

EXHIBIT F

DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER DIVISION

SUBJECT: Regulation 6; State Administration of the National Pollutant Discharge Elimination System (NPDES)

DESCRIPTION: The proposed changes establish permit-by-rule coverage for discharges of pesticides to waters of the state. On March 1, 2012, the ADEQ issued a National Pollutant Discharge Elimination System (NPDES) general permit for pesticide discharges (Permit No. ARG870000). Issuance of a permit to cover pesticide discharges was required by federal law, based on a decision of the Federal Court of Appeals for the Sixth Circuit in *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir. 2009). ADEQ's general permit incorporated narrative effluent limitation based on the Environmental Protection Agency's draft general permit. ADEQ's general permit does not require any additional conditions beyond those already in place under the authority of the Arkansas State Plant Board.

Currently, operators that are required to seek coverage under the general permit are required to pay a \$200 permit fee and file a Notice of Intent (NOI) for coverage under the general permit. With the proposed changes, the operator will no longer be required to post a Notice of Coverage at their site and follow the terms of the general permit in order to be deemed to have permit coverage for discharge of pesticides to waters of the state.

Additionally, ADEQ proposes to remove Reg.6.204(B) from the regulation. This provision required industrial users that discharged into a publicly owned treatment works (POTW) to obtain a permit from ADEQ before discharging to the POTW. The department has determined that this requirement is not necessary because the industrial users are discharging into a treatment system that is already permitted, not into waters of the state. In most cases, the POTW will issue a permit to industrial users for their discharge to the treatment system.

Summary of the Changes as Submitted before Public Comment

1. Add several defined terms to Reg.6.103, Definitions. The new definitions are necessary to understand the requirements found in Reg.6.206 for discharges of pesticides into waters of the state.
2. Add Reg. 6.206 to provide a permit-by-rule for entities discharging pesticides into waters of the state.
3. Delete Reg.6.204(B). This section is not necessary under the regulations governing NPDES permits. NPDES permits are only required for discharges of pollutants to waters of the state. Industrial users discharging to a public-owned treatment works are not discharging to waters of the state and are not required to obtain a permit from ADEQ prior to discharge.
4. Make several minor changes to bring the regulation into compliance with the commission's regulation drafting guidelines.

Change to the Regulation Based on Public Comments:

ADEQ proposes to withdraw the amendments to Reg. 6.204 and leave the regulation as currently written (with typographical corrections, as throughout the rest of the document).

PUBLIC COMMENT: A public hearing was held on October 16, 2012. The public comment period ended on October 30, 2012. The following comments were received:

Comment #1: One commenter expressed his concern about over-regulation. He stated that his initial concerns had been addressed by talking to others before the hearing and he was not opposed to this regulation as it had been explained to him. **Response:** ADEQ acknowledges this comment.

Comment #2: The Arkansas Forestry Association supports the proposed amendments, specifically the amendments that create a permit-by-rule for pesticide application. **Response:** ADEQ acknowledges this comment.

Mary Cameron, Bureau of Legislative Research:

Comment #1: The new definition for “pesticide” goes beyond the definition found in A.C.A. § 8-6-203(8), including among other things, that it means “any nitrogen stabilizer”. **Response:** The BLR cites to a provision of the Arkansas Solid Waste Management Act, Ark. Code Ann. § 8-6-201 et seq. APC&EC Regulation No. 6 is promulgated under the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 et seq. This state law corresponds with the federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., which is administered by the Environmental Protection Agency. The definition of pesticides found in Ark. Code Ann. § 8-6-203(8) does not apply to the regulations promulgated in APC&EC Regulation No. 6. The proposed changes establish permit-by-rule coverage for discharges of pesticides to waters of the state, as allowed by Arkansas law and the Clean Water Act. On March 1, 2012, ADEQ issued a National Pollutant Discharge Elimination System (“NPDES”) general permit for pesticide discharges (Permit No. ARG870000). Issuance of a permit to cover pesticide discharges was required by federal law, based on a decision of the Federal Court of Appeals for the 6th Circuit in *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir. 2009). The 6th Circuit’s decision vacated EPA’s regulation which exempted the application of pesticides on or near waterways from NPDES permitting requirements, if those pesticides were applied in accordance with other federal laws. ADEQ’s general permit incorporated narrative effluent limitations based on EPA draft general permit. ADEQ’s general permit does not require any additional conditions beyond those already in place under the authority of the Arkansas State Plant Board.

Comment #2: Currently, industrial users discharging to publicly owned treatment works must obtain a permit except for those qualifying for a “permit-by-rule” (have an approved local pretreatment program or are not subject to pretreatment standards). As written, the new rule would not require a permit or a permit-by-rule for these industrial users. According to the explanation provided with the rule, it is ADEQ’s position that a permit is not necessary because the industrial users are discharging into a treatment system that

is already permitted, not into waters of the State, and because in **most** cases the publicly owned treatment works will issue a permit to industrial users for their discharge to the treatment system. Under 33 U.S.C. 1342(b)(8), the state must insure that the discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards (1317(b)) and a program to assure compliance with the pretreatment standards and adequate notice to the permitting agency of new introduction or substantial change in volume into the publicly owned treatment works of pollutants that are regulated by federal law. If these industrial users will not be required to obtain a permit or be covered by a permit-by-rule, how will the state be able to insure compliance with 33 U.S.C. 1342, especially since not **all** of the publicly owned treatment works are requiring a permit from these industrial users? Is there an ADEQ rule that requires publicly owned treatment works to obtain a permit from its industrial users? **Response:** ADEQ acknowledges this comment. ADEQ's intent with the proposed change was to address the requirement that industrial users obtain a state construction permit for a facility whose discharge is permitted through a publicly owned treatment works, not ADEQ. However, based upon confusion regarding the intent of the proposed changes, ADEQ will withdraw this proposed change and request that APC&EC Reg. 6.204 remain as currently written.

The effective date of this proposed rule is March 2013.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: There is no cost to the agency to implement the rule. As covered entities will not be required to submit permit coverage paperwork to the department, the costs of implementation will be low. Any necessary costs for enforcement will be covered by current federal grant funds available for the implementation of the NPDES permitting program.

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.

The proposed amendments to Regulation No. 6 will result in a positive economic impact to affected entities. Operators that discharge pesticides into waters of the state would be able to obtain permit coverage under the permit-by-rule and would not need to submit permit fees to ADEQ. Likewise, industrial users that discharge pollutants into a publicly owned treatment works (POTW) will no longer be required to obtain a permit from ADEQ and would not need to pay associated permit fees.

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.

See above. Affected entities would no longer need to pay permit fees. All costs to implement the rule would be covered by the federal grant for ADEQ's NPDES permitting program.

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

None.

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.

As covered entities will not be required to submit permit coverage paperwork to the department, the costs of implementation will be low. Any necessary costs for enforcement will be covered by current federal grant funds available for the implementation of the NPDES permitting program.

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?

Market-based or voluntary standards are not appropriate alternatives for the proposed changes. A permit-by-rule by definition follows the rulemaking process.

Environmental Impact

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

The proposed amendments offer regulatory flexibility for operators discharging pesticides into waters of the state and to industrial users of POTWs. Appropriate regulatory mechanisms promote compliance with environmental regulations.

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

Appropriate regulatory mechanisms promote compliance with environmental regulations.

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

Unnecessary regulatory requirements may impede quick and effective compliance with environmental laws.

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

Unnecessary regulatory requirements may impede quick and effective compliance with environmental laws.

LEGAL AUTHORIZATION: Ark. Code Ann. § 8-1-101 provides the Arkansas Pollution Control and Ecology Commission (“Commission”) with the authority “to establish a system of fees for the issuance of permits required by” the Arkansas Department of Environmental Quality and the Commission under the Arkansas Water and Air Pollution Control Act. Ark. Code Ann. § 8-4-201 authorizes the Commission to promulgate rules concerning water standards and moratoriums or suspensions of types or categories of permits. Ark. Code Ann. § 8-4-202 gives the Commission the authority to adopt, modify, or repeal rules that implement or effectuate the powers and duties of the Arkansas Department of Environmental Quality and the Commission under the Arkansas Water and Air Pollution Control Act. See also Ark. Code Ann. § 8-1-103.

