

## DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER DIVISION

**SUBJECT:** Regulation No. 5; Liquid Animal Waste Management Systems

**DESCRIPTION:** The primary change presented in this rulemaking is the addition of an exemption from the requirements of the regulation for facilities that have chosen to receive coverage under a National Pollutant Discharge Elimination System (NPDES) permit for a Concentrated Animal Feeding Operation (CAFO). This exemption will eliminate double permitting for liquid animal waste management systems.

ADEQ also proposes to remove the continuing education requirements from the regulation. This change is necessary to match the requirements for liquid animal waste management systems under Regulation No. 5 with the requirements for CAFOs permitted under the NPDES program. Neither the federal regulations governing CAFOs nor the general permit issued by ADEQ require continuing education requirements in Regulation No. 5.

Likewise, many waste management plans written pursuant to Regulation No. 5 include the continuing education requirement in the text of the plan and the plan would need to be changed to remove this requirement. In most instances, a change to a waste management plan requires a major permit modification, which includes public notice and comment. Regulation No. 5 specifically list permit modifications that are minor and do not require full public participation. ADEQ proposes adding removal of education requirements from waste management plans to this list, as the agency has requested the requirement be removed from the regulation.

**PUBLIC COMMENT:** A public hearing was held on December 19, 2011. The public comment period ended on January 5, 2012. The following comment was received:

**Connie Burks, Harrison, Arkansas:**

**Comment:** Here is comment of opposition including, but not limited to, the following: On behalf of all those in Boone, Newton, and Marion Counties awaiting resolution to the unjustified and strongly opposed TMDL proposal for Crooked Creek, they, as well as I, oppose and contend that no new CAFO changes should be adopted until the Crooked (TMDL) Creek matter is resolved and none should be proposed without plainly publicizing to all concerned if and what is the/any potential nexus with TMDL proposals and CAFO, etc. present or proposed issues.

**Response:** ADEQ acknowledges the comment. The changes to Regulation No. 5 are not related to the Total Maximum Daily Load ("TMDL") developed for Crooked Creek or any other waterbody. The proposed amendments are based on changes to federal regulations governing concentrated animal feeding operations ("CAFOs"). The amendments:

- 1) Offer an exemption from Regulation No. 5 permitting requirements for operators of liquid animal waste management systems that choose to obtain a National Pollutant Discharge Elimination System (NPDES) permit under APC&EC Regulation No. 6; and

2) Remove the continuing education requirements from the regulation to be consistent with NPDES permitting.

The changes to Regulation No. 5 were developed following extensive stakeholder meetings and input from the regulated industry. In addition, the Department has requested that the Environmental Protection Agency ("EPA") withdraw the Crooked Creek TMDL. Therefore, there are no changes necessary to the regulation based on public comments.

The rule will become effective ten (10) days after filing with the Arkansas Secretary of State, the State Library, and the Bureau of Legislative Research.

**CONTROVERSY:** This is not expected to be controversial.

**FINANCIAL IMPACT:**

**Economic Impact**

**1. Who will be affected economically by this proposed rule? 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 the proposed rule.**

Any facility with a liquid animal waste management system is subject to Regulation No 5. Currently, ADEQ permits approximately 300 facilities under this regulation. All of those facilities would benefit from the change in the education requirements. Those facilities that are permitted under the NPDES CAFO permitting program would benefit from the exemption from regulation under Regulation No.5. ADEQ estimates that 10 or fewer facilities may qualify for this exemption.

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

Those facilities that will be exempt from the regulation because they have been permitted under the NPDES CAFO permitting program will not have to pay an additional \$200 permit fee for the Regulation No. 5 permit. The CAFO permit fee is also \$200; therefore, the facility will not be required to pay an increased fee, if they choose to be permitted under the NPDES program.

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

No fee changes are proposed by the proposal.

**4. What is the probably 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 rule.**

There will be no increased cost to ADEQ in terms of manpower or associated resources to implement the proposed change.

**5. Is there a known beneficial or adverse impact to any other relevant state agency to implement or enforce this proposed rule? Is there any other relevant state agency's rule 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 rule? Identify the state agency and/or rule.**

There is no known beneficial or adverse impact to any other relevant state agency.

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

This proposed rule exempts certain entities from the requirements of this regulation. Therefore, no other methods are appropriate.

### **Environmental Impact**

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

This regulation addresses liquid animal waste management. Under the exemption, waste management will be addressed under the NPDES permitting program instead of Regulation No. 5.

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

This proposed rule essentially continues current levels of protection by addressing pollution concerns from liquid animal waste.

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

There will be no detrimental effect to the environmental or public health and safety if this proposed rule is not implemented. However, without the exemption, farmers may be subject to duplicative permitting requirements.

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

The risks addressed by the proposal are to the regulated entity, not necessarily the environment. However, duplicative permitting requirements might discourage compliance with the law.

**LEGAL AUTHORIZATION:** The Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 et seq., authorizes the proposed rule changes. Specifically, Ark. Code Ann. § 8-4-202 gives the Arkansas Pollution Control and Ecology Commission (“Commission”) the power and duty to adopt, modify, or repeal rules and regulations implementing or effectuating the powers and duties of the Arkansas Department of Environmental Quality (“ADEQ”) and the Commission. Ark. Code Ann. § 8-4-203 gives ADEQ the power and duty to issue, continue in effect, revoke, modify, or deny permits.

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

**DEPARTMENT/AGENCY:** Arkansas Department of Environmental Quality  
**DIVISIONS:** Water Division  
**DIVISION DIRECTOR:** Steven Drown, Division Chief, Water Division  
**CONTACT PERSON:** Ryan Benefield, Deputy Director, ADEQ  
**ADDRESS:** ADEQ; 5301 Northshore Drive, North Little Rock, AR, 72118  
**PHONE NO. :** (501) 682-0959 **FAX NO.:** (501) 682-0798 **E-MAIL:** benefield@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**  
**Subcommittee on Administrative Rules and Regulations**  
**Arkansas Legislative Council**  
**Bureau of Legislative Research**  
**Room 315, State Capitol**  
**Little Rock, AR 72201**

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- 1. What is the short title of this rule?  
Regulation No. 5, Liquid Animal Waste Management Systems
- 2. What is the subject of the proposed rule?  
This proposed rule will:
  - 1) Provide for an exemption for those liquid animal waste management systems that are permitted under a National Pollutant Discharge Elimination System ("NPDES") and the federal regulations governing concentrated animal feeding operations ("CAFOs"); and
  - 2) Eliminate the continuing education requirements in the regulation and provide that removal of those requirements from a facility's waste management plan will qualify as a minor permit modification.
- 3. Is this rule required to comply with federal statute or regulations? Yes \_\_\_\_\_ No  X   
If yes, please provide the federal regulation and/or statute citation.
- 4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?  
Yes \_\_\_\_\_ No  X   
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? \_\_\_\_\_ 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."

