

EXHIBIT F

DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER DIVISION

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

DESCRIPTION: With the passage of Act 1511 of the 2013 Regular Session, the General Assembly created a Committee and charged it with developing public notification requirements for any applicant seeking coverage under the general permit issued by the Arkansas Department of Environmental Quality (hereinafter "ADEQ") for a proposed Concentrated Animal Feeding Operation (hereinafter "CAFO") in Arkansas.

The Committee was comprised of one representative each from the ADEQ, Arkansas Agriculture Department, and Arkansas Farm Bureau and two members appointed by the Governor.

Following meetings and comments from stakeholders, the Committee presented to the Arkansas Legislative Council its recommendations for additional public notice requirements for any applicant for the CAFO general permit issued pursuant to Regulation No. 6¹. After presentation to the Arkansas Legislative Council, ADEQ filed before the Arkansas Pollution Control and Ecology Commission (hereinafter "APC&EC") a Petition to Initiate Rulemaking on Regulation No. 6 to incorporate the Committee's recommendations. The APC&EC approved the Petition to Initiate Rulemaking at its May 22, 2014 meeting.

The rulemaking would incorporate the following additional public notice requirements, as presented by the Committee to the Arkansas Legislative Council:

(A) The applicant would be required to provide written notice by certified mail letter to the following people:

- (1) Property owners adjacent to the CAFO production site and property owners adjacent to manure spreading sites;
- (2) The County Judge of the county where the CAFO production site and any manure spreading site is located;
- (3) Mayors of incorporated municipalities within ten miles of the CAFO production site; and

¹ APC&EC Regulation No. 6 consists of the Regulations for the State Administration of the National Pollutant Discharge Elimination System (NPDES).

(4) The superintendent of the school district that serves the CAFO production site.

(B) ADEQ shall provide the contents of the written public notice distributed by the applicant in a form letter made available to the applicant.

The form letter shall include, at a minimum, the following:

(1) Notice of the proposed CAFO, including the address of the production site, and the name of the applicant and farm;

(2) An explanation of the thirty-day public comment period and the right to comment;

(3) The telephone number of a person to contact at ADEQ with questions;

(4) Directions to ADEQ's website, including directions regarding how an interested party may submit his or her name to receive electronic notification of notices of intent for coverage under the CAFO general permit; and

(5) All letters shall include the certified mail, return receipt number.

(C) The applicant shall publish notice one time of the proposed CAFO in the paper of the largest circulation in the county of the CAFO production site. ADEQ shall determine the form of that notice, and determine the proper paper for publication.

(D) The applicant shall post a sign measuring at least two-feet-by-three-feet (2' x 3') on a public road nearest the entrance to the CAFO production site. The sign shall be clearly legible and conspicuous in such a manner that passersby can clearly see from the public road the applicant's requirements set forth in this section. ADEQ will prescribe the sign's minimum requirements which, at a minimum, will contain the same information as that which ADEQ requires the applicant to publish in the paper. The sign shall be posted prior to submittal of an NOI and shall remain in place until thirty (30) days following ADEQ approval of the NOI and NMP.

(E) Applicants for a CAFO general permit must certify compliance with the public notification requirements in subsections (A) — (F) of this section when submitting the Notice of Intent (NOI) and Nutrient Management Plan (NMP) to ADEQ.

PUBLIC COMMENT: A public hearing was held on July 14, 2014. The public comment period ended on July 28, 2014. Forty-seven comments were received regarding the proposed amendments. These comments are set out below, with the Department's response following. There were several similar issues raised throughout the comments; those are grouped together with one response from the Department.

Comment #1:

The Commission should strengthen this rule change by defining the time within which notice must be perfected. Specifically, it was suggested that the Commission add a sentence to the end of paragraph G of the proposed rule to state: "*The certification shall also require confirmation that applicants perfected the forms of notices required by Reg. 6.207 within the 30 days preceding submission of the NOI and NMP to the Department. This means letter notices shall have been received within the preceding 30 days, newspaper noticed published within the preceding 30 days, and the required signage posted at the facility for the preceding 30 days.*" Such a change will prevent notice from being stale, and thus ineffective, due to a prolonged period between notice and application submission. Thank you for accepting this comment.

Comments Received From: Ross Noland, Little Rock, Arkansas, Julie and Andy Feinstein, Marti Olesen, Sarah Garrett, Ellen Corley, Jasper, Arkansas, Ginny Masullo, Fayetteville, Arkansas, Laura Timby, Gilbert, Arkansas, Ray Quick, Alice Andrews, Trella Laughlin, Eureka Springs, Arkansas, Jane E. Darr of Friends of the North Fork and White Rivers, Cotter, Arkansas, Amy Wilson, Fayetteville, Arkansas, John Murdoch, Wesley, Arkansas, Patti Kent, Fayetteville, Arkansas, Susan Drouilhet, Teresa Turk, Fayetteville, Arkansas, Fay Knox, Deer, Arkansas, Arkansas Canoe Club, Anna Weeks of Arkansas Public Policy Panel, Linda Stith, Fayetteville, Arkansas, Mark Smith, and Socially Responsible Agricultural Project.