**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 Steve Drown, Water Division Chief/Ryan Benefield, ADEQ Deputy Director
 CONTACT PERSON Jamie Ewing, Attorney Specialist
 ADDRESS 5301 Northshore Drive, North Little Rock, AR, 72118
 PHONE NO. (501) 682-0918 FAX NO. (501) 682-0891 E-MAIL ewing@adeq.state.ar.us
 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
 Room 315, State Capitol
 Little Rock, AR 72201

Regulation No. 6, Regulations for State Administration of
 the National Pollutant Discharge Elimination System
 (NPDES)

1. What is the short title of this rule? _____
2. What is the subject of the proposed rule? Creating a permit-by-rule for discharges of pesticides to waters of the State
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
 If yes, please provide the federal rule, regulation, and/or statute citation.
 The regulation must comply with the federal Clean Water Act, 33 U.S.C. 1251 et seq. and regulations promulgated thereunder. _____
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 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 proposed changes establish permit-by-rule coverage for discharges of pesticides to Waters of the State. On March 1, 2012, the Arkansas Department of Environmental Quality issued a National Pollutant Discharge Elimination System ("NPDES") general permit for pesticide discharges (Permit No. ARG870000). Issuance of a permit to cover pesticide discharges was required by federal law, based on a decision of the Federal Court of Appeals for the Sixth Circuit in *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir. 2009). ADEQ's general permit incorporated narrative effluent limitation based on the Environmental Protection Agency's ("EPA") draft general permit. ADEQ's general permit does not require any additional conditions beyond those already in place under the authority of the Arkansas State Plant Board.

Currently, operators that are required to seek coverage under the general permit are required to pay a \$200 permit fee and file a Notice of Intent ("NOI") for coverage under the general permit. With the proposed changes, the operator will no longer be required to submit the permit fee and NOI to the Department. The operator would only be required to post a Notice of Coverage at their site and follow the terms of the general permit in order to be deemed to have permit coverage for discharge of pesticides to Waters of the State.

Additionally, ADEQ proposes to remove Reg.6.204(B) from the regulation. This provision required industrial users that discharged into a publicly owned treatment works ("POTW") to obtain a permit from ADEQ before discharging to the POTW. The Department has determined that this requirement is not necessary because the industrial users are discharging into a treatment system that is already permitted, not into waters of the State. In most cases, the POTW will issue a permit to industrial user for their discharge to the treatment system.

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: Oct. 16, 2012

Time: 2:00 pm

Place: ADEQ Headquarters, Commission Room, North Little Rock, AR

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

October 30, 2012

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

March 2013

12. Do you expect this rule to be controversial?

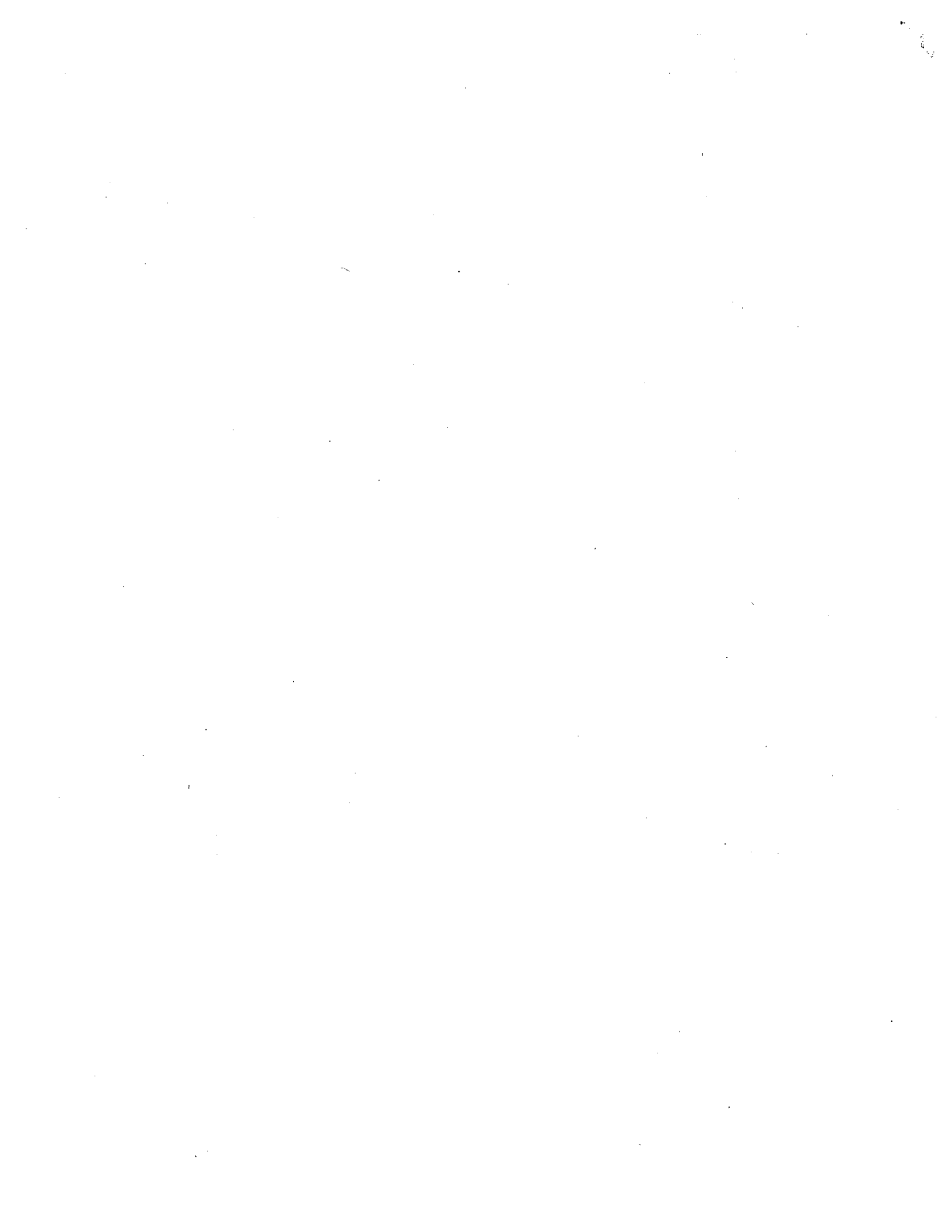
Yes

No

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.

Municipalities and utilities may express support for the proposed rule because it reduces the processing requirements for permits that cover discharges of pesticides to waters of the State.



FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Environmental Quality

DIVISION Water Division

PERSON COMPLETING THIS STATEMENT Jamie Ewing, Attorney Specialist

TELEPHONE NO. (501) 682-0918 **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. 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

2. Does this proposed, amended, or repealed rule affect small businesses? Yes No

If yes, please attach a copy of the economic impact statement required to be filed with the Arkansas Economic Development Commission under Arkansas Code § 25-15-301 et seq.

Even though this amended rule will not affect small businesses, we have attached a copy of the economic impact statement to this document.

3. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.

Not applicable.

4. If the purpose of this rule is to implement a federal rule or regulation, please give the incremental cost for implementing the rule. Please indicate if the cost provided is the cost of the program.

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total \$0

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____
Total \$0

5. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule? Identify the party subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

The proposed permit-by-rule will eliminate permitting and annual fees for entities covered by the rule.

6. What is the total estimated cost by fiscal year to the agency to implement this rule? Is this the cost of the program or grant? Please explain.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

As covered entities will not be required to submit permit coverage paperwork to the Department, the costs of implementation will be low. Any necessary costs for enforcement will be covered by current federal grant funds available for the implementation of the NDPES 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 August 3, 2012

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

Title or Subject: Arkansas Pollution Control and Ecology Commission Regulation No. 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)

Benefits of the Proposed Rule or Regulation

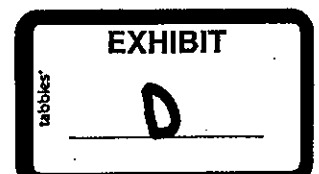
1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, Please explain the nature of such complaints.

The proposed changes establish permit-by-rule coverage for discharges of pesticides to Waters of the State. On March 1, 2012, the Arkansas Department of Environmental Quality issued a National Pollutant Discharge Elimination System ("NPDES") general permit for pesticide discharges (Permit No. ARG870000). Issuance of a permit to cover pesticide discharges was required by federal law, based on a decision of the Federal Court of Appeals for the Sixth Circuit in *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir. 2009). ADEQ's general permit incorporated narrative effluent limitation based on the Environmental Protection Agency's ("EPA") draft general permit. ADEQ's general permit does not require any additional conditions beyond those already in place under the authority of the Arkansas State Plant Board.