See Question 7 below for a summary of the proposed rule and the purpose for the changes.

6. Cite the state law that grants the authority for this proposed rule? If codified, please give 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. § 8-4-203.

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

The primary change presented in this proposed rulemaking is the addition of an exemption from the requirements of the regulation for facilities that have chosen to receive coverage under a National Pollutant Discharge Elimination System ("NPDES") permit for a CAFO. This exemption will eliminate double permitting for liquid animal waste management systems.

ADEQ also proposes to remove the continuing education requirements from the regulation. This change is necessary to match the requirements for liquid animal waste management systems under Regulation No. 5 with the requirements for CAFOs permitted under the NPDES program. Neither the federal regulations governing CAFOs nor the general permit issued by ADEQ require continuing education for operators. Thus, ADEQ believes that it is no longer necessary to keep the continuing education requirements in Regulation No. 5.

Likewise, many waste management plans written pursuant to Regulation No. 5 include the continuing education requirement in the text of the plan and the plan would need to be changed to remove this requirement. In most instances, a change to a waste management plan requires a major permit modification, which includes public notice and comment. Regulation No. 5 specifically lists permit modifications that are minor and do not require full public participation. ADEQ proposes adding removal of education requirements from waste management plans to this list, as the agency has requested the requirement be removed from the regulation.

8. Will a public hearing be held on this proposed rule? Yes  No   
If yes, please complete the following:

Date/Time	Location
December 19, 2011	ADEQ Headquarters, 5301 Northshore Drive, North Little Rock

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
The period for receiving all written comments shall conclude ten (10) business days after the public hearing pursuant to Reg. 8.806(B). The projected date for the close of public comment period will be approximately January 2, 2012.

10. What is the proposed effective date of this proposed rule? (Must provide a date.)  
Final promulgation of the rule is anticipated on March 23, 2012. The rule will become effective 10 days after filing with the Arkansas Secretary of State, the State Library and the Bureau of Legislative Research, which is anticipated to be April 2, 2012.

11. Do you expect this rule to be controversial? Yes  No  If yes, please explain.

12. 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 Farm Bureau  
Tyson  
Cargill  
Arkansas Pork Producers Association  
The Poultry Federation  
Arkansas Natural Resources Commission  
USDA Natural Resources Conservation Service  
University of Arkansas Cooperative Extension Service





**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT:** Arkansas Department of Environmental Quality  
**DIVISIONS:** Water Division  
**PERSON COMPLETING THIS STATEMENT:** Jamie Ewing, Attorney Specialist  
**TELEPHONE NO.:** 501-682-0892 **FAX NO.:** 501-682-0891 **EMAIL:** ewing@adeq.state.ar.us

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE:** Regulation No. 5, Liquid Animal Waste Management Systems

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1. Does this proposed, amended, or repealed rule or regulation have a financial impact?  
Yes \_\_\_\_\_ No  X   
This proposed rule will be financially neutral for the regulated community and the agency.
  
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.  
The development of a financial impact statement may require some broad estimation but is not cost prohibitive.
  
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.  
There will be no additional costs for implementing the regulation beyond existing costs for administration of this permitting program.
  
4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.  

<u>Current Fiscal Year</u> Entities that choose to be regulated under a NPDES permit would save the Reg. 5 permit fee (\$200)	<u>Next Fiscal Year</u> Same
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5. What is the total estimated cost by fiscal year to the agency to implement this regulation?  

<u>Current Fiscal Year</u>	<u>Next Fiscal Year</u>
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There will be no additional costs for implementing the regulation beyond existing costs for administration of this permitting program.



**ECONOMIC IMPACT STATEMENT  
OF PROPOSED RULES OR REGULATIONS  
EO 05-04 and Act 143 of 2007: Regulatory Flexibility**

Department Arkansas Department of Environmental Quality

Divisions Water Division

Contact Person Jamie Ewing/Steve Drown Date October 12, 2011

Contact Phone 501.682.0918 Contact Email: ewing@adeq.state.ar.us

Title or Subject: Arkansas Pollution Control and Ecology Commission Regulation No. 5, Liquid Animal Waste Management Systems

**Benefits of the Proposed Rule or Regulation**

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, Please explain the nature of such complaints.

The primary change presented in this proposed rulemaking is the addition of an exemption from the requirements of the regulation for facilities that have chosen to receive coverage under a National Pollutant Discharge Elimination System ("NPDES") permit for a Concentrated Animal Feeding Operation ("CAFO"). This exemption will eliminate double permitting for liquid animal waste management systems.

ADEQ also proposes to remove the continuing education requirements from the regulation. This change is necessary to match the requirements for liquid animal waste management systems under Regulation No. 5 with the requirements for CAFOs permitted under the NPDES program. Neither the federal regulations governing CAFOs nor the general permit issued by ADEQ require continuing education for operators. Thus, ADEQ believes that it is no longer necessary to keep the continuing education requirements in Regulation No. 5.

Likewise, many waste management plans written pursuant to Regulation No. 5 include the continuing education requirement in the text of the plan and the plan would need to be changed to remove this requirement. In most instances, a change to a waste management plan requires a major permit modification, which includes public notice and comment. Regulation No. 5 specifically list permit modifications that are minor and do not require full public participation. ADEQ proposes adding removal of education requirements from waste management plans to this list, as the agency has requested the requirement be removed from the regulation.

