

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 8:)
ADMINISTRATIVE PROCEDURES)

DOCKET NO. 18-__-R

**PETITION TO INITIATE RULEMAKING TO AMEND
REGULATION NO. 8: ADMINISTRATIVE PROCEDURES**

Comes now the Arkansas Department of Environmental Quality (ADEQ), by and through Michael McAlister, Managing Attorney, for its Petition to Initiate Rulemaking to Amend Arkansas Pollution Control & Ecology Commission (APC&EC) Regulation No. 8: Administrative Procedures, states:

1. ADEQ initiates this rulemaking pursuant to Ark. Code Ann. § 8-1-203(b) to adopt changes to state law, make the regulation consistent with the Arkansas Rules of Civil Procedure; modernize the regulation as it relates to notice and service by electronic mail pursuant to Act 195 of 2011 and Act 1057 of 2017; modernize the regulation concerning public communication of information on ADEQ’s website; make other changes consistent with the administrative due process; and make minor revisions to include correcting typographical, grammatical, formatting, and stylistic errors throughout the regulation.

2. In addition to the changes described above made throughout the regulation, a summary of proposed amendments by chapter of the regulation include:

A. **Chapter 1: General Provisions** – Addition of the definitions for “general permit” as defined under Act 731 of 2011, “history of noncompliance,” “individual permit,” “notice of intent,” “permit application,” “permit by rule,” and “written” or “writing;” and revisions of the definition of “permit.” “Administrative Hearing Officer” was replaced with “Administrative Law Judge” in compliance with Act 838 of 2015 with the terminology change made throughout the regulation;

B. **New Chapter 2: Noncompliance Determinations** – This chapter is based on current Reg. 8.204 and was separated into a new chapter because it applies to both

individual permits in Chapter 3 and general permits in Chapter 4. Changes were made to remove the requirement to submit a social security number in disclosure statements in compliance with Act 222 of 2011;

C. **Chapter 3: Individual Permits** – The current “Chapter 2: Permits” was divided into two chapters, with Chapter 3 setting forth the administrative procedures for individual permits and the new Chapter 4 concerning general permits. Changes concerning permit transfer were made pursuant to Act 402 of 2013;

D. **New Chapter 4: General Permits** – This new chapter clarifies the administrative procedures for general permits and incorporates Act 731 of 2011 concerning the issuance of general permits;

E. **Chapter 5: Grant, Loan, and Tax Credit Decisions** – The current “Chapter 3: Grant, Loan, and Tax Credit Decisions” has been renumbered as Chapter 5;

F. **Chapter 6: Enforcement Actions** – The current “Chapter 4: Enforcement Actions” has been renumbered as Chapter 6. Other changes include the change in the time to respond to a Notice of Violation from twenty (20) days to thirty (30) days and the addition of licenses and certifications in the proposed amended Reg. 8.602 in the proposed amended Reg. 8.602;

G. **Chapter 7: Emergency Actions** – The current “Chapter 5: Emergency Actions” has been renumbered as Chapter 7;

H. **Chapter 8: Practice and Procedure** – The current “Chapter 6: Practice and Procedure” has been renumbered as Chapter 8. Other changes include adding the ability of the Commission and Administrative Law Judge to issue a warning order under Rule 4 of the Arkansas Rules of Civil Procedure and adding licenses and certifications under Reg. 8.813(A);

I. **Chapter 9: Appeals** – The current “Chapter 7: Appeals” has been re-numbered as Chapter 9;

J. **Chapter 10: Rulemaking** – The current “Chapter 8: Rulemaking” has been renumbered as Chapter 10. Other changes include changes to the renumbered Reg. 8.1002 concerning emailing notices pursuant to Act 195 of 2011 and changes to Reg. 8.1008 concerning Ark. Const., Art. 5, § 42;

K. **Chapter 11: Other Provisions** – The current “Chapter 9: Other Provisions” has been renumbered as Chapter 11;

L. *New Chapter 12: Repealer, Severability, and Effective Date* – This new chapter was created for consistency with other regulations and is based on current sections Reg. 8.908 through Reg. 8.910; and

M. *Striking Attachment 1: Economic Impact/Environmental Benefit Analysis* because of the repeal of Ark. Code Ann. § 25-15-301 et seq. concerning the economic impact statement for agency rules that impact small businesses.

3. Exhibits attached to this petition and incorporated by reference include:

A. Exhibit A – A markup version of the regulation showing the proposed changes;

B. Exhibit B – Governor’s Approval;

C. Exhibit C – Bureau of Legislative Research (BLR) Questionnaire;

D. Exhibit D – BLR Financial Impact Statement; and

E. Exhibit E – Proposed Minute Order.

4. An Economic Impact and Environmental Benefit Analysis is not required for this rulemaking because “the proposed rule is limited to matters arising under Regulation No. 8 regarding the rules of practice or procedure before the Commission” and exempt under Reg. 8.812(A)(3).

WHEREFORE, ADEQ requests that the APC&EC initiate the rulemaking process, adopt the proposed Minute Order to initiate the rulemaking process, and promulgate the proposed amendments to Regulation No. 8 after the completion of the rulemaking process.

Respectfully Submitted,



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