Currently, operators that are required to seek coverage under the general permit are required to pay a \$200 permit fee and file a Notice of Intent ("NOI") for coverage under the general permit. With the proposed changes, the operator will no longer be required to submit the permit fee and NOI to the Department. The operator would only be required to post a Notice of Coverage at their site and follow the terms of the general permit in order to be deemed to have permit coverage for discharge of pesticides to Waters of the State.

Additionally, ADEQ proposes to remove Reg.6.204(B) from the regulation. This provision required industrial users that discharged into a publicly owned treatment works ("POTW") to obtain a permit from ADEQ before discharging to the POTW. The Department has determined that this requirement is not necessary because the industrial users are discharging into a treatment system that is already permitted, not into waters of the State. In most cases, the POTW will issue a permit to industrial user for their discharge to the treatment system.

2. What are the top three benefits of the proposed rule or regulation?
- a. Operators discharging pesticides to Waters of the State will no longer be required to submit a NOI or pay a permit fee for coverage under the NPDES general permit.
 - b. This proposed rule would allow operators to continue current practices with no additional requirements beyond posting the Notice of Coverage at their sites, as the general permit requirements are the same as the rules under the authority of the Arkansas State Plant Board.



- c. Industrial users that discharge into POTWs will no longer be required to obtain a permit from ADEQ for the discharge.
3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?
- a. No action regarding pesticide discharges would require operators to continue to submit a permit fee and NOI to ADEQ. The Department has heard from many stakeholders that this would not be practical or acceptable.
- b. No action regarding industrial users to a POTW would require those discharges to obtain a permit from ADEQ for a discharge that was not entering waters of the State.
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.
- Market-based or voluntary standards are not appropriate alternatives for the proposed changes. A permit-by-rule by definition follows the rulemaking process.

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.
- The rulemaking will not increase costs to ADEQ associated with the proposed rules
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 small business that discharges pesticides to Waters of the State are required to obtain permit coverage for the discharge. Permit coverage may be obtained by individual permit, but most entities will opt to be automatically covered by the proposed permit-by-rule. The estimated number of small businesses affected by the rule is estimated to be small. Primarily, municipalities and utilities will be affected.
- The number of small businesses that are industrial users discharging to a POTW is also estimated to be small. Also, this proposed change would have a positive economic impact upon small businesses as they would no longer be required to obtain a permit from ADEQ, including the payment of permitting fees.
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. The permit-by-rule does not impose any new requirements on any sized entity; therefore, it was unnecessary to proposed 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.

Small business owners will not need to implement any changes in order to comply with the proposed permit-by-rule.

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

The proposed rule incorporated federal requirements for permitting discharges of pesticides to waters of the State. The permit-by-rule does not impose any additional requirements beyond those already in place under the authority of the Arkansas State Plant Board.

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

Small cities and towns submitted their concerns to ADEQ about the processing and reporting requirements in the original general permit issued for coverage of pesticide discharges. ADEQ determined that a permit-by-rule would ease the permitting and reporting process for eligible entities and initiated this rulemaking.

Summary of Proposed Changes to Regulation No. 6:

1. ADEQ proposes to add several defined terms to Reg.6.103, Definitions. The new definitions are necessary to understand the requirements found in Reg.6.206 for discharges of pesticides into waters of the State.
2. ADEQ proposes to add Reg.6.206 to provide a permit-by-rule for entities discharging pesticides into waters of the State.
3. ADEQ proposes to delete Reg.6.204(B). This section is not necessary under the regulations governing NPDES permits. NPDES permits are only required for discharges of pollutants to waters of the State. Industrial users discharging to a publicly-owned treatment works are not discharging to waters of the State and are not required to obtain a permit from ADEQ prior to discharge.
4. ADEQ also proposes several minor changes to bring the regulation into compliance with the Commission's Regulation Drafting Guidelines.

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

Rule Number & Title: Regulation No. 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)

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.

The proposed amendments to Regulation No. 6 will result in a positive economic impact to affected entities. Operators that discharge pesticides into waters of the State would be able to obtain permit coverage under the permit-by-rule and would not need to submit permit fees to ADEQ. Likewise, industrial users that discharge pollutants into a publicly owned treatment works ("POTW") will no longer be required to obtain a permit from ADEQ and would not need to pay associated permit fees.

Sources and Assumptions:

Proposed rule.



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.

See above. Affected entities would no longer need to pay permit fees. All costs to implement the rule would be covered by the federal grant for ADEQ's NPDES permitting program.

Sources and Assumptions:

Proposed rule; ADEQ Water Division staff

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

None.

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?

As covered entities will not be required to submit permit coverage paperwork to the Department, the costs of implementation will be low. Any necessary costs for enforcement will be covered by current federal grant funds available for the implementation of the NPDES permitting program.

Sources and Assumptions:

ADEQ Water Division staff

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?

Market-based or voluntary standards are not appropriate alternatives for the proposed changes. A permit-by-rule by definition follows the rulemaking process.

Sources and Assumptions:

Not applicable

2B. ENVIRONMENTAL BENEFIT

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

The proposed amendments offer regulatory flexibility for operators discharging pesticides into waters of the State and to industrial users of POTWs. Appropriate regulatory mechanisms promote compliance with environmental regulations.

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

Appropriate regulatory mechanisms promote compliance with environmental regulations.

Sources and Assumptions:

Comments received on the general permit issued for discharges of pesticides into waters of the State.

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

Unnecessary regulatory requirements may impede quick and effective compliance with environmental laws.

Sources and Assumptions:-

Comments received on the general permit issued for discharges of pesticides into waters of the State.

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

Unnecessary regulatory requirements may impede quick and effective compliance with environmental laws.

Sources and assumptions:

Comments received on the general permit issued for discharges of pesticides into waters of the State.



BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF PROMULGATION OF)
REGULATION NO. 6, REGULATIONS FOR THE STATE) DOCKET NO. 12-____-R
ADMINISTRATION OF THE NATIONAL POLLUTANT)
DISCHARGE ELIMINATION SYSTEM (NPDES))

PETITION TO INITIATE RULEMAKING TO AMEND REGULATION NO. 6

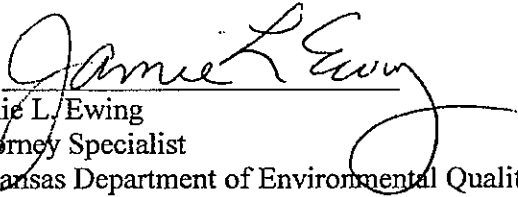
The Arkansas Department of Environmental Quality (hereinafter "ADEQ"), for its
Petition to Initiate Rulemaking to Amend Regulation No. 6, Regulations for the State
Administration of the National Pollutant Discharge Elimination System (NPDES), states:

1. ADEQ proposes to add several defined terms to Reg.6.103, Definitions. The new definitions are necessary to understand the requirements found in Reg.6.206 for discharges of pesticides into waters of the State.
2. ADEQ proposes to add Reg.6.206 to provide a permit-by-rule for entities discharging pesticides into waters of the State.
3. ADEQ proposes to delete Reg.6.204(B). This section is not necessary under the regulations governing NPDES permits. NPDES permits are only required for discharges of pollutants to waters of the State. Industrial users discharging to a publicly-owned treatment works are not discharging to waters of the State and are not required to obtain a permit from ADEQ prior to discharge.
4. ADEQ also proposes several minor changes to bring the regulation into compliance with the Commission's Regulation Drafting Guidelines.
5. 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 L. 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. 6

MINUTE ORDER NO. 12- 37

Docket No. 12-008-R

PAGE 1 OF 3

On August 10, 2012, the Arkansas Department of Environmental Quality, ("ADEQ") filed a Petition to Initiate Rulemaking to Amend Regulation No. 6, Regulations for the State Administration of the National Pollutant Discharge Elimination System ("NPDES"). 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. 12-008-R.

