original and three (3) copies of the request or response to a request, unless the Administrative Hearing Officer or the Commission Secretary require a different number.~~

#### ~~(C)~~(B) Failure to Comply with Time Limitation:

(1) ~~Any~~ A party ~~failing that fails~~ to file a request for oral argument within the time period set ~~out~~ forth in ~~Reg.8.619~~ subdivision (A)(1) of this section shall not be permitted to present oral argument, unless the party who failed to timely file the request proves that the failure to file before the deadline was ~~due to excusable neglect~~ for good cause or the ~~Administrative Hearing Officer~~ Administrative Law Judge modifies the

deadline set out in ~~Reg.8.619~~ subdivision (A)(1) of this section for good cause as provided in ~~Reg.8.619~~ subsection (G) of this section.

(2) ~~A party requesting oral argument past the filing deadline due to excusable neglect must, prior to Before Commission Review of the Administrative Hearing Officer's Administrative Law Judge's Recommended Decision Decision, a party requesting oral argument past the filing deadline shall:~~

~~(a) File a petition that explains the party's good cause for the late filing; and~~

~~(a)(b) File a request for oral argument Request for Oral Argument in accordance with Reg.8.619 subsections (A) and (B) of this section; and.~~

~~(b) File a petition which sets forth the reasons for the party's excusable neglect.~~

(3) Any party may request a hearing on a petition filed as provided in ~~Reg.8.619~~ subdivision (C)(2)(b) of this section.

(D) Requirements for Opposing Party or Parties:

Each party of record may file a response to a request for oral argument within ten (10) business days of service. ~~The number of copies filed shall comply with the provisions of Reg.8.619(B).~~

(E) Service Upon Parties:

Any party filing a request for oral argument or a response must serve all parties of record with a copy of the document as set forth in ~~Reg.8.607808~~.

(F) Appearance on Agenda:

~~A request for oral argument filed at any time on or after the twentieth~~ within twenty (20) business day preceding calendar days before the next ~~regularly~~ scheduled Commission meeting ~~will be removed from the agenda for that meeting. The request will~~ shall be placed on the agenda for the following ~~regularly~~ scheduled Commission meeting.

(G) Exception to Deadlines:

Any of the deadlines ~~contained in Reg.8.619~~ subdivision (A)(1); and subsections (D)(2) (C) and (F) of this section may be modified by order of the ~~Administrative Hearing Officer~~ Administrative Law Judge for good cause.

(H) Time Allowed for Presenting Oral Argument:

(1) The party or parties requesting an oral argument and the party of record supporting the request shall be allowed no more than fifteen (15) minutes each for argument; unless the Commission extends the time.

(2) ~~The party(ies)~~ party or parties may retain a portion of the ~~fifteen (15) minute~~ allocated time period for rebuttal by notifying the Chairperson at the beginning of the oral argument.

~~(2)~~(3) The opposing ~~party(ies)~~ party or parties of record will be permitted no more than a combined total of fifteen (15) minutes to respond, unless the Commission extends the time.

(I) Prohibition on New Evidence:

The Commission shall not consider any evidence concerning a matter on review that is not included in the record except as provided in Reg.8.620821.

(J) Questioning by Commissioners:

(1) Following an oral argument, the Chairperson shall allow each Commissioner to question the attorneys for each party of record or the person who presented the oral argument.

(2) The Commissioners shall not question any other persons, except for the ~~Administrative Hearing Officer~~ Administrative Law Judge.

**Reg.8.620821 Additional Evidence**

(A) A party of record may request an opportunity to supplement the record with additional evidence.

~~(B)(1) The requesting party must shall~~ satisfactorily demonstrate to a majority of a quorum 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. ~~Upon majority vote of a quorum, the Commission may remand the matter to the Administrative Hearing Officer to take further testimony and evidence in the matter or direct the Director to reconsider the matter based on the additional evidence before the matter is considered by the Commission.~~

~~(B)(2)~~ The requesting party shall file an affidavit with the Commission 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.

(3) A copy of the affidavit and proffered new evidence shall be furnished to all parties of record at least ten (10) business days ~~prior to~~ before the date the Commission meets to consider the request.

~~(C) Upon majority vote of a quorum and before the matter is considered by the Commission, the Commission may remand the matter to the Administrative Law Judge to take further testimony and evidence in the matter or direct the Director to reconsider the matter based on the additional evidence.~~

~~(D) In his or her discretion, the Administrative Law Judge may set deadlines or other requirements for the submittal of additional evidence to be considered by the Commission.~~

**Reg.8.621822 Prohibition on Ex Parte Communication**

(A) ~~No~~ A party of record, or representative thereof, to a pending adjudicatory proceeding shall not attempt by any means to communicate ex parte with any member of the Commission

or the ~~Administrative Hearing Officer~~ Administrative Law Judge regarding ~~that~~ the pending proceeding.

