



August 31, 2018

Ms. Raeanne Gardner  
 Arkansas Department of Environmental Quality  
 5301 Northshore Drive  
 North Little Rock, AR 72118

**Re: APC&EC Docket #18-003-R: Rulemaking for Regulation No. 8: Administrative Procedures  
 Public Comment**

Dear Ms. Gardner:

Below please find the changes to the Revised Draft Regulation 8 Markup filed May 11, 2018, that ADEQ recommends to comply with the law, ensure administrative efficiency, avoid costs that exceed available funding and resources, and for practical administrative and operational reasons. All specific language that is added or deleted are potential suggested edits. Also, the citations to Regulation No. 8 are the proposed new regulation number.

#	Reg. Citation	Recommended Changes / Suggested Edits
1.	8.304(C) 8.306(G) 8.308(D) 8.309(E) 8.315(A) 8.404(F) 8.406(D) 8.408(C)(5) 8.409(C)(4) 8.502(E)(4) 8.605(A) 8.702(G)	Delete language that mandates the publication of notices on the Department’s website and make any related stylistic, formatting, or renumbering changes.
2.	8.304(A)	Revise to add the highlighted, underlined language: (A) Public notice of an administratively complete application for a <u>an individual</u> permit shall be published in a newspaper of general circulation in the county <del>in which</del> <u>where</u> the proposed facility or activity is to be located, <del>or, for a statewide permit, in a newspaper of statewide circulation</del> <u>unless the Department determines that publication in a newspaper of statewide circulation is necessary for administrative or technical reasons.</u> The Department shall provide or approve the format of the notice.

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3.	8.306(A)	Revise to add the highlighted, underlined language: (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 <del>in which</del> where the facility or activity proposed to be permitted is located, <del>or, for a statewide permit, in a newspaper of statewide circulation</del> <u>unless the Department determines that publication in a newspaper of statewide circulation is necessary for administrative or technical reasons.</u>
4.	8.310(C)(6)	Revise to add the highlighted, underlined language: (6) <u>The final written permitting decision shall be published on the Department's website in a database listing or other manner approved by the Director.</u>
5.	8.311(B)	Revise to add the highlighted, underlined language: (B) The permit is automatically transferred to the <del>new permittee</del> applicant requesting the <u>permit transfer</u> unless the Director denies the request to transfer within thirty (30) calendar days of the Department's receipt of the disclosure information <u>and any other necessary information.</u>
6.	8.315(B)(3)	Delete " <del>variance</del> "
7.	8.408	Review general permit statutory law and compare to this section and chapter to assure all necessary provisions are included in the regulation.
8.	8.408(C)(1)	Revise to add the highlighted, underlined language and delete the highlighted, stricken language: (1) <u>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 hold coverage under any prior the expiring version of the same general permit before it expired</u> using one (1) of the following methods based on the contact information available and the Director's discretion: (a) <u>U.S. mail;</u> (b) <u>A commercial delivery company; or</u> (c) <u>Electronic mail.</u>
9.	8.408(D)	Remove this subsection from this section of the regulation and move to a new subsection 8.409(D).
10.	8.409(C)	Review this subsection for consistency with other public notice and comment procedures, timelines, and requirements and general permit procedures to determine whether this subsection should be: (1) <u>Removed to prevent undue administrative costs and burdens; or</u> (2) <u>Removed or edited to address possible conflicts with other public notice and comment procedures, timelines, or requirements or general permit procedures.</u> At a minimum, add the highlighted, underlined language: (C) <u>Notices of Intent received by the Department for initial 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:</u>