Response:

The Department acknowledges this comment. However, the Department is not implementing changes at this time in an effort to move forward with the amendment process. This is because the 2013 Arkansas Act 1511 created a Committee and charged it with developing public notification requirements for any applicant seeking coverage under the general permit issued by the Department for a proposed Concentrated Animal Feeding

Operation (hereinafter “CAFO”) in Arkansas. The Committee was comprised of one representative from the Department, Arkansas Agriculture Department, and Arkansas Farm Bureau and two members appointed by the Governor. The Committee presented to the Arkansas Legislative Council its recommendations, after which the Department filed before the APC&EC a Petition to Initiate Rulemaking on Regulation No. 6 to incorporate the Committee’s recommendations. The APC&EC approved the Petition to Initiate Rulemaking at its May 22, 2014 meeting. The Department is concerned with modifying these recommendations that have been agreed upon by the elected Committee as approval of these recommendations in a timely manner is of the utmost importance.

Comment #2:

The Arkansas Department of Health should be included on the list of entities requiring notice.

Comments Received From: Julie and Andy Feinstein, Pamela E. Stewart, Marti Olesen, Sarah Garrett, Ellen Corley, Jasper, Arkansas, Ginny Masullo, Fayetteville, Arkansas, Kristine Hall, Laura Timby, Gilbert, Arkansas, Ray Quick, Joe Golden, Harrison, Arkansas, Pam Floyd, Jane E. Darr of Friends of the North Fork and White Rivers, Cotter, Arkansas, Stephen Michael Farar, Fox, Arkansas, Amy Wilson, Fayetteville, Arkansas, John Murdoch, Wesley, Arkansas, Patti Kent, Fayetteville, Arkansas, Susan Drouilhet, Teresa Turk, Fayetteville, Arkansas, Veronica Rosenau, Huntsville, Arkansas, Fay Knox, Deer, Arkansas, Arkansas Canoe Club, Anna Weeks of Arkansas Public Policy Panel, Gerald Weber, Mountain View, Arkansas, Linda Stith, Fayetteville, Arkansas, Mark Smith, Socially Responsible Agricultural Project, Trisha Wilding, and Dina Nash.

Response:

The Department acknowledges this comment. The Arkansas Department of Health is notified of new, renewal, and modified draft permits as a standard practice at the Department and is included on the listserv. Please see response to Comment #1.

Comment #3:

The National Parks Service requests an amendment to the proposed rulemaking to add the following text as 6.207(A)(5):

(5) Administrators of State and Federal land management agencies and Non-Governmental Organizations who manage property within 10 miles of the CAFO production site and/or the manure spreading sites, or which manage property downstream of the CAFO production site and/or the manure spreading site.

6.207(E): The National Park Service requests an amendment to the wording in the proposed rulemaking to the following text to 6.207(E):

The applicant shall publish adequate notice of the proposed CAFO in the paper of the largest circulation in the county or counties of the CAFO production sites and/or manure spreading sites. ADEQ shall determine the form of that notice, the minimum number of publication dates, and the proper paper for publication to ensure robust public notice is given.

We feel that these amendments will better serve the public, private land owners, NGOs, and the State and Federal lands within the State of Arkansas.

Comments Received From: Kevin G. Cheri, National Park Service Superintendent, Harrison, Arkansas, Gene Dunaway, Ginny Masullo, Fayetteville, Arkansas, Kristine Hall, Laura Timby, Gilbert, Arkansas, Joe Golden, Harrison, Arkansas, Pam Floyd, Trella Laughlin, Eureka Springs, Arkansas, Jane E. Darr of Friends of the North Fork and White Rivers, Cotter, Arkansas, Stephen Michael Farar, Fox, Arkansas, Charles Bitting, John Murdoch, Wesley, Arkansas, Patti Kent, Fayetteville, Arkansas, Susan Drouilhet, Teresa Turk, Fayetteville, Arkansas, Veronica Rosenau, Huntsville, Arkansas, Arkansas Canoe Club, Anna Weeks of Arkansas Public Policy Panel, Carol Bitting, Marble Falls, Arkansas, Zella Holden, Erin Rains, Gerald Weber, Mountain View, Arkansas, Linda Stith, Fayetteville, Arkansas, Mark Smith, Socially Responsible Agricultural Project, Trisha Wilding, and Dina Nash.