(B) ~~Any flagrant~~ A violation of this section may constitute grounds for denying the relief sought by the offending party.

(C) Any member of the Commission or the ~~Administrative Hearing Officer~~ Administrative Law Judge who received an ex parte communication in violation of this section 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, which shall be filed in the record of the proceeding.

### **Reg.8.823      Conflicts of Interest**

A Commissioner shall not participate, vote, influence, or attempt to influence an official decision of the Commission if the Commissioner has a pecuniary interest in the matter under consideration.

### **Reg.8.622824      Actions for Declaratory Orders**

(A) ~~Any~~ A 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~~ regulation, statute, permit, or order enforced by the Commission or the Department.

(B) The petition shall be processed in the same manner as a Request for Hearing.

~~(B)~~(C) A Declaratory Order ~~shall constitute~~ is a final Commission ~~action~~ decision for the purposes of ~~appeal~~ appellate review.



## CHAPTER SEVEN 9: APPEALS

### Reg.8.701901 Finality of Decisions

~~No~~ An order of the Director ~~on~~ concerning any enforcement or emergency matter, any permitting decision, grant or loan decision, tax credit decision, petroleum storage tank trust fund decision, or any other appealable decision shall is not a ~~be construed to constitute~~ final agency action on the matter unless and until all procedures and remedies for hearing and review have been completed or the time ~~periods~~ limits for initiating those procedures have expired.

### Reg.8.702902 Filing of Appeal

(A) Within thirty (30) calendar days after service of a copy of the Commission's final order, regulation, or other final decision, an appellant may file a notice of appeal with the circuit court of the county ~~in which~~ where the business, industry, municipality, or ~~thing~~ matter involved is situated.

(B) A copy of the notice of appeal shall be served upon the Commission Secretary by personal delivery or by mail with a return receipt requested within ten (10) calendar days of filing the notice of appeal with the circuit court.

(C) The notice of appeal:

- (1) Shall state the action appealed from;
- (2) Shall specify the grounds of the appeal, including the points of both law and fact ~~which~~ that are asserted or questioned by the party appealing; and
- (3) May contain any other allegations or denials of fact pertinent to the appeal.

### Reg.8.703903 Filing of Commission Response and Record

(A) Within thirty (30) calendar days after service of the notice of appeal, the Commission shall file with the clerk of the circuit court a response to the notice of appeal and the record of the contested case, regulation, or other final decision.

(B) The Commission's response shall consist of ~~any~~ statements, admissions, or denials on the questions of law or fact raised in the notice of appeal, as that the Commission ~~may deem~~ finds pertinent to the appeal.

(C) Any allegations or new matter set out in the response shall be deemed denied by the party appealing unless expressly admitted, and no further pleading shall be necessary.

(D) The record shall consist of:

- (1) A copy of any application or petition, all pleadings, or other material ~~paper~~ on which the appeal is based;
- (2) A statement of any findings of fact, rulings, or conclusions of law made by the Commission;

- (3) A copy of the final order, regulation, or other final decision ~~on which the appeal is based~~ that forms the basis of the appeal; and
- (4) All testimony, exhibits, and other evidence submitted to the Commission; ~~and~~
- (E) The parties may stipulate that only a specified portion of the record is to be filed with the circuit court.
- (F) The Commission shall serve a copy of the response by mailing or serving a copy of the response on the party appealing or his or her attorney.
- (G)(1) If a party files a motion to transfer an appeal from circuit court to the Court of Appeals pursuant to Ark. Code Ann. § 8-4-223(d), the Commission shall:
- (a) File a response with the circuit court to the notice of appeal; and
  - (b) File with the clerk of the circuit court the administrative record of the contested case, regulation, or other final decision.
- (2) The party who files a motion to transfer an appeal from circuit court to the Court of Appeals pursuant to Ark. Code Ann. § 8-4-223(d) shall order the transcript from the circuit court clerk to be lodged with the Court of Appeals. The record lodged with the Court of Appeals shall include the order of transfer from the circuit court judge.

## CHAPTER EIGHT 10: RULEMAKING

### Reg.8.~~801~~1001 Public Notice

~~Prior to~~ Before the adoption, amendment, or repeal of any regulation, the Commission shall give notice of at least thirty (30) calendar ~~days~~ days' ~~notice~~ of the Commission's intended action on the proposed rulemaking decision.

