

EXHIBIT D

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

DEPARTMENT/AGENCY Arkansas Department of Environmental Quality
DIVISION Water Division
DIVISION DIRECTOR Ryan Benefield, ADEQ Deputy Director
CONTACT PERSON Ryan Benefield, ADEQ Deputy Director
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NAME OF PRESENTER AT COMMITTEE MEETING Teresa Marks, ADEQ Director
PRESENTER E-MAIL marks@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. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas
2. What is the subject of the proposed rule? Triennial review and revision of the State's water quality standards, as required by the federal Water Pollution Control Act ("Clean Water Act")
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
The regulation must comply with the federal Clean Water Act, 33 U.S.C. § 1251 et seq. and regulations promulgated thereunder.
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 rule? _____

When does the emergency rule expire? _____

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If yes, a copy of the repealed rule is to be included with your completed questionnaire.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. The Arkansas Water and Air Pollution Control Act, Ark. Code. Ann. § 8-4-101 et seq., including but not limited to Ark. Code Ann. § 8-4-202(b)(3).

7. What is the purpose of this proposed rule? Why is it necessary?
Pursuant to the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1251 et seq., Arkansas has been delegated the authority to establish and administer water quality standard. The water quality standards are administered through the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 et seq. The Clean Water Act requires states to review their water quality standards on a triennial basis and to amend those standards as necessary. This proposed rule is the result of that process. The proposed changes are necessary to ensure that waters of the State are maintained and protected, in accordance with the Clean Water Act and the Arkansas Water and Air Pollution Control Act.

Please see Attachment 1 to this form. Many of the changes proposed in this rulemaking are intended to clarify the regulation through formatting changes or grammatical revisions. Also, several revisions are proposed to comply with the Arkansas Pollution Control and Ecology Commission's Regulation Drafting Guidelines.

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). After initiation of the rulemaking process by the Arkansas Pollution Control and Ecology Commission, the proposed rule and all related documents, including this form, will be available here: http://www.adeq.state.ar.us/regs/drafts/draft_regs.htm

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

If yes, please complete the following:

Date: (multiple dates - see below)

Time: _____

Jonesboro - Allen Park Community
Center; April 15, 2013; 6:00 p.m.;
Fayetteville - Fayetteville City
Administration Building, Room 219;
April 18; 6:00 p.m.;
El Dorado - South Arkansas
Community College, East Campus,
Workforce Development Building;
April 22; 6:00 p.m.;
North Little Rock - ADEQ
Headquarters, Commission Room;
Place: April 24; 2:00 p.m.

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)
May 8, 2013 (or ten days after last public hearing)

11. What is the proposed effective date of this proposed rule? (Must provide a date.)
February 2014

12. Do you expect this rule to be controversial? Yes No
Changes to the water quality standards have often been controversial. Even though ADEQ engaged in an extensive stakeholder process, not every participant may agree with the outcome. The list of interested parties provided in response to question 13 below includes the list of parties invited to participate in the stakeholder process.
If yes, please explain.

13. 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.
Arkansas Environmental Federation (support in part and oppose in part)
Environmental organizations, such as the Arkansas Canoe Club, Ozark Society, The Nature Conservancy, etc. (support majority of changes, possibly oppose in part)
Arkansas Department of Health
Arkansas Farm Bureau
Arkansas Municipal League
University of Arkansas Extension Service
Arkansas Natural Resources Commission
Arkansas Natural Heritage Commission
Arkansas Game and Fish Commission
United States Fish and Wildlife Service
United States Environmental Protection Agency
United States Forest Service
Beaver Water District
United States Army Corps of Engineers

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Environmental Quality
DIVISION Water Division
PERSON COMPLETING THIS STATEMENT Ryan Benefield, ADEQ Deputy Director
TELEPHONE NO. (501) 682-0960 **FAX NO.** (501) 682-0891 **EMAIL:** benefield@adeq.state.ar.us

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

General Revenue
Federal Funds \$212,058.97 - based on federal grant application to implement this portion of the Clean Water Act

Next Fiscal Year

General Revenue
Federal Funds \$212,058.97 - estimated to be the same as previous year, as the number does not

program during FY13

vary much from year
to year, but ADEQ has
not submitted grant
application for FY14

Cash Funds _____
Special Revenue _____
Other (Identify) _____

Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$212,058.97

Total \$212,058.97

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____

General Revenue _____

Federal Funds _____

Federal Funds _____

Cash Funds _____

Cash Funds _____

Special Revenue _____

Special Revenue _____

Other (Identify) _____

Other (Identify) _____

Total _____

Total _____

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

See pages 14-23 of Attachment 2 to this form. This document is the Economic Impact/Environmental Benefit Analysis prepared in accordance with Arkansas Pollution Control and Ecology Commission Reg.8.812.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ _____

\$ _____

See Question 4 above and Attachment 2. The cost will covered by federal grant monies for state implementation of the federal Clean Water Act.

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

Triennial Review Summary

State water quality standards have to be adopted in final form before they are submitted to EPA for review and approval. If EPA disapproves the standards a state has adopted, then those standards must be revised through another formal rulemaking process and re-submitted to EPA for review and approval. The following details the Triennial Review process as set forth in federal law and regulations.

Under the federal Clean Water Act, states are given the responsibility to establish water quality standards, and at least once every three years states are to review the applicable water quality standards to determine whether any modifications are appropriate.¹ Any changes to water quality standards adopted by a state during the Triennial Review must be submitted to EPA for review and approval or disapproval. The standards adopted by the state are submitted to EPA along with any supporting information² and a certification that the standards were adopted pursuant to state law.³ This submittal is to be provided to EPA within 30 days of the final State action to adopt and certify the revised standards.⁴ After the State submits its revised water quality standards, EPA must approve or disapprove the revisions.⁵ If EPA approves the new state standards, then they can be used for purposes of implementing the federal Clean Water Act, including such things as listing water quality impairments, calculating TMDLs, and developing effluent limits for NPDES permits.⁶

If the revised water quality standards are disapproved by EPA, then the standards are not applicable water quality standards for purposes of implementing the federal Clean Water Act. If the water quality standards adopted by a State are disapproved by EPA, then those standards cannot be used to implement the provisions of the federal Clean Water Act until they have been revised through a new rulemaking and re-submitted to EPA for review and approval. The rulemaking process for adopting or revising environmental regulations in Arkansas can take 4 -6 months for a noncontroversial rulemaking proposal.

ADEQ is seeking to have this Triennial Review completed and submitted to EPA in March 2014 at the latest, because the deadline for submitting the 2014 list of impaired waterbodies to EPA is April 1, 2014.⁷ This Triennial Review adopts standards that are being used to assess the state's water quality for the 2014 list of impaired waterbodies. If ADEQ is unable to submit the revised Regulation 2 to EPA prior to the April 1 deadline, then many more streams could be potentially listed as impaired based on the assessment of water quality under the existing regulation, rather than the revised Regulation 2.

In addition to the revised Regulation 2, Legislative Questionnaire, and List of Revisions to Draft Reg. No. 2 Based on Public Comments, please also find attached the Interim Strategy for Mineral Permit Limits dated January 15, 2014, which the Department has agreed to implement if

¹ Section 303(c) of the Clean Water Act.

² 40 CFR § 131.20 (c).

³ 40 CFR § 131.6(e).

⁴ 40 CFR §131.20(c).

⁵ 40 CFR §131.21

⁶ 40 CFR § 131.21(d).

⁷ 40 CFR § 130.7(d)(1).

Regulation 2 is allowed to go forward, and correspondence from EPA dated August 1, 2013, regarding the Tyson-Waldron third-party rulemaking. This correspondence reflects EPA's concern about using 4 cfs in developing site-specific criteria for minerals. And finally, for your ease of reference, the compromise language for the critical flow definition is attached as well.