The Commission's Regulations Committee met on August 24, 2012, to review the Petition and it recommends that the Commission institute a rulemaking proceeding to consider adopting the proposed amendments to Regulation No. 6. 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 October 16, 2012 at 2:00 p.m. The hearing will be held 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

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to
Initiate Rulemaking
Regulation No. 6

MINUTE ORDER NO. 12- 37

Docket No. 12-008-R

PAGE 1 OF 3

On August 10, 2012, the Arkansas Department of Environmental Quality, ("ADEQ") filed a Petition to Initiate Rulemaking to Amend Regulation No. 6, Regulations for the State Administration of the National Pollutant Discharge Elimination System ("NPDES"). 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. 12-008-R.

The Commission's Regulations Committee met on August 24, 2012, to review the Petition and it recommends that the Commission institute a rulemaking proceeding to consider adopting the proposed amendments to Regulation No. 6. 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 October 16, 2012 at 2:00 p.m. The hearing will be held 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

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

SUBJECT: Petition to
Initiate Rulemaking
Regulation No. 6

Docket No. 12-008-R

MINUTE ORDER NO. 12-37

PAGE 2 OF 3

Committee on Public Health and Welfare and/or from the Joint Interim Committee on Administrative Rules and Regulations.

7. The Regulations Committee and the Commission may consider this matter at their March 2013 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

SUBJECT: Petition to
Initiate Rulemaking
Regulation No. 6

MINUTE ORDER NO. 12-37

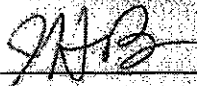












Docket No. 12-008-R

PAGE 3 OF 3

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		J. Shannon
	L. Bengal		J. Simpson
	J. Chamberlin		L. Sickel
	J. Fox		W. Thompson
	D. Hendrix		B. White
	D. Samples		R. Young
	S. Jorgensen		

 Submitted by: Jamie Ewing DATE PASSED: August 24, 2012
Stan Jorgensen, Chair

NOTICE OF PROPOSED REGULATION CHANGES, PUBLIC HEARING

The Arkansas Pollution Control and Ecology Commission (APC&EC) will hold a public hearing at North Little Rock October 16, 2012, to receive public comments on proposed changes to APC&EC Regulation 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. October 30, 2012

The hearing will be held in the Commission Room of the Arkansas Department of Environmental Quality (ADEQ) headquarters building, 5301 Northshore Drive, North Little Rock, beginning at 2:00 p.m.

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 6 is found in the Arkansas Code Annotated, Section 8-4-101, et seq.

Proposed significant changes to Regulation 6 include:

- Addition of a new section which will provide for a permit-by-rule for entities which discharge pesticides into the waters of the state.
- Addition of several terms to the definitions section of the regulation to clarify provisions of the proposed new permit-by-rule for pesticide dischargers.
- Deletion of a section which currently requires entities discharging wastewater directly to publicly-owned treatment works to first obtain an NPDES construction permit.

In addition, proposed revisions include format and style changes throughout the regulation to conform to other APC&EC regulations.

Copies of the proposed changes to Regulations 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.

Oral and written statements will be accepted at the hearing, 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. October 30, 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.

Published August 29 and 30, 2012,
Teresa Marks, Director,
Arkansas Department of Environmental Quality

Arkansas Pollution Control and Ecology Commission
(Arkansas Department of Environmental Quality)

Regulation No. 6, Regulations for the State Administration of the National Pollutant Discharge Elimination System (NPDES)

Change to the Proposed Regulation Based on Public Comments:

ADEQ proposes to withdraw the amendments to Reg. 6.204 and leave the regulation as currently written (with typographical corrections, as throughout the rest of the document).

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF PROMULGATION OF)
REGULATION NO. 6, REGULATIONS FOR THE STATE) DOCKET NO. 12-008-R
ADMINISTRATION OF THE NATIONAL POLLUTANT)
DISCHARGE ELIMINATION SYSTEM (NPDES))

RESPONSE TO COMMENTS

On August 24, 2012, the Arkansas Pollution Control and Ecology Commission (“APC&EC”) passed Minute Order 12-37, which initiated rulemaking procedures for amendments to APC&EC Regulation No. 6, Regulations for the State Administration of the National Pollutant Discharge Elimination System (NPDES). A public hearing on the proposed changes was held on October 16, 2012. The public comment period closed on October 30, 2012.

Two oral comments were submitted at the public hearing. No written comments were submitted during the public comment period. The comments are set forth below followed by the responses of the Department.

Comment 1: One commenter expressed his concern about over-regulation. He stated that his initial concerns had been addressed by talking to others before the hearing and he was not opposed to this regulation as it had been explained to him.

Response 1: ADEQ acknowledges this comment.

Comment 2: The Arkansas Forestry Association supports the proposed amendments, specifically the amendments that create a permit-by-rule for pesticide application.

Response 2: ADEQ acknowledges this comment.

Comment 3: The Bureau of Legislative Research (hereinafter “BLR”) noted that “[t]he new definition for ‘pesticide’ goes beyond the definition found in A.C.A. 8-6-203(8), including, among other things, that it means ‘any nitrogen stabilizer’ and asked for an explanation.

Response 3: The BLR cites to a provision of the Arkansas Solid Waste Management Act, Ark.

Code Ann. § 8-6-201 *et seq.* APC&EC Regulation No. 6 is promulgated under the authority of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.* This state law corresponds with the federal Water Pollution Control Act (the “Clean Water Act”), 33 U.S.C. § 1251 *et seq.*, which is administered by the Environmental Protection Agency. The definition of pesticides found in Ark. Code Ann. § 8-6-203(8) does not apply to the regulations promulgated in APC&EC Regulation No. 6.

The proposed changes establish permit-by-rule coverage for discharges of pesticides to Waters of the State, as allowed by Arkansas law and the Clean Water Act. On March 1, 2012, the Arkansas Department of Environmental Quality issued a National Pollutant Discharge Elimination System (“NPDES”) general permit for pesticide discharges (Permit No. ARG870000). Issuance of a permit to cover pesticide discharges was required by federal law, based on a decision of the Federal Court of Appeals for the Sixth Circuit in *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir. 2009). The Sixth Circuit’s decision vacated EPA’s regulation which exempted the application of pesticides on or near waterways from NPDES permitting requirements, if those pesticides were applied in accordance with other federal laws. ADEQ’s general permit incorporated narrative effluent limitations based on EPA draft general permit. ADEQ’s general permit does not require any additional conditions beyond those already in place under the authority of the Arkansas State Plant Board.

Comment 4: The BLR also stated:

Currently, industrial users discharging to publicly owned treatment works must obtain a permit except for those qualifying for a “permit-by-rule” (have an approved local pretreatment program or are not subject to pretreatment standards). As written, the new rule would not require a permit or a permit-by-rule for these industrial users.

According to the explanation provided with the rule, it is ADEQ’s position that a permit is not necessary because the industrial users are discharging

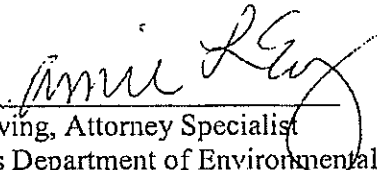
into a treatment system that is already permitted, not into waters of the State, and because in **most** cases the publicly owned treatment works will issue a permit to industrial users for their discharge to the treatment system.

Under 33 U.S.C. 1342(b)(8), the state must insure that the discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards (1317(b)) and a program to assure compliance with the pretreatment standards and adequate notice to the permitting agency of new introduction or substantial change in volume into the publicly owned treatment works of pollutants that are regulated by federal law.

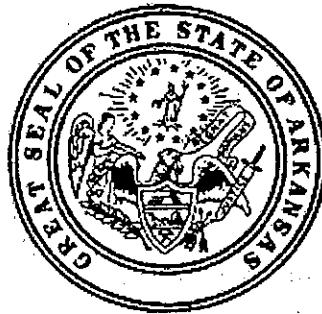
If these industrial users will not be required to obtain a permit or be covered by a permit-by-rule, how will the state be able to insure compliance with 33 U.S.C. 1342, especially since not **all** of the publicly owned treatment works are requiring a permit from these industrial users? Is there an ADEQ rule that requires publicly owned treatment works to obtain a permit from its industrial users?

Response No. 4: ADEQ acknowledges this comment. ADEQ's intent with the proposed change was to address the requirement that industrial users obtain a State construction permit for a facility whose discharge is permitted through a publicly owned treatment works, not ADEQ. However, based upon confusion regarding the intent of the proposed changes, ADEQ will withdraw this proposed change and request that APC&EC Reg. 6.204 remain as currently written (with typographical corrections as throughout the rest of the document).