### Reg.8.~~802~~1002 Publication of Notice

The notice for rulemaking shall be mailed or emailed to all persons requesting advance notice of rulemaking proceedings. In addition, notice shall be published ~~in appropriate industry, trade, professional, or public interest publications chosen by the Commission~~ and at least ~~twice~~ two (2) times in a newspaper of statewide circulation and posted on the Commission's website.

### Reg.8.~~803~~1003 Contents of Notice

The notice shall include:

- ~~(A)~~(1) Reference to the legal authority under which the regulation is proposed;
- ~~(B)~~(2) ~~Either the terms or~~ A statement of the substance of the proposed regulation or proposed changes to the regulation; and
- (3) ~~a~~ A description of the subjects and issues involved;
- ~~(C)~~(4) The time, place, and manner for submission of written and oral comments;
- (5) The date, time, and place of the public hearing; and
- ~~(D)~~(6) A statement that copies of the proposed regulation are available at the Department, on the Department's website, and in local public library depositories.

### Reg.8.~~804~~1004 Public Hearing Required

~~No~~ The Commission shall hold a public hearing before a regulation shall be is adopted, amended, or repealed by the Commission. ~~until after a~~ The public hearing is shall be held at least ~~20~~ twenty (20) calendar days after the ~~date~~ public notice is first published in a newspaper of statewide circulation ~~of public notice,~~ except for an emergency rulemaking ~~as set forth in~~ under Reg.8.~~807~~1007.

### Reg.8.~~805~~1005 Public Hearing Proceedings

- (A) The Presiding Officer at a public hearing shall be any Commissioner, the Administrative Hearing Officer, or the Commission's designee.
- (B) At the hearing:
  - (1) Any interested person may submit written or oral comments, ~~written or oral,~~ on the proposed ~~Regulation~~ regulation;
  - (2) Oral comments shall be stenographically or electronically recorded; and

(3) At any time during a public hearing, the Presiding Officer may limit the time for the public hearing; continue the hearing until all oral comments have been heard; or ~~may~~ determine not to receive additional oral comments if he or she determines that additional comments would not serve a useful purpose, ~~or would~~ be repetitious, or be unduly time consuming.

#### **Reg.8.8061006 Written Comments**

(A) The Commission prefers that all comments be in writing and filed with the Department by mail, ~~facsimile,~~ or ~~electronic mail~~ email.

(B) The period for receiving written comments shall begin on the day ~~of publication of public notice~~ public notice is first published in a newspaper of statewide circulation and shall extend ten (10) business days ~~beyond~~ after the date of the public hearing.

(C) Written public comments shall be transmitted to the Department by mail or delivery to the address specified in the public notice or by email to the email address specified in the public notice. To be accepted, the written public comment must be received by the Department not later than 11:59 p.m. on the last day of the public comment period whether transmitted by mail, delivery, or email. Written public comments will be accepted if received no later than 4:30 p.m. on the last day of the public comment period. Written public comments may be submitted by electronic mail if received no later than 4:30 p.m. on the last day of the public comment period. Electronic mail comments must be sent to the electronic mail address specified in the public notice.

(D) The Presiding Officer may extend the period for written comments at the public hearing for ~~up to~~ no more than an additional twenty (20) calendar days ~~beyond~~ after the close of the public comment period. If the extended date falls on a weekend or holiday, the public comment period will end on the next ~~working~~ business day.

#### **Reg.8.8071007 Emergency Rulemaking**

(A) If the Commission determines that imminent peril to the public health, safety, or welfare requires ~~emergency rulemaking~~ immediate changes to a regulation or promulgation of a new regulation, the Commission may adopt emergency rulemaking.

(B) The Commission may waive or reduce the notice requirements of under Reg.8.8011001 through Reg.8.8061006 for emergency rulemaking.

~~(B)~~(C) The Commission must document the facts and reasons justifying emergency rulemaking in a written order.

~~(C)~~(D) To establish a prima facie case of imminent peril to the public health, safety, or welfare to support emergency rulemaking, the Commission must find ~~The~~ the imminent loss of state or federal funding, certification, or authorization for any program administered by the Department shall establish a prima facie case of imminent peril supporting emergency rulemaking. In addition, the Department may present and the Commission may consider any other evidence proving that establishes the existence of imminent peril to the public health, safety, or welfare.

~~(D)~~(E)(1) ~~No regulation~~ Regulations adopted pursuant to this ~~Section~~ section shall not be effective for ~~no~~ more than one hundred and eighty (180) calendar days; unless a longer period is allowed by law.

