

Exhibit C:

Legislative Questionnaire

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL

DEPARTMENT/AGENCY Arkansas Department of Environmental Quality (ADEQ) by and through the Arkansas Pollution Control and Ecology Commission (APC&EC)

DIVISION Office of Law and Policy (OLP)

DIVISION DIRECTOR Julie Linck, Senior Associate Director, Office of Law and Policy

CONTACT PERSON Michael McAlister, Managing Attorney

ADDRESS 5301 Northshore Drive, North Little Rock, Arkansas

PHONE NO. 501-682-0918 **FAX NO.** 501-682-0891 **EMAIL** McAlister@adeq.state.ar.us

NAME OF PRESENTER AT COMMITTEE MEETING Michael McAlister, Managing Attorney

PRESENTER EMAIL McAlister@adeq.state.ar.us

INSTRUCTIONS

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

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

1. What is the short title of this rule? Regulation No. 8: Administrative Procedures

2. What is the subject of the proposed rule? Procedures used by the Arkansas Pollution Control and Ecology Commission (APC&EC) and the Arkansas Department of Environmental Quality (ADEQ) concerning administrative due process.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☐ No ☒
If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒

If yes, what is the effective date of the emergency Not applicable

rule?

When does the emergency rule expire? Not applicable

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☐

5. Is this a new rule? Yes ☐ No ☒

If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule?

Yes ☐

No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does. _____

Is this an amendment to an existing rule? Yes ☒ No ☐

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled “mark-up.”**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. § 8-1-203(b).

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

The Arkansas Department of Environmental Quality (ADEQ) proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission (Commission) for amendments to Regulation No. 8 (Administrative Procedures) 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.

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

● **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.

● **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.

● **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.

● **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.

- **Chapter 5: Grant, Loan, and Tax Credit Decisions** – The current “Chapter 3: Grant, Loan, and Tax Credit Decisions” has been renumbered as Chapter 5.
- **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.
- **Chapter 7: Emergency Actions** – The current “Chapter 5: Emergency Actions” has been re-numbered as Chapter 7.
- **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).
- **Chapter 9: Appeals** – The current “Chapter 7: Appeals” has been renumbered as Chapter 9.
- **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.
- **Chapter 11: Other Provisions** – The current “Chapter 9: Other Provisions” has been renumbered as Chapter 11.
- **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.
- **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.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). www.adeq.state.ar.us/regs/draft_regs.aspx

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

If yes, please complete the following:

Date: June 25, 2018
 Time: 2:00 p.m.
Commission Room
ADEQ Headquarters
5301 Northshore Drive
 Place: North Little Rock, AR 72118

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
 The public comment period expires on July 10, 2018. However, after the public comment period, the regulation must be reviewed by the Legislative Committees and the APC&EC must adopt the final regulation. The earliest estimated time for APC&EC adoption is October 2018, with the effective date being ten (10) days after the APC&EC files with the Secretary of State, approximately November 15, 2018.

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
November 15, 2018

12. Please provide a copy of the notice required under Ark. Code Ann. § 25-15-204(a), and proof of the

publication of said notice. The Arkansas Pollution Control and Ecology Commission (APC&EC) is exempt from the definition of “agency” under the Administrative Procedure Act. (See Ark. Code Ann. § 25-15-202(2)(C)). However, laws concerning the promulgation of regulations by the APC&EC do require public notice, and a copy is attached.

13. Please provide proof of filing the rule with the Secretary of State and the Arkansas State Library as required pursuant to Ark. Code Ann. § 25-15-204(e). The Arkansas Pollution Control and Ecology Commission (APC&EC) is exempt from the definition of “agency” under the Administrative Procedure Act. (See Ark. Code Ann. § 25-15-202(2)(C)). Filing with the Secretary of State does not occur until after legislative review and final adoption by the APC&EC.
14. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known. None anticipated.