Response:

The Department acknowledges this comment. See response to Comment #1 regarding modifications to Reg. 6.207 and proposed changes to public notification requirements.

Comment #4:

Reg. 6.207(E) should require two publications as one is not enough. It was further recommended that another provision be added as 6.207(A)(5) to provide *email* notice to anyone who joins a list server to request such notices. Perhaps this would be added as Section (B), moving other sections down, or as a new Section (F).

Comments Received From: Gene Dunaway, Mountain View, Arkansas, Lin Wellford, Green Forest, Arkansas, Kristine Hall, Mary M. Cameron of the Bureau of Legislative Research, Jane E. Darr of Friends of the North Fork and White Rivers, Cotter, Arkansas, Stephen Michael Farar, Fox, Arkansas, Charles Bitting, Patti Kent, Fayetteville, Arkansas, Teresa Turk, Fayetteville, Arkansas, Veronica Rosenau, Huntsville, Arkansas, Erin Rains, Gerald Weber, Mountain View, Arkansas, Socially Responsible Agricultural Project, Trisha Wilding, and Dina Nash.

Response:

The Department acknowledges this comment. See response to Comment #1 regarding modifications to Reg. 6.207(A) and proposed changes to public notification requirements.

In regards to providing email notice to individuals who have joined a listserv, the Department already has this in place. Interested persons can join any of the Department's email lists or listservs by following the directions at the following web address:

<http://www.adeq.state.ar.us/compsvs/webmaster/listserv.htm>

Comment #5:

The Tulsa Metropolitan Utility Authority (TMUA) and the City of Tulsa suggest one amendment to the proposed rulemaking.

6.207(A): TMUA and the City of Tulsa request an amendment to the proposed rulemaking to add the following text as 6.207(A)(5):

(5) Public water supply utilities using the net drainage lake of the watershed encompassing the proposed CAFO.

We believe inclusion of this amendment will serve and protect the public.

Comments Received From: Lou Reynolds, Tulsa Metropolitan Utility Authority, Tulsa, Oklahoma, Marti Olesen, Sarah Garrett, Ellen Corley, Jasper, Arkansas, Ginny Masullo, Fayetteville, Arkansas, Joe Golden, Harrison, Arkansas, Arkansas Department of Health, Susan Drouilhet, Veronica Rosenau, Huntsville, Arkansas, Fay Knox, Deer, Arkansas, Beaver Water District, and Socially Responsible Agricultural Project.

Response:

The Department acknowledges this comment. See response to Comment #1 regarding modifications to Reg. 6.207(A) and proposed changes to public notification requirements.

The Arkansas Department of Health (ADH) is the regulatory authority for public drinking water. As stated in response to Comment #2, the ADH is routinely notified of new, renewal, and modified draft permits by the Department. The Department addresses public health concerns related to ADH regulations when provided with comments from the ADH.

Comment #6:

Subsection 1(c) states that the act is only effective for 1 year from the effective date of the act, or July 23, 2014. This means that the act will expire before this rule promulgating the act goes into effect.

Comment Received From: Mary M. Cameron, Bureau of Legislative Research.

Response:

The Department acknowledges this comment.

Comment #7:

Citizens in support of the proposed changes to Regulation 6.

Comments Received From: Scharmel Roussel, Margaret Fortuny, Rogers, Arkansas, Lin Wellford, Justin Taylor, Gene Milus, Fayetteville, Arkansas, and Bill Saunders, Little Rock, Arkansas.

Response:

The Department acknowledges this comment.

The effective date of this rule is October 24, 2014.

CONTROVERSY: This is not expected to be controversial.

FINANCIAL IMPACT: Revisions to be public notice requirement will add costs to the permittee. Based on the requirements being proposed, the permittee will be responsible for the following costs not previously required. Providing written notices by certified mail with return receipt costs approximately \$6.48 for each letter. The number of property owners adjacent to the CAFO will vary for each permit, but a minimum of four letters would be necessary resulting in a cost of \$25.92. A one-time public notification in the local paper would vary from \$150 to \$250, depending on the paper being used for publication. The preparation of a 2 x 3 foot sign containing public notification requirements will result in an additional cost of \$150.

The agency does not anticipate any cost to the state, county, or municipal government.

LEGAL AUTHORIZATION: This rule implements Act 1511 of 2013. Act 1511 established a committee to develop the procedures for applicants to give sufficient notice prior to being granted or denied a general permit to discharge from a Concentrated Animal Feeding Operation (CAFO). Pursuant to Ark. Code Ann. § 8-4-201(b)(2), The Arkansas Pollution Control and Ecology Commission (“Commission”) may promulgate rules

that it “deems necessary to secure public participation in the environmental decision-making processes”. See also, Ark. Code Ann. §§ 8-4-101 et seq., 8-4-201, 202.