(2) If the emergency rulemaking is related to the transfer of a state or federal program or the implementation of a new state or federal program, the Commission may determine a specific effective date for the emergency rulemaking that is consistent with the requirements of state or federal law.

### **Reg.8.8081008 Contents of Rulemaking Docket Required Filings for Rulemaking**

(A) A Except for emergency rulemaking, a rulemaking docket shall include the following documents that must be filed before the Commission consideration of a Petition to Initiate Rulemaking:

(1) A petition containing a caption as set out in Reg.8.605806, and a detailed explanation of the proposed regulation;

(2) An attached ~~marked-up~~ mark-up copy of the entire regulation or the specific pages of the regulation that are affected, ~~showing all~~ that shows all proposed changes that are proposed;

(3) Any documentation required by Legislative Council or the Bureau of Legislative Research under Ark. Const., Art. 5, § 42, Ark. Code Ann. § 10-3-309, and other applicable law to include without limitation:

(a) A completed legislative questionnaire; and

~~(4)~~(b) A completed Financial Impact Statement;

(4) The Governor's approval if required under any applicable Executive Order;

~~(5)~~ The Arkansas Economic Development Commission ("AEDC") approval letter regarding Act 143 of 2007 (formerly Governor's Executive Order 05-04) or memorandum explaining why the Act is not applicable;

~~(6)~~(5) The economic impact/environmental benefit analysis report required by Reg.8.8121012, if applicable; and

~~(7)~~(6) A proposed Minute Order initiating the rulemaking; and

(7) An executive summary.

(B) Upon satisfaction of After the public notice and hearing requirements contained in under Reg.8.8021002 and Reg.8.8051005 are satisfied and before the Commission consideration of a Motion to Adopt amendments to a regulation or promulgation of a new regulation, the following shall be ~~submitted to~~ filed with the Commission for final promulgation of the regulation; and shall become part of the rulemaking docket;

(1) The Statement of Basis and Purpose and Responsive Summary as described in Reg.8.8151015;

(2) The ~~Final~~ final revised regulation;

(3) Evidence of legislative approval consistent with Ark. Code Ann. § 10-3-309;

~~(3)~~(4) The Regulation Tracking Sheet; and

~~(4)~~(5) The proposed Minute Order ~~adopting~~ that adopts the proposed revisions to the regulation.

(C) All documents ~~contained~~ in the rulemaking docket shall be prepared in accordance with the ~~Commission~~ Regulation Formatting and Drafting Guidelines promulgated by the Department and the Commission.

(D) The documents filed under this section shall be published on the Department's website.

### **Reg.8.8091009 Third-Party Petition for Rulemaking**

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

### **Reg.8.8101010 Commission Deadline ~~On~~ for Third-Party Petitions**

(A) Within sixty (60) calendar days after ~~the petition~~ a third-party petition is filed with the Commission, the Commission shall either initiate the procedures for adopting the proposed regulation, or deny the petition.

(B) A decision to initiate rulemaking shall not constitute an endorsement of the proposed regulation.

(C) If the Commission denies the petition, the reasons for the denial shall be stated in a written order.

(D) The written order shall constitute a final Commission decision for the purposes of appeal to circuit court.

### **Reg.8.8111011 Procedures for Third-Party Rulemaking**

(A) If the Commission initiates rulemaking in response to a third-party petition, the Commission shall:

(1) ~~give~~ Publish notice of the proposed regulation as set forth in Reg.8.8041001 through Reg.8.8031003; and

(2) ~~shall hold~~ Hold a public hearing as required by Reg.8.8041004 ~~through Reg.8.806 and Reg.8.1005.~~

(B) The Commission shall direct the proponent of a third-party rulemaking to:

(1) ~~compile~~ Compile or produce portions of the record required by Reg.8.8141014; and

(2) ~~pay~~ Pay the costs associated with publication of the ~~legal~~ notice, rental fees for hearing locations, and copying of documents required by the Commission Regulation Formatting and Drafting Guidelines.

(C) The Commission shall direct the Department to receive public comments on the third-party rulemaking pursuant to Reg.8.1006.

~~(C)~~(D) The proponent of a third-party rulemaking shall prepare a proposed Statement of Basis and Purpose and Responsive Summary required by Reg.8.8151015 for the Commission's review ~~prior to~~ before its final decision.

~~(D)~~(E) ~~Prior to~~ Before the close of the public comment period, the Department shall file with the Commission a written comment, ~~for the record~~, on any proposed third-party proposal to adopt, amend, or repeal all or part of a regulation.

~~(E)~~(F) The Department shall prepare and file its own proposed Statement of Basis and Purpose and Responsive Summary as described in Reg.8.8151015 after the close of the public comment period.