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11.	8.409(D)	Move subsection 8.408(D) to this section in its entirety: <u>(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.</u>
12.	Chapter 10	Rulemaking: Revise for clarity and consistency.
13.	8.1003(6)	Revise to add the highlighted, underlined language and delete the highlighted, stricken language: <del>(D)(6)</del> A statement that <u>copies of the proposed regulation are is</u> available at the Department, on the Department's website, and <u>in local public library depositories provided to the Arkansas State Library and its State and Local Government Publications Clearinghouse.</u>
14.	8.1006(B)	Revise to add the highlighted, underlined language and delete the highlighted, stricken language: The period for receiving written comments shall begin on the day of publication of public notice is first published in a newspaper of statewide circulation and <u>shall extend at least ten (10) business days beyond after the date of the public hearing unless an extension of the public comment period is granted as provided under subsection (D) of this section.</u>
15.	8.1006(D)	Review and consider revision for clarity, style, consistency, administrative efficiency, or a combination of these.
16.	8.1007(D)	Revise to ensure that a prima facie case is established as matter of law by the specified circumstances consistent with the original version of the regulation.
17.	8.1008(A)	Reorganize and revise to improve clarity and administrative efficiency; remove the requirement for filing a Statement of Basis and Purpose; add the highlighted, underlined language and delete the highlighted, stricken language: (A) <u>A Except for emergency rulemaking and unless other items are required by law or regulation for a specific rulemaking, a rulemaking docket shall include the following documents that must be filed before Commission consideration of a Petition to Initiate Rulemaking:</u> (1) <u>An executive summary that provides the following information at a minimum:</u> (a) <u>A description of the regulation and the legal authority for the proposed regulatory amendments or new regulation; and</u> (b) <u>A statement of the substance of the proposed regulatory amendments or new regulation;</u> <del>(1)</del> (2) <u>A petition containing a caption as set out in Reg.8.605806, and a detailed explanation of the proposed regulation that includes the following information at a minimum:</u> (a) <u>A brief summary of the purpose of the regulation and legal authority for the regulation;</u> (b) <u>An explanation of the proposed changes to the regulation to include the legal authority for the changes;</u> <del>(2)</del> (3) <u>An attached marked up A 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 attached as an exhibit;</u> (4) <u>Evidence of the Governor's approval if required under any applicable Executive Order attached as an exhibit;</u> <del>(3)</del> (5) <u>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</u>

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		<p><u>other applicable law to include without limitation:</u></p> <p>(a) A <u>completed</u> legislative questionnaire <u>attached as an exhibit</u>; and</p> <p><del>(4)(b)</del> A <u>completed</u> Financial Impact Statement <u>attached as an exhibit</u>;</p> <p><del>(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;</del></p> <p>(6) The economic impact/environmental benefit analysis <u>report</u> required by Reg. 8.8121012, if applicable, <u>attached as an exhibit</u>; and</p> <p>(7) A proposed Minute Order initiating the rulemaking, <u>attached as an exhibit</u>.</p>
18.	8.1008(B)(1) 8.1011(D) 8.1011(F) 8.1013(A)(8) 8.1014	Remove the requirement for Statement of Basis and Purpose.
19.	8.1008	<p>Add new subsection before last subsection:</p> <p><u>(D) Unless other items are required by law or regulation for a specific rulemaking, a Motion to Adopt Amendments to a Regulation or Motion to Promulgate a New Regulation shall include at a minimum:</u></p> <p><u>(1) The legal authority for the regulation and regulatory amendments;</u></p> <p><u>(2) An explanation of the necessity of the regulatory amendments or new regulation;</u></p> <p><u>(3) A summary of the procedural history of the regulatory amendment process to establish compliance with all applicable state and federal laws and regulations;</u></p> <p><u>(4) If applicable, 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 is satisfied by reference to the Code of Federal Regulations;</u></p> <p><u>(5) The final proposed regulation, or the final parts of the regulation if the entire regulation is not opened for amendment, attached as an exhibit; and</u></p> <p><u>(6) The proposed minute order attached as an exhibit.</u></p>
20.	8.1008(D)	<p>Re-designate this subsection as 8.1008(E) and replace the language in its entirety with:</p> <p><u>(E) If the Department publishes on its website the pending draft rulemakings by docket number, all filings with the Commission related to each docket number shall be included on the Department’s website.</u></p>
21.	8.1018	<p>Add the highlighted, underlined language and delete the highlighted, stricken language:</p> <p><b><u>Reg.8.1018 Filing Final Regulation – Effective Date of All Regulations</u></b></p> <p><u>(A)(1) If the entire regulation is included in a proposed rulemaking, the entire regulation must be filed as provided under this section after final adoption by the Commission.</u></p> <p><u>(2) If only part of a regulation is included in the proposed rulemaking, the Commission shall direct the Department to compile a complete, revised regulation consistent with the regulation adopted by the Commission. The revised regulation must be filed as provided under this section.</u></p> <p><del>(A)(B)(1)</del> <u>Except for emergency rulemaking, 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.</u></p> <p><del>(B)(2)</del> <u>If a later date is stated, the regulation is effective on that date.</u></p>

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Thank you for your consideration of this public comment.

Sincerely,

A handwritten signature in blue ink that reads "Janelle Evyan". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Janelle Evyan  
Attorney Specialist