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

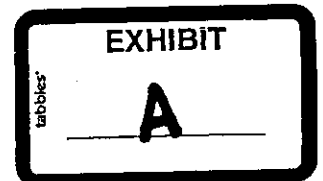


REGULATION NO. 6

REGULATIONS FOR STATE ADMINISTRATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Submitted to PC&E Commission in August 2012

Mark-up Copy



REGULATION NO. 6
REGULATIONS FOR STATE ADMINISTRATION OF THE NATIONAL
POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

TABLE OF CONTENTS

CHAPTER ONE: GENERAL PROVISIONS.....	1-1
Reg.6.101 Adoption.....	1-1
Reg.6.102 Purpose.....	1-1
Reg.6.103 Definitions.....	1-1
Reg.6.104 Incorporation of the latest Federal Regulations	1-3
Reg.6.105 Confidentiality.....	1-5
Reg.6.106 Violations	1-6
CHAPTER TWO: PERMIT PROCEDURES	2-1
Reg.6.201 Status and Continuation of Permits.....	2-1
Reg.6.202 Application Requirements for Construction and Operation of Wastewater Facilities	2-1
Reg.6.203 Permitting Requirements for sStormwater dDischarges aAssociated with a Small Construction Site.....	2-3
Reg.6.204 Permitting Requirements for Industrial Users of Publicly Owned Treatment Works.....	2-4
Reg.6.205 Financial Assurance Permitting Requirements	2-5
Reg.6.206 Permitting Requirements for Discharges of Pesticides	2-7
CHAPTER THREE: LOSING STREAM SEGMENTS	3-1
Reg.6.301 Effluent Discharges to Losing Stream Segments.....	3-1
CHAPTER FOUR: WASTEWATER DISCHARGES	4-1
Reg.6.401 Determination of Domestic Wastewater Effluent Limitations.....	4-1
Reg.6.402 Discharge of Treated Wastewater to the Ouachita River.....	4-2
CHAPTER FIVE: (RESERVED).....	5-1
CHAPTER SIX: ADMINISTRATIVE PROCEDURES	6-1
Reg.6.601 Penalty Policy and Administrative Procedures	6-1
Reg.6.602 Severability.....	6-1
CHAPTER SEVEN: EFFECTIVE DATE	7-1
Reg.6.701 Effective Date.....	7-1

CHAPTER ONE: GENERAL PROVISIONS

Reg.6.101 Adoption

Pursuant to the provisions of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Arkansas Pollution Control and Ecology Commission hereby promulgates this regulation to implement State administration of the National Pollutant Discharge Elimination System.

Reg.6.102 Purpose

It is the purpose of this regulation to adopt regulations necessary to qualify the State of Arkansas to receive authorization to implement the State water pollution control permitting program, in lieu of the federal National Pollutant Discharge Elimination System program, pursuant to the federal Clean Water Act, 33 U.S.C. § 1342251 *et seq.* In order to receive such authorization, it is necessary for the Arkansas Department of Environmental Quality to have regulations as stringent as the federal program administered by the United States Environmental Protection Agency.

Reg.6.103 Definitions

(A) The definitions set forth in 40 C.F.R. §§ 122.2 and 124.2 are all adopted herein by reference in Reg.6.104.

(B) In addition, the following definitions also apply to this Regulation:

“Act” means the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*

“Biochemical Pesticide” means a pesticide that: (1) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (2) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticide, is equivalent to a naturally-occurring substance that has such a history; and (3) has a non-toxic mode of action to the target pest(s).

“Biological Pesticides (also called Biopesticides)” includes microbial pesticides, biochemical pesticides and plant-incorporated protectants.

“Chemical Pesticides” means all pesticides not otherwise classified as biological pesticides.

“Commission” means the Arkansas Pollution Control and Ecology Commission.

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

“Director” means the Director of the Arkansas Department of Environmental Quality, unless the context dictates otherwise. (See 40 C.F.R. §§ 122.2, and 124.2, and Ark. Code Ann. § 8-1-202 *et seq.*)

“Domestic wastewater” means the spent wastewater originating from all aspects of human sanitary water usage.

“Effluent” means water that is not reused after flowing out of any wastewater treatment facility or other works used for the purpose of treating, stabilizing, or holding wastes.

“Larger Common Plan of Development” means a contiguous (sharing a boundary or edge, adjacent, or touching) area where multiple and distinct construction activities may be taking place at different times on different schedules under one plan. Such a plan might consist of many small projects (e.g., a common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools and commercial development that the developer plans to build or sell to others for development.) All these areas would remain part of the common plan of development or sale. The term “plan” is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

“Microbial Pesticide” means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant that: (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (2) is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaeobacteria; or (3) is a parasitically replicating microscopic element, including but not limited to, viruses.

“Non-municipal domestic sewage treatment works” means a device or system operated by an entity other than a city, town, borough, county, or sewer improvement district that treats, in whole or in part, waste or wastewater from humans or household operations and must continuously operate to protect human health and the environment despite a permittee's failure to maintain or operate the treatment works.

“Operator” means any person (an individual, association, partnership, corporation, municipality, state or federal agency) who has the primary management and ultimate decision-making responsibility over the operation of a facility or activity. The operator is responsible for ensuring compliance with all applicable environmental regulations and conditions.

“Pesticide” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 201(w) of the FFDCA, 21 U.S.C. § 321(w), that has been determined by the Secretary of United States Department of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of the FFDCA, 21 U.S.C. § 321(x), bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the FFDCA, 21 U.S.C. § 321. For purposes of the preceding sentence, the term “critical device” includes any device introduced directly into the

human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term "semi-critical device" includes any device that contacts intact mucous membranes but which does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body, FIFRA Section 2(u), 7 U.S.C. § 136(u). The term "pesticide" applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA), 7 U.S.C. § 136.

Note: drugs used to control diseases of humans or animals (such as livestock, fishstock and pets) are not considered pesticides; such drugs are regulated by the United States Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc).

"Pesticide Residue" Includes that portion of a pesticide application that is discharged from a point source to Waters of the State and no longer provides pesticidal benefits but which may impact non-target species. It may include the pesticide and degradates of the pesticide.

"Plant-incorporated Protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant or produce.

"Small Construction Site" means construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance.

"Stormwater" means runoff from rainfall, snow melt runoff, and surface runoff and drainage.

"Stormwater Pollution Prevention Plan" means a plan that describes the measures and practices used to control the discharge of pollutants through stormwater discharges.

"Treatment Area" means an area of land, including any Waters of the State, within a pest management area where pesticides are being applied at a concentration that is adequate to control the targeted pests within that area. Multiple treatment areas may be located within a single "pest management area."

Reg.6.104 Incorporation of the latest Federal Regulations

- (A) The following regulations promulgated by the U.S. Environmental Protection Agency are hereby adopted as provisions of this Regulation as though set forth herein line for line and word for word of the most current version of the Code of Federal Regulations with the exception that, and unless the context otherwise dictates, all references therein to

“Administrator,” “Regional Administrator,” “Director” or “State Director” shall be considered references to the “Director of the Arkansas Department of Environmental Quality”, and all references to the “U.S. Environmental Protection Agency” or “EPA” shall be considered references to the “Arkansas Department of Environmental Quality”; and all references elsewhere in this Regulation to any of the following regulations shall constitute a reference to the regulation as herein adopted; and provided that the effective date of provisions adopted herein by reference as provisions of this Regulation shall be the date such provisions are specified as being effective by the Commission in its rulemaking and the effective date of the federal regulations adopted herein shall have no bearing on the effective date of any provisions of this Regulation:

Portions of Title 40 of the Code of Federal Regulations adopted verbatim by ADEQ—:

- (1) Part 116;
- (2) Part 117;
- (3) Subparts A, B, C and D of Part 122 with the following exceptions: §§ 122.6 (for analogous provision, see Reg. 7); 122.7(a); 122.21(l); 122.29(c) and (d); and 122.49;
- (4) The following ~~provisions—sections~~, only, of Part 123: 123.25(b), 123.26(d), 123.27(d), 123.41(a), and 123.62(e);
- (5) The following ~~provisions—sections~~, only, of Part 124: 124.2; 124.3(a); 124.5(a), (c), (d) and (f); 124.6(a), (c), (d), (e); 124.7; 124.8; 124.10(a)(1)(ii), (iii) and (v); 124.10(b), (c), (d) and (e); 124.11; 124.12(a), (b), (c) and (d); 124.13; 124.14; 124.17(a) and (c); 124.19; 124.56; 124.57(a); 124.59; and 124.62;
- (6) Subparts A, B, C, D, H, I, J, K, and L, only, of Part 125;
- (7) Part 129;
- (8) Part 133;
- (9) Part 136;
- (10) Part 257;
- (11) Parts 400 through 471 with the following exceptions: § 401.17.