(G) If the Commission has not adopted a third-party rulemaking within twelve (12) months after the expiration of the public comment period, the Commission shall:

(1) Give notice to the party who initiated the third-party rulemaking that it has until the next regularly scheduled Commission meeting to explain the status of the rulemaking, explain the delay, and request additional time; and

(2) Determine whether any additional time should be granted for the party to complete the proposed third-party rulemaking and request adoption; and

(3) Determine whether the third-party rulemaking should be dismissed for inactivity.

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

### **Reg.8.8121012 Economic Impact and Environmental Benefit Analysis Requirements**

(A) When Economic Impact and Environmental Benefit Analysis is Required: An economic impact and environmental benefit analysis ~~shall~~ is required to be prepared by the proponent of any proposed rulemaking before the Commission unless the ~~rule~~ regulation qualifies as exempt under this ~~subsection~~ section. The economic impact and environmental benefit analysis shall be prepared by the proponent of the rulemaking based upon information that is reasonably available. If a rulemaking proposes to alter or amend an existing Commission ~~rule~~ regulation, the analysis shall be restricted to the economic impact and environmental benefit of the proposed changes. The economic impact and environmental benefit analysis must be included in the petition to initiate rulemaking before the Commission for all regulatory changes, unless the proposed ~~rule~~ regulation is exempt under this ~~subsection~~ section.

(B) Except as required by any applicable Executive Order or law, a rulemaking ~~shall be~~ is exempt from the economic impact and environmental benefit analysis requirements if the proposed regulation:

(1) ~~the proposed rule incorporates~~ Incorporates or adopts the language of a federal statute or regulation without substantive change;

- (2) ~~the proposed rule incorporates~~ Incorporates or adopts the language of an Arkansas state statute or regulation without substantive change;
- (3) ~~the proposed rule is~~ Is limited to matters arising under Regulation No. 8 ~~regarding~~ concerning the rules of practice or procedure before the Commission;
- (4) ~~the proposed rule makes~~ Makes only *de minimis* changes to existing ~~rules or~~ regulations, such as the correction of typographical or grammatical errors, ~~or the~~ renumbering ~~of chapters, sections, or paragraphs,~~ or sections formatting changes, or stylistic changes; or
- (5) ~~the proposed rule is~~ Is an emergency rule regulation that is temporary in duration.

~~(B)(C)~~ If the proponent of a proposed regulation believes that its proposal is exempt under ~~Reg.8.812(A)(1)-(5) above~~ subsection (B) of this section, the proponent shall state in the petition to initiate rulemaking which exemptions apply and explain why each is applicable.

~~(C)(D)~~ If the proponent of a proposed regulation believes that a portion of its proposed ~~rule~~ regulation is exempt under ~~Reg.8.812(A)(1)-(5) above~~ subsection (B) of this section, but that the remainder is not exempt, the proponent shall:

- (1) ~~prepare~~ Prepare an economic impact and environmental benefit analysis for all portions of the proposed regulation believed to be non-exempt; and
- (2) ~~identify~~ Identify the portions of the proposed ~~rule~~ regulation believed to be exempt, state which exemptions apply, and explain why each is applicable.

~~(D)(E)~~ An economic impact and environmental benefit analysis shall be presumed to be adequate for purposes of initiating a rulemaking before the Commission if the analysis is prepared by completing ~~the~~ any required Economic Impact/Environmental Benefit Analysis form ~~that is attached as Appendix of Regulation No. 8.~~

~~(E)(F)~~ ~~Nothing in Reg.8.812~~ This section shall not be construed as a limitation upon the Commission's discretion to require an economic impact and environmental benefit analysis of any proposed rulemaking decision.

**~~Reg.8.813~~ — ~~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 and Responsive Summary for the final rulemaking decision a discussion demonstrating reasoned evaluation of the relative impacts and benefits of the regulation. If a change is made to a proposed rule after initiation of the rulemaking proceeding and the change is a logical outgrowth of the regulation proposed in the prior notice within the meaning of Reg.8.816, then no new Economic Impact and Environmental Benefit Analysis form shall be required.~~

**Reg.8.8141013 Rulemaking Record**

(A) The Commission shall compile a rulemaking record consisting of, ~~as appropriate~~ the following, as applicable:

- ~~(A)(1)~~ (1) Copies of all public notices required by ~~Reg.8.8011001~~ Reg.8.8031003;



~~(B)(2)~~ ~~The proposed regulation as published for public notice~~ The required filings for rulemaking under Reg.8.1008;