2. What are the top three benefits of the proposed rule or regulation?
- a. Addition of the exemption from regulation for those facilities already permitted under the NPDES program will prevent double permitting for some operations and save time and money for the facilities.
  - b. Removal of the continuing education requirements from this regulation will make the permitting requirements for different types of animal waste systems consistent. The operators will be able to save the cost and time necessary to complete classes.
  - c. Removal of the education requirements from the waste management plan to the list of minor permit modification. This change will lessen the time necessary to complete the modification.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?  
As stated above, no action would allow redundant or unnecessary requirements to remain in place at a cost of time and money for operators of liquid animal waste management systems.
4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.  
The proposed changes will result in less regulation for covered entities; therefore, market-based or voluntary alternatives were not considered.

### **Impact of Proposed Rule or Regulation**

5. Estimate the cost to state government of *collecting information, completing paperwork, filing recordkeeping, auditing and inspecting* associated with this new rule or regulation.  
This proposed rule change will essentially be revenue-neutral for the agency. A few operators may choose to get the NPDES permit for their liquid animal waste management system and ADEQ would not collect the permit fee for the Regulation No. 5 permit. However, the agency would collect a permit fee for the NPDES permit. Likewise, the requirements for the NPDES CAFO permit and the Regulation No. 5 permits are very similar, so the resources expended by ADEQ in processing those permits are essentially the same.  
  
Also, by allowing changes to the waste management plan for removal of education requirements to be a minor modification, the agency will spend less time processing the permit modification and free up resources for other protection efforts.
6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.  
Any facility with a liquid animal waste management system is subject to the requirements of Regulation No. 5. These facilities may be small businesses. Currently, ADEQ permits approximately 300 facilities under this regulation. All of those facilities would benefit from the change in the education requirements. Those facilities that are permitted under the NPDES CAFO permitting program would benefit from the exemption from regulation under Regulation No. 5. ADEQ estimates that ten (10) or fewer facilities may qualify for this exemption.
7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.  
No.
8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.  
No additional requirements for small business owners.
9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.  
The proposed regulation does not contain different requirements for different sized entities.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

This proposed regulation does not impose any new requirements for small businesses. ADEQ believes that the proposed changes will benefit small businesses by reducing certain permitting requirements.

11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?

Regulation No. 5 is very similar to new federal regulations for the permitting of CAFO. That similarity supports the exemption for facilities that choose to get a CAFO permit. A few other states, such as North Carolina, also have regulations that govern animal waste management systems that may not be permitted under the federal CAFO program.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

When ADEQ began the process of implementing the new federal regulations on CAFOs, we held several stakeholder meetings to discuss how Regulation No. 5 fit into the new permitting requirements under federal law. The regulated entities indicated to ADEQ that they wanted Regulation No. 5 to remain in effect for those facilities that were not required to apply for a federal CAFO permit. They also wanted the exemption for those liquid waste systems that chose to receive a federal permit. This is the approach that ADEQ is implementing with this proposed rulemaking. The stakeholder group included the Farm Bureau, industry representatives, and representatives from other governmental agencies that assist facilities with compliance.



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

Rule Number & Title: Regulation No. 5, Liquid Animal Waste Management Systems

Petitioner: Arkansas Department of Environmental Quality, Water Division

Contact/Phone/Electronic mail: Jamie Ewing  
(501) 682-0918  
ewing@adeq.state.ar.us

2A. ECONOMIC IMPACT

*1. Who will be affected economically by this proposed rule? 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 rule.*

Any facility with a liquid animal waste management system is subject to the requirements of Regulation No. 5. Currently, ADEQ permits approximately 300 facilities under this regulation. All of those facilities would benefit from the change in the education requirements. Those facilities that are permitted under the NPDES CAFO permitting program would benefit from the exemption from regulation under Regulation No. 5. ADEQ estimates that ten (10) or fewer facilities may qualify for this exemption.

*Sources and Assumptions:*

Information for the number of reserve pits and number of companies was taken from the Permit Database and the ADEQ Permit Data Summary (PDS) program.

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

Those facilities that will be exempt from the regulation because they have been permitted under the NPDES CAFO permitting program will not have to pay an additional \$200 permit fee for the Regulation No. 5 permit. The CAFO permit fee is also \$200; therefore, the facility will not be required to pay an increased fee, if they choose to be permitted under the NPDES program.

## Exhibit E

### *Sources and Assumptions:*

APC&EC Regulation No. 9, Fee Regulation.

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

No fee changes are imposed by the proposal.

### **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 rule?**

There will be no increased cost to ADEQ in terms of manpower or associated resource to implement the proposed change.

### *Sources and Assumptions:*

Under the exemption, a facility will be permitted under either the NPDES CAFO permitting program or a Regulation No. 5 permit. As most CAFOs will be permitted under a general permit, there may even be a reduction in manpower and associated resources needed to process those permits.

### **5. Is there a known beneficial or adverse impact to any other relevant state agency to implement or enforce this proposed rule? Is there any other relevant state agency's rule 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 rule? Identify state agency and/or rule.**

There is no known beneficial or adverse impact to any other relevant state agency.

### *Sources and Assumptions:*

Not applicable

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

This proposed rule exempts certain entities from the requirements of this regulation. Therefore, no other methods are appropriate.

### *Sources and Assumptions:*

Not applicable



## 2B. ENVIRONMENTAL BENEFIT

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

This regulation addresses liquid animal waste management. Under the exemption, waste management will be addressed under the NPDES permitting program instead of Regulation No. 5.

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

This proposed rule essentially continues current levels of protection by addressing pollution concerns from liquid animal waste. However, the exemption allows some flexibility to the farmer in which permit to choose.

*Sources and Assumptions:*

ARG590000, NPDES General Permit for CAFOs.

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

There will be no detrimental effect to the environmental or public health and safety if this proposed rule is not implemented. However, without the exemption, farmers may be subject to duplicative permitting requirements

*Sources and Assumptions:*

ARG590000, NPDES General Permit for CAFOs.

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

The risks addressed by the proposal are to the regulated entity, not necessarily the environment. However, duplicative permitting requirements might discourage compliance with the law.

*Sources and assumptions:*

ARG590000, NPDES General Permit for CAFOs.