All as adopted as final rules (including “interim final rules” and “technical amendments”) by the United States Environmental Protection Agency on or before ~~October 28, 2011~~ August 24, 2012.

- (B) The Director, within 180 days after the date of promulgation of any new or revised federal National Pollutant Discharge Elimination System regulations, shall conduct rulemaking

procedures with reference to this Regulation necessary to maintain a state National Pollutant Discharge Elimination System program as stringent as the federal program. Such new or revised federal regulations, upon their publication as final rules by Environmental Protection Agency, shall constitute minimum guidelines to the Director in formulating rulemaking proposals to this regulation but shall not be construed to limit or interfere with the adoption of provisions more stringent than federal regulations.

Reg.6.105 Confidentiality

In addition to the provisions of 40 C.F.R. § 122.7(b) and (c), which are adopted by reference in Reg. 6.104, the following provisions apply:

- (A) Any information submitted to the Department may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in accordance with the provisions of this section. If no claim is made at the time of submission, the Department may make the information available to the public without further notice. If a claim is asserted, the Director will make a determination of whether the material, if made public, would divulge trade secrets entitled to protection.
- (B) It shall be the responsibility of the person claiming any information as confidential under the provisions of subsection (A) above to clearly make each page containing such information with the words "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection as a trade secret.
- (C) Any document submitted to the Department which contains information for which the claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document shall be submitted in two separate parts. The first part shall contain all information which is not deemed by the submitter as confidential and shall include appropriate cross references to the second part which contains data, words, phrases, paragraphs or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.
- (D) No information shall be protected as confidential information by the Director unless it is submitted to him in accordance with the provisions of subsections (B) and (C) above. No information shall be afforded protection as confidential information unless the Director finds that such protection is necessary to protect trade secrets and that such protection will not hide from public view the characteristics of waste materials and probable effects of the introduction of such waste or by-products into the environment. The person who submits information claimed as confidential shall receive written notice from the Director as to whether the information has been accepted as confidential or not.
- (E) All information which the Director determines is entitled to protection shall be marked with the term "ACCEPTED" and shall be protected as confidential information. Whenever the Director finds that information which has been submitted does not meet the criteria of subsection (D) above, he shall promptly notify the person submitting such information of his finding and shall give that person reasonable opportunity to further justify his contention that the information deserves protection as a trade secret or to further limit the scope of

information for which the request for protection is made. If said person fails to satisfactorily demonstrate to the Director that such information in the form presented to him meets the criteria of subsection (D) above, the Director shall mark the information "REJECTED" and promptly return such information to the person submitting such information. Such person shall have 30 days to resubmit the information in acceptable form or request review of the decision of the Director in accordance with Chapter 6 of Arkansas Pollution Control and Ecology Commission Regulation No. 8.

- (F) All information which is accepted by the Director as confidential shall be stored in locked filing cabinets and only those personnel of the Department specifically designated by the Director shall have access to the information contained therein. The Director shall not designate any persons to have access to confidential information unless the person requires such access in order to carry out his responsibilities and duties. No person shall disclose any confidential information except in accordance with the provisions of this section.
- (G) NPDES permits and permit applications and all information contained in them are required by 40 C.F.R. § 122.7 to be publicly available. No claim of confidentiality will be accepted hereunder for such material. Consequently, applications containing confidential information will be returned to the applicant.

Reg.6.106 Violations

Violation of any of the following prohibitions shall be considered a violation of this regulation and shall be subject to the penalties provided in the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-103:

- (A) No person shall construct, install, alter, modify or operate any disposal system or any part thereof or any extension or addition thereto that will discharge into any of the waters of the State without first having obtained a permit from the Department for such activity.
- (B) No person shall increase in volume or strength any sewage, industrial waste or other wastes in excess of the permitted discharges specified under any existing permit.
- (C) No person shall construct, install or operate any building plant, works, establishment or facility or any extension or modification thereto, the operation of which would result in discharge of any wastes into the waters of the State or would otherwise alter the physical, chemical, or biological properties of any waters of the State in any manner not already lawfully authorized.
- (D) No person shall construct or use any new outlet for the discharge of any wastes into the waters of the State without having first obtained a permit for such activity from the Department.
- (E) No person shall discharge sewage, industrial wastes or other wastes into any of the waters of the State without having first obtained a permit for such activity from the Department.
- (F) No person shall violate any other provision of this regulation or the Act.

CHAPTER TWO: PERMIT PROCEDURES

Reg.6.201 Status and Continuation of Permits

Conditions of a National Pollutant Discharge Elimination System permit issued by the Arkansas Department of Environmental Quality will continue in effect past the expiration date pending issuance of a new permit, if:

- (1) The permittee has submitted a timely and complete application as described in 40 C.F.R. § 122.21; and
- (2) The Director, through no fault of the permittee, does not issue a new permit prior to the expiration date of the previous permit.

Reg.6.202 Application Requirements for Construction and Operation of Wastewater Facilities

- (A) Any person who desires to construct, operate or modify any disposal system which will discharge to the waters of the State or to discharge any sewage, industrial waste or other wastes into the waters of the State or to do any other act for which Ark. Code Ann. § 8-4-217(b) requires a permit shall submit an application for a permit for such activity. In addition to the permit application procedures set forth in 40 C.F.R. Parts 122, 123, and 124, that are incorporated by reference in Reg. 6.104, hereof, the applicant must also submit Arkansas Department of Environmental Quality Form 1. The application must be submitted, approved, along with the approval letter from Arkansas Department of Health for domestic discharges and a permit issued and effective before the activity applied for can begin.
- (B) A state permit for construction or modification of a wastewater treatment facility does not constitute an National Pollutant Discharge Elimination System permit. Issuance of a state permit for construction or modification of a treatment system in no way guarantees or assumes that an application for an National Pollutant Discharge Elimination System permit to operate the system will be approved or the National Pollutant Discharge Elimination System permit issued, nor does issuance of an National Pollutant Discharge Elimination System permit assume or require a prior permit for construction or a satisfactory review of the design or construction of the treatment facility. Arkansas Department of Environmental Quality Form 1 plans and specifications, and design calculations are required for a state construction permit. Plans and specifications and design calculations must be stamped and signed by a Registered Professional Engineer in the State of Arkansas. The basic design criteria for wastewater treatment plants in the State of Arkansas should be based on the latest addition of the "Recommended Standards for Sewage Works," published by the Great Lakes-Upper Mississippi Board of State Sanitary Engineers known as 10 States Standards, with the following modifications. Exception to these criteria will only be approved by the Department when fully justified.

The following exceptions to 10 States Standards, as provisions adopted through Arkansas

Pollution Control and Ecology Commission Minute Order 80-21, are allowed:

Combined Sewer Interceptors

- Combined sewers will not be approved

(1) Biological Treatment

Waste Sludge Facilities

Activated sludge treatment plant of 10,000 gallons per day or more capacity shall be provided with an aerated waste sludge holding tank or other sludge disposal facility.

(2) Disinfection

Disinfection shall be required when necessary to meet the State's water quality standards for the receiving stream or to protect public water supplies and recreational use areas.

(3) Wastewater Treatment Ponds (Lagoons)

Basis of Design

The maximum design loading rate for the primary cell(s) will be thirty (30) pounds of BOD₅ per acre per day, with a minimum surface area of one (1) acre.

Multiple Units

- a. Two cell systems must be followed by sand or rock filtration, or other solids removal devices.

The second cell of a two-cell system will be designed on the same biological loading rate as a primary cell, with at least thirty (30) days detention time.

- b. For three (or more) cell systems, the cells following the primary will have a combined detention time of at least thirty (30) days. The final cell shall be designed to facilitate solids reduction and minimize algae growth.

(4) Control Structures and Interconnecting Piping

Control structures shall be provided for interconnecting cell piping and for final cell effluent flow. The structures shall have the ability to vary the water depth in each cell a range of, at least, twenty-four (24) inches. Non-corrosive stop-logs, slide gates, or slide tubes are the devices that shall be utilized to regulate the wastes level. A baffle of the same type of material as the control devices shall extend a minimum of six (6) inches below the low-water surface.

(5) Appendix – Ground Disposal of Wastewaters

Land treatment of wastewater shall be in accordance with the Land Application Guidelines as promulgated by this department and the Arkansas Department of Health.

- (C) At the discretion of the Director, the provisions of Reg.6.202(B) may not apply to minor revision to the existing treatment system, routine repair, replacement (i.e. aerator) or maintenance.
- (D) Prior to obtaining a construction permit for domestic wastewater discharges from ADEQ, an approval letter from Arkansas Department of Health is required.

All information supplied to this Department shall be available for public inspection unless the information constitutes a trade secret and a claim of confidentiality is submitted in accordance with the procedures specified in Reg.6.105 above.

Reg.6.203 Permitting Requirements for sStormwater dDischarges aAssociated with a Small Construction Site

Operators of a small construction sites shall be deemed to have a permit by rule for the purposes of the federal Clean Water Act, 33 U.S.C. § 1342251 *et seq.*, and the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, if the following conditions are met:

- (A) A completed Notice of Coverage must be posted at the site for automatic permit coverage prior to commencing construction; and
- (B) A Stormwater Pollution Prevention Plan must be prepared in accordance with good engineering practices as follows:
 - (1) Identify potential, site-specific sources of pollution which may reasonably be expected to affect the quality of stormwater discharges from the construction;
 - (2) Identify, describe and ensure the implementation of site-specific Best Management Practices, with emphasis on initial site stabilization, which are to be used to reduce pollutants in stormwater discharges from the construction site;
 - (3) Identify the responsible party for on-site Stormwater Pollution Prevention Plan implementation;
 - (4) Develop a legible site map (or multiple maps, if necessary) complete to scale, showing the entire site, that identifies, at a minimum, the following:
 - a. Pre-construction topographic view;
 - b. Direction of stormwater flow (i.e., use arrows to show which direction stormwater will flow) and approximate slopes anticipated after grading activities;

- c. Delineate on the site map areas of soil disturbance and areas that will not be disturbed;
- d. Location of major structural and nonstructural controls identified in the plan;
- e. Location of main construction entrance and exit;
- f. Location where stabilization practices are expected to occur;
- g. Locations of off-site materials, waste, borrow area, or equipment storage area;
- h. Location of areas used for concrete wash-out;
- i. Location of all surface water bodies (including wetlands);
- j. Locations where stormwater is discharged to a surface water and/or municipal separate storm sewer system if applicable,
- k. Locations where stormwater is discharged off-site (should be continuously updated);
- l. Location of areas where final stabilization has been accomplished and no further construction phase permit requirements apply.

Reg.6.204 Permitting Requirements for Industrial Users of Publicly Owned Treatment Works

(A)—Industrial users discharging to publicly owned treatment works shall be deemed to have a permit by rule for construction and discharge for the purposes of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-2-101 *et seq.*, if either of the following conditions are met:

- (1) The industrial user is discharging into a receiving publicly owned treatment works with an approved local pretreatment program; or
- (2) The industrial user is not subject to categorical pretreatment standards set forth in 40 CFR Parts 400-471 (Subchapter N) and not likely to introduce pollutants to the publicly owned treatment works which would pass through or interfere with the treatment works or which would contaminate the sewage sludge of the treatment works.

An “approved pretreatment program” means a program approved by either the Environmental Protection Agency pursuant to 40 C.F.R. Part § 403.11 or the Department pursuant to 40 C.F.R. Part § 403.11, as incorporated in Reg.-6.102. The determination of which industrial users are likely to introduce pollutants which would pass through or interfere with a publicly owned treatment works or which are likely to contaminate sewage sludge from the treatment works shall be made by the

Director subject to the provisions of Arkansas Pollution Control and Ecology Commission Regulation No. 8 and Ark. Code Ann. § 8-4-216.

- ~~(B) With the exception of industrial users qualifying for a permit by rule pursuant to subsection (A) above, all industrial users discharging or proposing to discharge to publicly owned treatment works shall obtain a permit hereunder in accordance with Reg.6.202 prior to construction or modification of the disposal system, and a permit prior to discharge in accordance with the requirements incorporated in Reg.6.102 and the other applicable provisions of this regulation.~~

Reg.6.205 Financial Assurance Permitting Requirements

- (A) The Department shall not issue, modify, or renew a National Pollutant Discharge Elimination System permit for a non-municipal domestic sewage treatment works without the permit applicant first demonstrating to the Department its financial ability to cover the estimated costs of operating and maintaining the non-municipal domestic sewage treatment works for a minimum period of five (5) years.
- (B) State or federal facilities, schools, universities, and colleges are specifically exempted from the requirements of this section.
- (C) Each permit application for a non-municipal domestic sewage treatment works submitted under this section shall be accompanied by a cost estimate for a third party to operate and maintain the non-municipal domestic sewage treatment works each year for a period of five (5) years.
- (D) The department shall not issue or modify a National Pollutant Discharge Elimination System permit for a non-municipal domestic sewage treatment works that proposes to use a new technology that, in the discretion of the Department, cannot be verified to meet permit requirements without the applicant first demonstrating its financial ability to replace the new technology with a non-municipal domestic sewage treatment works that uses technology acceptable to the Department.
- (E) Each permit application for a non-municipal domestic sewage treatment works that proposes to use a new technology that, in the discretion of the Department, cannot be verified to meet permit requirements shall be accompanied by a cost estimate to replace the proposed system with a non-municipal domestic sewage treatment works that uses technology acceptable to the Department.
- (F) The applicant's financial ability to operate and maintain the non-municipal domestic sewage treatment works for a period of five (5) years shall be demonstrated to the Department by:
- (1) Obtaining insurance that specifically covers operation and maintenance costs;
 - (2) Obtaining a letter of credit;

- (3) Obtaining a surety bond;
 - (4) Obtaining a trust fund or an escrow account; or
 - (5) Using a combination of insurance, letter of credit, surety bond, trust fund, or escrow account.
- (G) The Department may reduce or waive the amount of the required financial assurance if the permit applicant can demonstrate to the Department's satisfaction that:
- (1) For a renewal permit, during the five (5) years preceding the application for a renewal permit, the non-municipal domestic sewage treatment works facility has:
 - (1) Remained in continuous operation;
 - (2) Received no more than three (3) permit violations within a six-month period, as set out in the permit issued by the Department;
 - (3) Maintained the services of a certified wastewater treatment operator, where applicable;
 - (4) Remained financially solvent; and
 - (5) Operated the facility's non-municipal domestic sewage treatment works to prevent the discharge of waterborne pollutants in unacceptable concentrations to the surface waters or groundwater of the State as defined in the permit or as defined in the State's water quality standards; or
 - (2) For a new permit, that the reduction or waiver is necessary to accommodate important economic or social development in the area of the proposed non-municipal domestic sewage treatment works facility and that the applicant has shown a history of financial responsibility and compliance with regulatory requirements in other relevant ventures.
- (H) The Department has discretion to withdraw a reduction or waiver granted under this subsection at any time in order to protect human health or the environment.
- (I) A financial instrument required by this section shall be posted to the benefit of the Department and shall remain in effect for the life of the permit.
- (J) It is explicitly understood that the Department shall not directly operate and shall not be responsible for the operation of any non-municipal domestic sewage treatment works.

Reg.6.206 Permitting Requirements for Discharges of Pesticides

Operators of a pesticide application site shall be deemed to have a permit by rule for the purposes of the federal Clean Water Act, 33 U.S.C. § 1251 et seq., and the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 et seq., if the following conditions are met:

(A) The application of biological pesticides or chemical pesticides that leave a residue (hereinafter collectively "pesticides") to Waters of the State falls under one of the following pesticide use patterns and annual threshold:

(1) Mosquito and Other Flying Insect Pest Control – to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies.

(2) Weed and Algae Control – to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches or irrigation canals. This use pattern is understood to include right-of-way maintenance for utilities and forest lands, as well as other applicable uses.

(3) Aquatic Nuisance Animal Control – to control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks.

(4) Forest Canopy Pest Control – aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.

(B) A completed Notice of Coverage must be posted at the site or kept at the physical address of the operator for automatic permit coverage prior to commencing the pesticide application:

(C) Pesticides must be handled, used, or applied in accordance with state laws and regulations and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., which include all instructions on the pesticide label; and

(D) Operators must comply with all requirements of the National Pollutant Discharge Elimination System General Permit for Pesticide Discharges Located within the State of Arkansas.

CHAPTER THREE: LOSING STREAM SEGMENTS

Reg.6.301 Effluent Discharges to Losing Stream Segments

- (A) In addition to all applicable effluent standards and conditions required by State and federal laws and regulations, wastewater discharged to losing stream segments shall comply with subsections (B) through (E) below.
- (B) For purposes of this regulation, a "losing stream segment" is defined as a stream segment which, beginning at the point of existing or proposed discharge and extending two (2) miles downstream, distributes thirty percent (30%) or more of its flow at a 7Q10 flow or one (1) cfs, whichever is greater, through natural processes such as permeable subsoil or cavernous bedrock into an aquifer.
- (C) Effluent Limitations for Discharges into Losing Stream Segments:
- (1) Discharges to losing stream segments shall be permitted only after other alternatives including (a) land application of wastewater, (b) discharge to non-losing stream segment, and (c) connection to a regional wastewater treatment facility, have been evaluated and determined to be unacceptable for environmental and/or economic reasons.
 - (2) If the Department agrees to allow a discharge to a losing stream segment, the permit will be written using the limitations described below, as a minimum. Discharges from wastewater treatment facilities, which receive primarily domestic waste, or from publicly owned treatment works (POTWs) shall undergo treatment sufficient to conform to the following limitations:
 - (a) CBOD₅ equal to or less than a monthly average of ten (10) mg/1 and a seven (7) day average of fifteen (15) mg/1.
 - (b) Total Suspended Solids (TSS) equal to or less than a monthly average of fifteen (15) mg/1 and a seven (7) day average of twenty-three (23) mg/1;
 - (c) Provisions of 40 C.F.R. § 133.102(c);
 - (d) The fecal coliform content of discharges shall not exceed a monthly average of 200 colonies per 100 milliliters and a weekly average of 400 colonies per 100 milliliters. However, at no time shall the fecal coliform content exceed 200 colonies per 100 milliliters in any water defined as an Extraordinary Resource Water or Natural and Scenic Waterway;
 - (e) Nitrate plus nitrite nitrogen levels shall not exceed ten (10) mg/1;
 - (f) Ammonia (as Nitrogen) limitations shall be included as necessary to prevent ammonia toxicity in-stream and/or to maintain instream dissolved oxygen.

(g) Other parameters as deemed appropriate by the Department.

(D) Implementation of Losing Stream Regulation

- (1) Existing discharges. At the time of permit renewal, or when deemed necessary by the Department, National Pollutant Discharge Elimination System permittees discharging to stream segments which may be losing stream segments, as defined above, shall submit documentation as part of the renewal permit application, showing that the segment is or is not a losing stream segment. If the discharge is into a losing stream segment, then the facility must be capable of meeting the effluent limitations described above, as a minimum.
- (2) New discharges. New facilities proposing to discharge to a stream which may be a losing stream segment shall submit documentation as part of the initial National Pollutant Discharge Elimination System permit application demonstrating that the segment is or is not a losing stream segment. This documentation includes, but is not limited to, stream studies or other data, showing the stream segment does or does not meet the criteria in Reg.6.301(B) above. If the proposed discharge is into a losing stream segment, then the facility must be designed and operated to meet the effluent limitations described above, as a minimum.
- (3) For facilities in both Reg.6.301(D)(1) and (2) above, stream studies for determining classification as a losing stream segment must be conducted during the critical low flow season, when stream flow is at least 1 cfs and representative of seasonal flow. Effluent flow, when existing, can be included in the minimum 1 cfs stream flow.
- (4) The Department shall determine the requirement for, and the content and level of detail of, stream studies, based on local topography, geological data, file data, other dischargers in area, stream flow, etc.

(E) Review of Applications by Arkansas Department of Health for Discharges of Domestic Effluents.

- (1) Nothing in this regulation limits the authority of the Arkansas Department of Health to include additional requirements as a prerequisite to its approval of the treatment/disposal system.

CHAPTER FOUR: WASTEWATER DISCHARGES

Reg.6.401 Determination of Domestic Wastewater Effluent Limitations

(A) Small discharges (less than or equal to 0.05 MGD)

- (1) The most stringent effluent limitations for oxygen demanding flows from small dischargers will be 10/15 (CBOD₅/TSS_{total} Suspended Solids), with nutrient removal where appropriate, which is considered as Best Conventional Treatment (BCT) for dischargers in this flow range.
- (2) On a case-by-case basis, less stringent effluent limitations may be permitted if stream modeling shows that water quality standards will be maintained.

(B) Outstanding State Resource Waters

Outstanding State Resource Waters include all water bodies designated in the Arkansas Water Quality Standards ~~of~~ Arkansas Pollution Control and Ecology Commission Regulation No. 2, as Extraordinary Resource Waters, Natural and Scenic Waterways, or Ecologically Sensitive Waterbodies.

- (1) For Extraordinary Resource Waters and Natural and Scenic Waterways: In no event shall the effluent limitations be greater than 10/15 (CBOD₅/TSS_{total} Suspended Solids).
- (2) For Ecologically Sensitive Waterbodies: Limitations shall be determined on a case-by-case basis to protect the specific species in the waterbody.

(C) Reservoirs/Domestic Water Supply

- (1) In all cases, applicable water quality standards shall be met.
- (2) All oxygen demanding effluent flows which are discharged into any lake shall have effluent limitations of 10/15 (CBOD₅/ TSS_{total} Suspended Solids) with nutrient removal as appropriate.

(D) Discharge of Domestic Wastewater to the Illinois River Basin

- (1) No permit for discharge of domestic wastewater into the Illinois River or its tributaries by the cities of Fayetteville, Springdale, Rogers, and Siloam Springs, shall authorize more than 1.0 mg/l Total Phosphorus based on a monthly average.
- (2) Compliance with (D)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.

(E) Discharge of Domestic Wastewater to the Osage Creek Basin, a tributary of the Kings River

- (1) No permit for discharge of domestic wastewater into Osage Creek or its tributaries, by the City of Berryville, shall authorize more than 1.0 mg/l Total Phosphorus based on a monthly average.
 - (2) Compliance with (E)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.
- (F) Discharge of Domestic Wastewater to Little Sugar Creek Basin
- (1) No permit for discharge of domestic wastewater into Little Sugar Creek or its tributaries by the City of Bentonville shall authorize more than 1.0 mg/l Total Phosphorus based on a monthly average.
 - (2) Compliance with (F)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.
- (G) Discharge of Domestic Wastewater to Spavinaw Creek Basin
- (1) No permit for discharge of domestic wastewater into Spavinaw Creek or its tributaries by the City of Decatur shall authorize more than 1.0 mg/l Total Phosphorus based on a monthly average.
 - (2) Compliance with (G)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.

Reg.6.402 Discharge of Treated Wastewater to the Ouachita River

No permit for the discharge of treated wastewater into the Ouachita River commencing at or downstream of the H.K. Thatcher Lock and Dam in segment 2D of the Ouachita River Basin shall authorize a total phosphorous limit in excess of the following:

- (A) A proposed permit with a design flow of less than or equal to 13.5 MGD shall have a total phosphorous mass limit calculated using a total phosphorous concentration of 1.0 mg/l year-round.
- (B) A proposed permit with a design flow greater than 13.5 MGD but less than 20.0 MGD shall have a total phosphorous mass limit calculated using a total phosphorous concentration of 1.0 mg/l for the months of November through June and 0.7 mg/l total phosphorus for the months of July through October.
- (C) The above mass calculations are considered to be on a monthly average basis. A daily maximum mass limit, if applicable, will be 1.5 to 2.0 times the monthly average mass limit.
- (D) At the director's discretion, the permit may include concentration limits in addition to the mass limit(s).

CHAPTER FIVE: (RESERVED)

CHAPTER SIX: ADMINISTRATIVE PROCEDURES

Reg.6.601 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.6.602 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 SEVEN: EFFECTIVE DATE

Reg.6.701 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.