~~(C)(3)~~ ~~In the case of~~ For third-party or emergency rulemaking, all documents required by Reg.8.8071008 through Reg.8.8111011;

(4) For emergency rulemaking, compliance with Reg.8.1007 is required;

~~(D)(5)~~ An electronic or stenographic record of all oral comments received during the public hearing and any supporting materials;

~~(E)(6)~~ Copies of all written comments and any supporting materials received during the public comment period or public hearing;

~~(F)(7)~~ The economic impact/environmental analysis required by Reg.8.8121012, if applicable;

~~(G)(8)~~ The Statement of Basis and Purpose and Responsive Summary described in Reg.8.8151014;

~~(H)(9)~~ The final regulation adopted by the Commission; and

~~(I)(10)~~ In the case of the denial of a rulemaking petition pursuant to for failure to comply with any provision of Reg.8.8081008 through Reg.8.8111011, the petition for rulemaking and the Commission's written order setting out the reasons for denial.

(B) The rulemaking record shall be published on the Department's website.

#### **Reg.8.8151014 Statement of Basis and Purpose and Responsive Summary**

(A) Before adopting a final regulation, the Commission shall cause to be prepared a concise general statement of the basis and purpose and responsive summary for the regulation.

~~(1)(B)~~ At a minimum, the Statement of Basis and Purpose shall include:

~~(i)(1)~~ An explanation of the necessity for the regulation; and

~~(ii)(2)~~ 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 requirement shall be satisfied by reference to the Code of Federal Regulations.

~~(2)(C)~~ The Responsive Summary shall include for each public comment received:

(1) The name of the person submitting the comment, if known;

(2) A summary of the comment; and

(3) The Department's response to the public comment, including a description of any changes made to the mark-up regulation in response to the public comment group public comments into similar categories and explain why the Commission accepted or rejected the rationale of each category.

### **Reg.8.8161015 Changes in a Regulation as a Result of Public Comment**

(A) ~~If, as a result of~~ in response to comments, the Commission changes a proposed regulation to the extent that the ~~rule~~ regulation would have an effect not previously expressed in the notice required in Reg.8.8011001 through Reg.8.8031003, the Commission shall provide another adequate public notice and public comment period that complies with the public notice and public comment requirements under this chapter.

(B) A second public notice and public comment period shall not be required if the final regulation is a logical outgrowth of the regulation proposed in the prior notice.

### **Reg.8.8171016 Incorporation by Reference**

(A) The Commission may, ~~through incorporation by reference,~~ adopt through incorporation by reference a state or federal law or state or federal regulation that contains all or portions of the provisions of other laws (~~i.e., statutes or regulations~~).

(B) Unless a contrary intent is expressly stated, any adoption by specific or descriptive reference to another law or regulation shall be construed as though the referenced law or regulation were set forth in the Commission regulation line for line, and word for word.

(C) If the Commission adopts through incorporation by reference a state or federal law or state or federal regulation, the law or regulation adopted by reference shall be the law or regulation in effect at the time of the effective date of the Commission regulation. The effective date of any regulation that the Commission adopts by reference shall be the effective date of the Commission regulation, not that of the referenced regulation.

(D) Unless the Commission expressly states a contrary intent, the Commission adopts a referenced law as it exists ~~at the date~~ on the effective date of Commission promulgation of the regulation.

(E) Any ~~subsequent changes in the referenced law do not~~ change made to the law or regulation after the effective date of the Commission regulation shall not affect the provisions of ~~those~~ the regulations adopted by the Commission.

### **Reg.8.8181017 Amendment of Regulations**

(A) ~~When amending portions of~~ If an existing regulation is proposed for amendment, the Commission's deliberations shall be restricted to those proposed amendments described in the public notice.

(B) Rulemaking proceedings concerning legally required periodic update of regulations shall be restricted to Department staff proposals.

(C) ~~Nothing in this~~ This section shall not be construed as a limit upon the right of third parties to petition for the amendment of a regulation in separate rulemaking proceedings.

**Reg.8.1018      Effective Date of All Regulations**

(A) All regulations adopted by the Commission shall be effective ten (10) calendar days after filing with the Secretary of State, State Library, and the Bureau of Legislative Research unless a later effective date is stated in the regulation.

(B) If a later date is stated, the regulation is effective on that date.

**Reg.8.8191019      Appeal of Rulemaking Decision**

Any person who reasonably considers himself or herself injured in his or her person, business, or property by a rulemaking decision may appeal the decision to the appropriate circuit court as provided in Ark. Code Ann. § 8-4-222; within thirty (30) calendar 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.~~

**Reg.8.8201020      Intent and Construction**

(A) The rulemaking procedures set out in this chapter are ~~merely~~ the minimum procedures ~~that must to~~ be followed before the Commission adopts a proposed regulation.