## APC&EC Regulation No. 5

### Proposed Amendments – Executive Summary

The primary change presented in this proposed rulemaking is the addition of an exemption from the requirements of the regulation for facilities that have chosen to receive coverage under a National Pollutant Discharge Elimination System (“NPDES”) permit for a Concentrated Animal Feeding Operation (“CAFO”). This exemption will eliminate double permitting for liquid animal waste management systems.

ADEQ also proposes to remove the continuing education requirements from the regulation. This change is necessary to match the requirements for liquid animal waste management systems under Regulation No. 5 with the requirements for CAFOs permitted under the NPDES program. Neither the federal regulations governing CAFOs nor the general permit issued by ADEQ require continuing education for operators. Thus, ADEQ believes that it is no longer necessary to keep the continuing education requirements in Regulation No. 5.

Likewise, many waste management plans written pursuant to Regulation No. 5 include the continuing education requirement in the text of the plan and the plan would need to be changed to remove this requirement. In most instances, a change to a waste management plan requires a major permit modification, which includes public notice and comment. Regulation No. 5 specifically list permit modifications that are minor and do not require full public participation. ADEQ proposes adding removal of education requirements from waste management plans to this list, as the agency has requested the requirement be removed from the regulation.

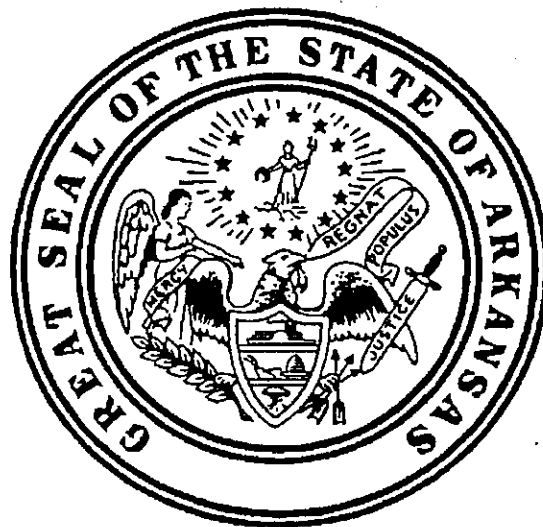


Exhibit A

Pollution Control and Ecology Commission #014.00-005

# Arkansas Pollution Control and Ecology Commission

## Regulation 5



## Liquid Animal Waste Management Systems

Submitted to Arkansas Pollution Control and Ecology Commission on October 2011

**Regulation Number 5  
Liquid Animal Waste Management Systems**

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## Chapter 1 : TITLE, PURPOSE AND APPLICABILITY

### Reg. 5.101      Title

The following rules and regulations of the Arkansas Pollution Control and Ecology Commission (~~the "Commission"~~), adopted pursuant to the Arkansas Water and Air Pollution Control Act (~~Act 472 of the Acts of Arkansas for 1949, as amended, codified at A.C.A. Ark. Code Ann. § 8-4-101 et seq et seq.~~) (the "Act"), shall be known as Regulation No. 5, -Liquid Animal Waste Management Systems (~~the "Regulation"~~).

### Reg. 5.102      Purpose

The purpose of this ~~R~~regulation is to establish the minimum qualifications, standards and procedures for issuance of permits for confined animal operations using liquid animal waste management systems within the state and for the issuance of permits for land application sites within the state. This ~~R~~regulation provides management, operational and maintenance procedures necessary to prevent point source pollution and minimize nonpoint source pollution to the waters of the state and control to the degree practicable the generation of offensive odors by regulated confined animal operations. The siting and separation requirements set forth in this ~~R~~regulation are intended to protect water quality, to protect public health, and to abate odor. In order to minimize odor, the Arkansas Pollution Control and Ecology Commission's policy is to encourage permittees to adopt a good neighbor policy and consider the use of chemical or biological additives or other best management practices in the operation of liquid animal waste management systems.

### Reg. 5.103      Applicability

The provisions of this ~~R~~regulation are applicable to the operation of hog, poultry or dairy farms or other confined animal operations using liquid animal waste management systems.

### Reg. 5.104      Policy for Compliance

It shall be the policy of the Department to provide a reasonable time for holders of existing permits to comply with new or revised provisions of this regulation. Holders of existing permits shall achieve compliance with this regulation at the earliest practicable time, not to exceed five years from the effective date of the regulation.



Reg. 5.105

Exemption

Any confined animal operation using a liquid waste disposal system shall be exempt from the requirements of this regulation if the owner or operator obtains and maintains active coverage under either an National Pollutant Discharge Elimination System individual or general permit for discharges from a concentrated animal feeding operation.

## Chapter 2 : DEFINITIONS

### Reg. 5.201            Definitions

The following definitions shall apply:

**Act** means the Arkansas Water and Air Pollution Control Act, (~~Act 472 of 1949, as amended~~) Ark. Code Ann. § 8-4-101 *et seq.*

**Animal feeding operation (AFO)** means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

**Best Management Practices** means schedules of activities, prohibited activities, maintenance procedures and management practices that prevent or reduce pollution of the waters of the state as set forth in this regulation and the General Permit.

**Commission** means the Arkansas Pollution Control and Ecology Commission

**Confined Animal Operation** means any lot or facility where livestock, fowl, or other animals have been, are or will be stabled or confined and fed or maintained and where crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over significant portions of the lot or facility.

**Concentrated animal feeding operation (CAFO)** means an AFO that is defined as a Large CAFO or as a Medium CAFO pursuant to 40 CFR 122.23, or that is designated as a CAFO in accordance with 40 CFR 122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

**Department** means the Arkansas Department of Environmental Quality, or its successor.

**Director** means the Director of the Arkansas Department of Environmental Quality or his/her designated representative.

**Liquid Animal Waste Management System** means any system used for the collection, storage, distribution or disposal of animal waste in liquid form generated by a confined animal operation.

**Site Management Plan** means a plan prepared by the United States Department of Agriculture Natural Resource Conservation Service, an Arkansas Natural Resources Commission water quality technician, Certified Nutrient Management Planner, the University of Arkansas Cooperative Extension Service, or a professional engineer registered in the state of Arkansas which includes a detailed map of the land application site showing all buffer zones, a description of the land use and the crops grown on the site, and a land use agreement if the site is not owned by the permittee. In Nutrient Surplus Areas designated by Ark. Code Ann. § 15-20-1104, persons drafting nutrient management plans must be certified by the Arkansas Natural Resource Commission ("ANRC") in accordance with Ark. Code Ann. § 15-20-1106 and Arkansas Natural Resources Commission Title 20, "Rules Governing the Arkansas Nutrient Management Planner Certification Program,";

**Waste Management Plan** means a plan prepared by the United States Department of Agriculture Natural Resource Conservation Service, an Arkansas Natural Resources Commission water quality technician, the University of Arkansas Cooperative Extension Service, or a professional engineer registered in the state of Arkansas detailing the management and disposal of liquid wastes generated in a confined animal operation. In Nutrient Surplus Areas designated by Ark. Code Ann. § 15-20-1104, persons drafting nutrient management plans must be certified by the Arkansas Natural Resource Commission ("ANRC") in accordance with Ark. Code Ann. § 15-20-1106 and Arkansas Natural Resources Commission Title 20, "Rules Governing the Arkansas Nutrient Management Planner Certification Program,";

**Waters of the state** means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of this state as defined by the Act.

Unless manifestly inconsistent with this Regulation, other words and phrases used in this Regulation shall have the same meaning as used in the Act.

## Chapter 3 : PERMIT, APPLICATIONS AND PROCEDURES

### Reg. 5.301 Requirements for a Permit

No confined animal operation using a liquid animal waste disposal system shall be constructed or operated unless the owner has first obtained a permit from the Department.

### Reg. 5.302 Permit Application Process

(A) Application and permitting procedures for new or major modifications as described in Reg. 5.305 shall comply with the Arkansas Pollution Control and Ecology Commission Regulation No. 8, Administrative Procedures. The Department shall provide a copy of the public notice or similar written notification of the operation to the county quorum court or, if located within an area zoned by a city, the city zoning authority. Applications for a permit under this regulation shall be made on forms provided by ~~ADEQ~~the Department. An applicant for a new or modification of an existing liquid animal waste disposal permit shall make a reasonable effort to notify all adjacent land owners that a complete application for a liquid animal waste disposal permit is on file with the Department. This notice shall also contain the permittee's name, mailing address, type of permit action, type of facility, size of facility and location. The land owners shall be notified at the same time that the permit application is submitted to the Department. The applicant must provide a copy of the letter sent to each adjacent land owner with the application. Any appeal rights are governed by the provisions of Regulation No. 8.

### Reg. 5.303 Prohibition

The operator of a confined animal operation constructed and operated as authorized by permit in accordance with the provisions of this Regulation shall not allow or cause a point source discharge from any part of the liquid animal waste management system.

### Reg. 5.304 Educational Requirements Reserved

~~(A) Applicants for permits and all managing owners or managing operators of the proposed operation must provide certification of satisfactory completion of formal education or training in the areas of waste management and odor control. Proof of certification of a minimum of four (4) hours of individualized training and education must be submitted to the Department prior to operation of the facility. The curricula~~

must be approved by ADEQ.

- ~~(B) — All managing owners or managing operators of all permitted liquid animal waste disposal systems subject to this Regulation must provide certification of satisfactory completion of continuing education in the areas of waste management and odor control once every three (3) years. The curricula and content must be approved by ADEQ. Providers of the training must supply certification of training and attendance within thirty (30) days of training event to the permittee and to the Department.~~
- ~~(C) — Failure to obtain the required training as provided in this Section shall be deemed a violation of this Regulation.~~

**Reg. 5.305                      Permit Modification**

When the Director receives any information (for example, receives information submitted by the permittee as required in the permit or by the Department) he or she may determine whether or not one or more of the causes for modification exist. If cause exists, the Director may modify the permit accordingly and may request an updated application, if necessary. When a permit is modified, only the conditions subject to modification are reopened. If cause does not exist, the Director shall not modify the permit.

If a permit modification satisfies the criteria in Reg. 5.306 for minor modifications, the permit may be modified without public notice. Otherwise, a draft permit must be prepared in accordance with Reg. 5.302 and Regulation No. 8.

*Causes for modification.* The following are causes for modification, but are not limited to:

- A. *Volume Increase.* A greater than ten percent increase in the volume of animal waste, as excreted, generated by the facility over what was allowed by the original permit or the last major modification for an increase in volume.
- B. *Sites.* Addition of land application sites.
- C. *Waste Management Plan.* Change in waste treatment, type, handling or disposal.

**Reg. 5.306                      Minor modifications of permits**

Upon receipt of written consent by the permittee, the Director may modify a permit to make the changes listed in this section. Such changes will be deemed minor modifications to the permit. Minor modifications allowed under this section may be made administratively in compliance with Reg. 5.302. Any modification not made under this section shall be deemed a major modification and must follow the permitting requirements contained in Regulation No. 8.

Minor modifications may only:

- A. Correct typographical errors;
- B. Allow for a change in ownership or operational control of a facility (transfer of the permit) where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the Director;
- C. Transfer permitted land application sites to another permit for the same waste source.
- D. Addition of sites not associated with a greater than ten percent increase in volume of waste as excreted, needed to provide more land to lower nutrient loadings in an effort to be proactive in environmental protection. Permittee must have an active confined animal feeding operation associated with the permit;
- E. Remove land application sites from a permit;
- F. Changes or practices not associated with a significant increase in storage volume in an effort to be proactive in environmental protection; or
- G. Removal of educational requirements from waste management plan.

## Chapter 4 : TECHNICAL REQUIREMENTS

### Reg. 5.401            Approval of Design

No liquid animal waste management system shall be constructed, modified, or placed into operation unless in accordance with final design plans and specifications approved by the Department.

### Reg. 5.402            Design Requirements

(A) Designs and waste management plans shall be in accordance with this Chapter and the following United States Department of Agriculture Natural Resource Conservation Service technical publications:

- (1) Field Office Technical Guide, as amended.
- (2) Agricultural Waste Management Field Handbook, as amended.

### Reg. 5.403            Siting Requirements

Confinement buildings, settling basins, holding ponds, and other liquid animal waste containment structures shall not be constructed within 1,320 feet of the nearest existing occupied dwelling for confined animal operations in excess of the following numbers of animals: 600 beef cattle, 430 dairy cows, 1500 finishing hogs, 600 sows, 6000 nursery pigs, 33,000 turkeys, or 130,000 chickens. A buffer distance of 500 feet shall apply to all other facilities. These buffer distances shall not apply if the existing dwelling is owned by owners or operators of the liquid animal waste management system or if the adjoining property owner consents in writing. Confined animal operations existing as of 1992 and proposing to construct a liquid animal waste containment structure in order to reduce waste/wastewater run-off to waters of the State may be considered exempt from these buffer distances by the Director. These buffer distances do not apply to confinement buildings, settling basins, holding ponds or other liquid animal waste containment structures existing as of the effective date of this regulation nor do they apply to existing structures when a liquid animal waste permit modification is required due to a change in ownership.

### Reg. 5.404            Subsurface Investigation Requirements

The subsurface investigation for earthen holding ponds and treatment lagoons suitability and

liner requirements may consist of auger holes, dozer pits, or backhoe pits that should extend to at least two (2) feet below the planned bottom of the excavation. In those situations where this depth is not practical in the initial on-site subsurface investigation, the applicant shall provide additional subsurface investigation documentation to the Department.

**Reg. 5.405**                    **Waste Management Plan**

- (A) The waste management plan shall be developed in accordance with Reg. 5.402 and shall address the timing of land application of wastes with respect to the nutrient uptake cycle of the vegetation found on the land application site(s) and, to the extent practicable, shall include measures to minimize off-site obnoxious and offensive odors.
- (B) All permitted facilities must have a waste management plan for the farm and a site management plan for each land application site prepared by a professional engineer registered in the state of Arkansas, the United States Department of Agriculture Natural Resource Conservation Service, the University of Arkansas Cooperative Extension Service, Certified Nutrient Management Planner, or a water quality technician of the Arkansas Natural Resources Commission and approved by the Department. The Department shall require proof of land ownership or of contractual agreements for use of the land as a land application site.
- (C) The facility waste management plan shall be reviewed annually by the operator. An updated waste management plan shall be submitted to ADEQ the Department when significant changes are made or as required by ADEQ the Department. The updated waste management plan shall include the soils analysis sampled and analyzed per Reg. 5.407(C).

**Reg. 5.406**                    **Land Application Requirements**

- (A) Waste/wastewater shall be evenly distributed over application sites at the rates specified in site management plans.
- (B) Land application of waste/wastewater shall not be undertaken when soil is saturated, frozen, covered with ice or snow, or when significant precipitation is reasonably anticipated in the next twenty-four hours.
- (C) Waste/wastewater shall not be applied on slopes with a grade of more than ~~15~~ fifteen percent (15%) or in any manner that will allow waste to enter waters of the State or to run onto adjacent property without the written consent of the affected adjacent property owner.



- (D) Application of waste/wastewater shall not be made within 100 feet of streams including intermittent streams, ponds, lakes, springs, sinkholes, rock outcrops, wells and water supplies; or 300 feet of extraordinary resource waters as defined by the Arkansas Pollution Control and Ecology Commission Regulation No. 2. Buffer distances for streams, ponds and lakes shall be measured from the ordinary high water mark. The Department may require additional buffer distances deemed necessary to protect the waters of the state.
- (E) Application of waste/wastewater shall not be made within 50 feet of property lines or 500 feet of neighboring occupied buildings existing as of the date of the permit. The restrictions regarding property lines or neighboring occupied buildings shall not apply if the adjoining property is also approved as a land application site under a permit issued by the Department or if the adjoining property owner consents in writing.
- (F) Application of waste/wastewater shall not be made in areas where the land application of waste/wastewater is prohibited by Arkansas Department of Health regulations for the protection of public water supplies.

**Reg. 5.407**

**Record Keeping Requirements**

- (A) Records shall be kept of all waste/wastewater applied. These records shall be kept in sufficient detail to determine the application rate. A daily log shall be kept of all land applied waste/wastewater when applying. The log should include date, weight and/or volume, field identification and the acreage over which the waste/wastewater was spread. All records and logs shall be kept at the facility and provided to the Department upon request.
- (B) A representative sample of the waste/wastewater to be land applied shall be collected periodically, at a minimum of once each year, and analyzed for the following parameters: pH, Total Nitrogen, Potassium, Total Phosphorous, Soluble Phosphorous and percent solids. The Department may require more frequent testing deemed necessary to protect waters of the state.
- (C) The soils of each field where liquid animal waste has been land applied shall be sampled and analyzed at least once every five (5) years for the following parameters: pH, Potassium, Phosphorous and Nitrates. The soils analysis shall be submitted with the updated Waste Management Plan required in Reg. 5.405 (C).
- (D) Unless specified otherwise, methods and timing of sampling and analysis described in this Section shall be in accordance with the University of Arkansas Cooperative Extension Service guidelines.

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- (E) Annual reports for the previous calendar year shall be submitted to the Department prior to May 30 of each year which must include the following: waste/wastewater analyses conducted under Reg. 5.407(B), locations, volumes, and nitrogen application rates for the previous year; methods of application; and types of crops grown on each land application site. Reports must be submitted on forms provided by the Department.

## Chapter 5 : FACILITY CONSTRUCTION CERTIFICATION

Reg. 5.501

### Facility Construction Certification

The provisions of this Regulation No. 5 require all confined animal operations to be constructed in accordance with plans and specifications approved by the Department. Following completion of construction and prior to any operation commencing at the facility, certification that the facility was constructed in accordance with the approved plans and specifications must be submitted to the Department. This certification must be prepared by United States Department of Agriculture Natural Resource Conservation Service, an Arkansas Natural Resources Commission water quality technician, the University of Arkansas Cooperative Extension Service, or a Professional Engineer registered in the State of Arkansas. Authorization to operate the facility will not be issued until the certification is received by the Department.

## Chapter 6 : ALTERNATIVE PERMITTING AND WASTE MANAGEMENT

### Reg. 5.601      Permit for Land Application Site Only

A separate permit may be issued for a land application site if the operator submits an application which includes a site management plan for the land application site and a plan detailing nutrient application rates; the timing of waste application with respect to the nutrient uptake cycle of the vegetation found on the land application site(s); and waste storage and distribution method(s) prepared in accordance with the requirements of this Regulation. The applicant for such a permit shall notify the Department of any contractual agreement for the use of the land as a land application site by submitting a copy of the agreement. Records of waste/wastewater application shall be kept as specified in Reg. 5.407 and shall include information regarding the source of the waste, including location and permit number if applicable. Sampling, analysis and annual reporting as specified in Reg. 5.407 are required.

### Reg. 5.602      Composting

Waste management plans submitted in accordance with this Regulation may include composting as an alternative to land application of liquid waste. Any such plans may provide for composting at a permitted composting facility per Arkansas Pollution Control and Ecology Commission Regulation No. 22, Solid Waste Management Rules. If no such facility is referenced in the plan, it must include sufficient detail for a determination by the Department that point or nonpoint source pollution to the waters of the State will not result from the use of this alternative.

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## Chapter 7 : FACILITY CLOSURE

Reg. 5.701

### Closure Plan Required

Should a permitted confined animal operation using a liquid waste management system cease operation, the permittee shall submit to the Department a closure plan for the liquid waste system storage/treatment structure(s) within sixty (60) days of the final day of operation for Department review and approval. Within ten (10) days of completion of closure activities, the permittee must submit certification that the facility was closed in accordance with the approved plan. The closure plan and closure certification shall be prepared by the United States Department of Agriculture Natural Resource Conservation Service, an Arkansas Natural Resources Commission water quality technician, the University of Arkansas Cooperative Extension Service or a professional engineer registered in the State of Arkansas.

## Chapter 8 : ADMINISTRATIVE PROCEDURES

### Reg.5.801 Penalty Policy and Administrative Procedures

Arkansas Pollution Control and Ecology Commission Regulation No. 7, Civil Penalties, and Regulation No. 8: Administrative Procedures, apply to this Regulation.

### Reg.5.802 Severability

If any provision of this Regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Regulation which can be given effect with the invalid provision or application, and, to this end, provisions of this Regulation are declared to be severable.



## **Chapter 9 : EFFECTIVE DATE**

### **Reg. 5.901            Effective Date**

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



BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF PROMULGATION OF )  
REGULATION NO. 5, LIQUID ANIMAL WASTE ) DOCKET NO. 11-\_\_\_\_-R  
MANAGEMENT SYSTEMS )

PETITION TO INITIATE RULEMAKING TO AMEND REGULATION NO. 5

The Arkansas Department of Environmental Quality (hereinafter "ADEQ"), for its  
Petition to Initiate Rulemaking to Amend Regulation No. 5, Liquid Animal Waste Management  
Systems, states:

1. This proposed rulemaking is necessary to address permitting issues for liquid animal waste management systems that may be permitted as a concentrated animal feeding operation (hereinafter "CAFO") under the National Pollutant Discharge Elimination System (hereinafter "NPDES").
2. This proposed rule will provide an exemption from the requirements of the regulation for liquid animal waste management systems that are covered under an individual or general NPDES permit for CAFOs. Reg. 5.105, Exemption.
3. This proposed rule will remove the continuing education requirements for operators of liquid animal waste management systems. These educational requirements are not required in the NPDES permit for CAFOs and ADEQ believes that the permitting programs should be similar in most aspects. Therefore, ADEQ proposes to remove Reg. 5.304, Educational Requirements, from the regulation.
4. Some operators have incorporated the educational requirements as a part of the waste management plan for their farm. ADEQ proposes to add "Removal of educational requirements from waste management plan" to the list of acceptable minor permit modifications. Reg. 5.306, Minor modifications of permits.

5. ADEQ also proposes several minor changes to bring the regulation into compliance with the Commission's Regulation Drafting Guidelines.
10. Jamie Ewing and Steve Drown from ADEQ will be available to answer questions concerning this proposed rulemaking. A red-lined version of the regulation showing the proposed changes is attached as Exhibit "A" and is hereby incorporated by reference. A copy of the Legislative Questionnaire is attached as Exhibit "B", and a copy of the Financial Impact Statement for the proposed revisions is attached as Exhibit "C", both of which are incorporated by reference. The Economic Impact Statement filed with the Arkansas Economic Development Commission is attached as Exhibit "D" and is hereby incorporated by reference. A copy of the Economic Impact/Environmental Benefit Analysis is attached hereto as Exhibit "E" and is hereby incorporated by reference. A proposed minute order is attached as Exhibit "F" and is hereby incorporated by reference.
- WHEREFORE, ADEQ requests that the Commission initiate the rulemaking process and adopt the proposed Minute Order.

Respectfully Submitted,

By:   
Jamie Ewing, Attorney Specialist  
Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, AR 72118

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**SUBJECT: Petition to  
Initiate Rulemaking  
Regulation No. 5**

**MINUTE ORDER NO. 11-**

**Docket No. 11- -R**

**PAGE 1 OF 3**

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On October 14, 2011, the Arkansas Department of Environmental Quality, (“ADEQ”) filed a Petition to Initiate Rulemaking to Amend Regulation No. 5, Liquid Animal Waste Management Systems. Pursuant to Ark. Code Ann. § 8-4-202(c), the Arkansas Pollution Control and Ecology Commission (“Commission”) has sixty (60) days in which to either institute rulemaking proceedings or to give written notice denying the petition for rulemaking. The Petition has been designated as Docket No. 11-\_\_\_-R.

The Commission’s Regulations Committee met on October 28, 2011, to review the Petition and it recommends that the Commission institute a rulemaking proceeding to consider adopting the proposed amendments to Regulation No. 5. The Regulations Committee also recommends adoption of the following procedures and schedule.

1. The Arkansas Department of Environmental Quality (“ADEQ”) shall file an original and one (1) copy and an electronic copy of all materials required under this Minute Order. This requirement does not apply to transcripts.
2. Persons submitting written public comments shall submit them to ADEQ and ADEQ will deliver the originals of all comments to the Commission Secretary at the conclusion of the proceeding.
3. A public hearing shall be conducted on the December 19, 2011 at 2:00 p.m. in the Commission Room, ADEQ Headquarters, 5301 Northshore Drive, North Little Rock or as otherwise determined by availability.
4. The period for receiving all written comments shall conclude ten (10) business days after the date of the public hearing, unless an extension of time is granted.
5. ADEQ shall file, not later than 14 days before the Commission meets to consider adoption of the proposed regulation, a Statement of Basis and Purpose and Responsive Summary as required by Reg. 8.814 and Reg. 8.815. In addition, ADEQ shall file a proposed Minute Order deciding this matter.
6. ADEQ shall seek review of the proposed rule from the Joint Interim Committee on Public Health and Welfare and/or from the Joint Interim

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

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Initiate Rulemaking  
Regulation No. 5**

**MINUTE ORDER NO. 11-**

**Docket No. 11- -R**

**PAGE 2 OF 3**

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Committee on Administrative Rules and Regulations.

7. The Regulations Committee and the Commission may consider this matter at their March 2012 meeting. In the event the appropriate legislative committees do not complete review of the proposed rule by the above date, the Regulations Committee and the Commission will consider the proposed amendments to the regulation after review by the appropriate legislative committees. Members of the Regulations Committee may ask questions of any persons that made oral or written comments and it will make a recommendation to the Commission.

8. At the Commission meeting, the presentation of oral statements and legal arguments will be regulated as follows:

a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, the one (1) hour oral statement period may be extended.

b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation or other legal entity may be permitted five (5) minutes in which to address the Commission.

c. ADEQ shall be permitted ten (10) minutes in which to address the Commission.

d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commissioner has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

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Initiate Rulemaking  
Regulation No. 5**

**MINUTE ORDER NO. 11-**

**Docket No. 11- -R**

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9. Pursuant to Act 143 of 2007, the Commission finds the proposed regulation does not affect small businesses.

The Commission accepts the recommendation of the Regulations Committee and initiates the rulemaking proceeding in this docket. The Commission adopts, without modification, the procedural schedule set forth above.

**COMMISSIONERS:**

\_\_\_\_\_ **J. Bates**  
\_\_\_\_\_ **L. Bengal**  
\_\_\_\_\_ **D. Hendrix**  
\_\_\_\_\_ **S. Jorgenson**  
\_\_\_\_\_ **D. Samples**  
\_\_\_\_\_ **J. Shannon**

\_\_\_\_\_ **J. Simpson**  
\_\_\_\_\_ **L. Sickel**  
\_\_\_\_\_ **W. Thompson**  
\_\_\_\_\_ **B. White**  
\_\_\_\_\_ **R. Young**  
\_\_\_\_\_ **(Vacant)**

\_\_\_\_\_ Submitted by: Jamie Ewing    DATE PASSED: October 28, 2011  
John Chamberlin, Chair



## NOTICE OF PROPOSED REGULATION CHANGES, PUBLIC HEARINGS

The Arkansas Pollution Control and Ecology Commission (APC&EC) will hold two public hearings at North Little Rock December 19, 2011, to receive public comments on proposed changes to APC&EC Regulations 5 (Liquid Animal Waste Management Systems) and 6 (Regulations for State Administration of the National Pollutant Discharge Elimination System [NPDES]). The deadline for submitting written comments on the proposals is 4:30 p.m. January 5, 2012.

The hearings will be held in the Commission Room of the Arkansas Department of Environmental Quality (ADEQ) headquarters building, 5301 Northshore Drive, North Little Rock. The Regulation 5 hearing will begin at 2:00 p.m., and the Regulation 6 hearing will start immediately after all comments on Regulation 5 have been submitted.

In the event of inclement weather or other unforeseen circumstances, a decision may be made to postpone the hearings. If the hearings are postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing date and comment period.

APC&EC authority to revise Regulations 5 and 6 is found in the Arkansas Code Annotated, Section 8-4-101, et seq.

Proposed significant changes to Regulation 5 include:

- Inclusion of an exemption from Regulation 5 requirements for liquid animal waste management systems covered under an individual or general NPDES permit for Concentrated Animal Feeding Operations (CAFOs).
- Elimination of the continuing education requirements for operators of liquid animal waste management systems.
- Addition of a provision that would consider the removal of educational requirements from waste management plans for existing permits under Regulation 5 as a minor permit modification.

Proposed significant changes to Regulation 6 include:

- Elimination of the regulation's Chapter 5, which deals with permit requirements for Concentrated Animal Feeding Operations (CAFOs), since the United States Environmental Protection Agency (EPA) has adopted federal regulations for CAFOs under the NPDES program, and these federal CAFO regulations will be added to the list of federal regulations incorporated into Regulation 6 by reference.
- Addition of a new provision which creates a permit by rule for storm water discharges from small construction sites, defined as greater than one acre but smaller than five acres.
- Addition of a new section dealing with financial assurance permitting requirements for non-municipal wastewater treatment plants.

In addition, proposed revisions to both regulations include changes in the definitions sections, as well as language changes throughout the regulations made in order to make the regulations conform to format changes adopted by the APC&EC.

Copies of the proposed changes to Regulations 5 and 6 are available for public inspection during normal business hours at the Public Outreach and Assistance (POA) Division in the ADEQ's headquarters building in North Little Rock, and in ADEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy,

Stuttgart, Texarkana, and West Memphis; in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway; and in the Arkansas State Library, 900 W. Capitol, Suite 100, Little Rock. In addition, a copy of the draft regulation showing the proposed changes, along with related support documents, is available for viewing or downloading on the draft regulations page of the ADEQ's Internet web site at [www.adeq.state.ar.us](http://www.adeq.state.ar.us).

Oral and written statements will be accepted at the hearings, but written comments are preferred in the interest of accuracy. In addition, written and electronic mail comments will be accepted if received no later than 4:30 p.m. January 5, 2012. Written comments should be mailed to Doug Szenher, POA Division, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, AR 72118. Electronic mail comments should be sent to: [reg-comment@adeq.state.ar.us](mailto:reg-comment@adeq.state.ar.us).

Published November 2 and 3, 2011,  
Teresa Marks, Director,  
Arkansas Department of Environmental Quality