(B) ~~Nothing in this Chapter~~ This chapter shall not be construed as restricting ~~the authority~~ of the Commission in its rulemaking capacity to direct the proponents or opponents of a proposed ~~rule~~ regulation to submit additional factual data or legal briefs as the Commission ~~deems~~ finds necessary; or to make individual proponents or opponents of a proposed regulation available for questioning by the Commission.

(C) The Commission may enter any order ~~as may be~~ necessary to efficiently conduct and conclude any rulemaking proceeding.

## CHAPTER NINE 11: OTHER PROVISIONS

### **Reg.8.9041101 Additional Public Participation Requirements**

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

### **Reg.8.9021102 Committees of the Commission**

- (A) The Chairperson may appoint one (1) 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.
- (C) Tape recordings of committee meetings shall be maintained by the Commission Secretary for a period of not less than one (1) year or as required by specific program record retention requirements.

### **Reg.8.9031103 Special Meetings**

- (A) Special Commission meetings may be called at the discretion of the Chairperson.
- (B) ~~Alternatively, if~~ If two (2) or more Commissioners submit written requests for a special meeting to the Chairperson, the Chairperson shall call a special Commission meeting.
- ~~(B)~~(C) The Chairperson shall call a special Commission meeting by delivering ~~written~~ email notice to each Commissioner.

### **Reg.8.9041104 Agenda**

The Commission Secretary shall prepare an agenda listing the topics for any Commission meeting, ~~and shall~~ deliver it to each Commissioner and the Director, and publish the agenda on the Commission's website.

### **Reg.8.9051105 Request to Appear Before on the Commission Agenda**

- (A) Any person may ~~seek~~ request to appear before the Commission by submitting a written request to the Commission Secretary.
- (B) 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.
- (C) Any materials for distribution to the Commission should be included in the written request.
- (D) The request and all supporting material shall not exceed a total of three (3) double-spaced typewritten pages or four (4) handwritten pages.
- ~~(C)~~(E) The Commission Secretary shall provide the Chairperson with a copy of the written request.

~~(F) At the Chairperson's~~ The Chairperson has discretion to add; the request ~~may be added~~ to the agenda as a specific business matter.

~~(G) In the event~~ If the request is not added to the agenda as a specific business matter, the requesting party may address the Commission during the "Public Comments" portion of the agenda.

#### **Reg.8.9061106 Public Comments**

(A) Any person may address the Commission during the time allocated on the agenda for "Public Comments."

~~(B) Any person completing a~~ who submits a comment card available at the a meeting shall be allowed to address the Commission before any person who has not submitted a comment not completing a card.

~~(B)(C)~~ The Chairperson 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 speaking~~ time.

~~(C)(D)~~ Any person who is a party to or a witness in a pending adjudicatory proceeding, or ~~who~~ is an attorney or other representative for a party or person in a matter pending before the Commission, shall not be allowed to address the Commission on any ~~such~~ pending proceeding or matter during the "Public Comments" portion of the Commission meeting.

#### **Reg.8.9071107 Inapplicability**

~~The provisions of Chapter 1 and Chapter 2~~ Chapters 1, 2, 3, 4, 5, and 6 of this Regulation do not apply to ~~the Commission's regulation governing~~ Regulation 20: The Arkansas Surface Coal Mining and Reclamation Code that concerns surface coal mining and reclamation pursuant to under the Arkansas Surface Coal Mining and Reclamation Act of 1979, as amended, ~~Arkansas Code Annotated Ark. Code Ann. §15-58-101 et seq., nor to Commission Regulation No. 20 (Arkansas Surface Coal Mining and Reclamation Code), as amended.~~

## **CHAPTER 12: REPEALER, SEVERABILITY, AND EFFECTIVE DATE**

### **Reg.8.9081201 Repealer**

All regulations, ~~or parts thereof~~ of regulations, and minute orders, adopted pursuant to ~~under~~ the laws administered by the Commission or the Department, ~~which~~ that are in conflict with the provisions of this ~~Regulation~~ regulation are hereby repealed to the extent of ~~such~~ the conflict.

### **Reg.8.9091202 Severability**

The provisions of this regulation are severable. If any provision part of this Regulation regulation is declared invalid or unenforceable by a court, the remainder of the regulation will continue to be valid and enforceable. ~~or its application to any person or circumstance is held invalid, the invalidity of that provision shall not affect other provisions or applications which can be given effect without the invalid provision or application, and therefore, the provisions of this Regulation are declared to be separable and severable.~~

### **Reg.8.9101203 Effective Date**

This ~~Regulation~~ regulation is effective ten (10) calendar days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.

~~ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION~~



~~REGULATION NO. 8~~

~~APPENDIX A~~

~~Economic Impact/Environmental Benefit Analysis~~

# ~~ATTACHMENT 1~~

## ~~ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT ANALYSIS~~

*Answer to best of the proponent's ability, as required by APC&EC Regulation 8.812*

### **~~STEP 1: DETERMINATION OF ANALYSIS REQUIREMENT (to be included in petition to initiate rulemaking)~~**

~~The Arkansas Pollution Control and Ecology Commission's (Commission) Regulation No. 8 requires the Commission to duly consider the economic impact and the environmental benefit of any regulation prior to promulgation. By Act 143 of 2007, the Governor has directed that impacts to small businesses be analyzed prior to adoption of regulations. Furthermore, the Arkansas Legislative Council requires the submission of a Financial Impact Statement and Questionnaire for Filing Proposed Regulations with the Arkansas Legislative Council and Joint Interim Committee with proposed regulation changes. The following procedures are outlined to provide clarity in the requirements of these various impact statements.~~

- ~~1. Prepare and submit the Financial Impact Statement and Questionnaire for Filing Proposed Regulations with the Arkansas Legislative Council and Joint Interim Committee required by the Arkansas Legislative Council for all proposed rulemakings.~~
- ~~2. The following analysis is necessary for the Commission to consider the economic impact and environmental benefit of any proposed regulation. This Economic Impact/Environmental Benefit Analysis ("Analysis") must be prepared by the proponent of the rulemaking initiated before the Commission based upon information reasonably available. If a rulemaking proposes to alter or amend an existing Commission regulation, the Analysis shall be restricted to the economic impact and environmental benefits of the proposed changes. This Analysis must be included in the Petition to Initiate Rulemaking before the Commission for all regulatory changes, unless the proposed regulation is exempt for one or more of the following reasons:~~
  - ~~➤ The proposed regulation incorporates or adopts the language of a federal statute or regulation without substantive change;\*~~
  - ~~➤ The proposed regulation incorporates or adopts the language of an Arkansas state statute or regulation without substantive change;~~
  - ~~➤ The proposed regulation is limited to matters arising under Regulation No. 8 regarding the rules of practice or procedure before the Commission;~~
  - ~~➤ The proposed regulation makes only *de minimis* changes to existing rules or regulations, such as the correction of typographical errors or the renumbering of paragraphs or sections; or~~
  - ~~➤ The proposed regulation is an emergency regulation that is temporary in duration.~~



~~If the proposed rulemaking does not require the following Analysis due to one or more of the exemptions listed above, state in the Petition to Initiate Rulemaking which exemptions apply and explain specifically why each is applicable.~~

~~*\*If a proposed regulation incorporates or adopts the language of a state or federal statute or regulation but does include one or more substantive change, then the Analysis shall address only the substantive changes.*~~

<b>STEP 2: THE ANALYSIS</b> <b>(to be included in petition to initiate rulemaking, if required)</b>
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~~**Directions for Analysis Completion:**~~

- ~~1. Answer all questions, unless an exemption applies, using information reasonably available.~~
- ~~2. List source(s) for any data used in an answer. If a response cannot be provided to any question because information is not reasonably available, describe the sources consulted or steps taken in an effort to obtain the information in question.~~
- ~~3. Describe any assumptions used.~~
- ~~4. Complete the Economic Impact Statement, if applicable, as required by Act 143 of 2007.~~
- ~~5. Highlight on the attached map the boundary of the geographical area impacted by the proposed regulation, unless the proposed regulation applies to the entire state.~~

~~**This Analysis shall be available for public review along with the proposed regulation in the public comment period. The Commission shall compile a response to comments demonstrating a reasoned evaluation of the relative economic impact and environmental benefits.**~~

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

~~Regulation Number & Title:~~

~~Petitioner:~~

~~Contact/Phone/Email:~~

~~Analysis Prepared by:~~

~~Date Analysis Prepared:~~

~~2A. ECONOMIC IMPACT~~

~~1. Who will be affected economically by this proposed regulation?~~

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

~~Sources and Assumptions:~~

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

~~Sources and Assumptions:~~

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

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

~~Sources and Assumptions:~~

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

Sources and Assumptions:

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

Sources and Assumptions:

## ~~2B. ENVIRONMENTAL BENEFIT~~

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

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

Sources and Assumptions:

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

Sources and Assumptions:

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

Sources and assumptions: