

EXHIBIT E

DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER QUALITY

SUBJECT: Regulation No. 9: Fee Regulation

DESCRIPTION: The proposed changes to Regulation 9 concerning fee regulation include:

1. **Amend the definitions.** The definition of “Q” or “Quantity” was added for clarification because it is used in formulas in Chapter 4 concerning the calculation of water permit fees.
2. **Amend Chapter 4 Formulas for Clarification.** Clarification to formulas in Chapter 4 were made concerning water permit fees to make the regulation easier to understand.
3. **Incorporate a proposed fee calculation for minor municipal and non-municipal facilities with National Pollutant Discharge Elimination System (NPDES) permits** under Reg.9.403 for limits of toxic pollutants based solely on Total Maximum Daily Load (TMDL) to allow ADEQ to assess lower water permit fees for qualifying facilities.
4. **Update the fee schedule in Chapter 4** to reflect permits currently offered by the Office of Water Quality and eliminate four (4) General Permits under Reg.9.404 no longer issued by the Officer of Water Quality.
5. **Incorporate updates to Arkansas Law.** Acts 94 and 575 of 2015 require revisions to Chapter 4 concerning contribution fees to the Nonmunicipal Domestic Sewage Treatment Works Trust Fund.
6. **Stylistic and Formatting Corrections.** Minor, non-substantive stylistic and formatting corrections were made throughout the regulation.

PUBLIC COMMENT: A public hearing was held on October 21, 2016. The public comment period expired on November 4, 2016. The following public comments were received:

Commissioner Wesley Stites of Arkansas Pollution Control and Ecology Commission

Comment: Reg.9.301(D) concerns failure to pay. One part reads “[c]ontinued refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Department...” Is there a particular reason for the use of the word ‘refusal’? I, of course, am not a lawyer, but in my mind the use of that word evokes the question of intent or willfulness in the act. Might it not be better to use the word that is in the title line, ‘failure,’ in place of ‘refusal’? Failure is devoid of intent. You either pay or don’t and whether you are refusing to pay, or forgot to pay, or couldn’t pay, or thought somebody else paid is immaterial.

Response: The use of “refusal” in Reg.9.301(D) is based on Ark. Code Ann. § 8-1-103(3) which states in part that the Department shall deny a permit, “if and when any facility subject to control by the department fails or refuses to pay the fees after reasonable notice...” In order to be consistent with Ark. Code Ann. § 8-1-103(3), the word “failure” has been added to that sentence in Reg.9.301(D) to read: “Continued failure or refusal to pay the required fees after a reasonable notice...”

Proposed revision of Reg.9.301(D) based on Comment:

(D) Failure to Pay Annual Fees

A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as established in these regulations. Continued failure or refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Department, ~~which that~~ that may result in revocation of the permit. When payment of fees is made by check ~~which that~~ that is subsequently returned due to insufficient funds, all review work on the particular application ~~will~~ shall immediately cease until the fee is paid in cash or by money order.

Comment: Reg. [sic] 9.403 & Chapter 2 – The definition of Q is moved to Chapter 2. That makes sense. However, the new definition in Chapter 2 says “‘Q’ or ‘Quantity’ means the flow expressed in million gallons per day (mgd).” In the old reg, Q is the DESIGN flow. This is no longer specified in the proposed changes. If I am applying for a permit and my average daily flow is 80% of design, using my average daily flow to calculate my fee might save me money. I suggest that ‘design’ or, if that is what you intend, ‘average daily’ be inserted ahead of ‘flow’ in the new definition of Q in Chapter 2.

Response: The Department acknowledges the comment. For more clarification the word “permitted” has been added to the definition of “Q” or “Quantity.” The term “Q” or “Quantity” is used in formulas for all permit categories, including those permits that do not use “design flow” for the permitted flow.

Proposed definition of “Q” or “Quantity” based on Comment:

“Q” or “Quantity” means the permitted flow expressed in million gallons per day (mgd), as used in formulas for calculating Water Permit Fees under Chapter 4.

Rebecca Miller-Rice, an attorney with the Bureau of Legislative Research, asked the following questions:

(1) Reg.9.403(B)(1) – I just wanted to make sure that I understood this amendment correctly. It is not a change to the fee charged, but merely a rewriting/simplification of the formula? **RESPONSE:** Yes, that is correct.

(2) Reg.9.403(C)(1)(a) – Can you please provide me with the precise statutory authority on which the Department/Commission relies to reduce the maximum fee?

RESPONSE: Ark. Code Ann. § 8-1-103 provides the specific legal authority for ADEQ and APC&EC to determine permit fees. This change is warranted because facilities classified as minor domestic facilities will not have a value for the term “Q” in the formula greater than one million gallons per day (1 mgd). However, based on your comment and the agency’s further review, it has been determined that the word “Domestic” should be added to the title of Reg.9.403(C) and read as “Minor Municipal and Minor Non-Municipal Domestic Facilities” with a maximum fee of \$5,800. Additionally, for more clarification, a new Reg.9.403(D) has been added for “Minor Non-Municipal Facility” with a maximum fee of \$10,000. The remaining subsections of Reg.9.403 will be reindexed to account for the changes from adding the new subsection.

Proposed revision of Reg.9.403(C) based on Comment:

(C) Minor Municipal and Minor Non-Municipal Domestic Facilities

Proposed addition of Reg.9.403(D) based on Comment:

(D) Non-Municipal Minor Facilities

Non-Municipal Minor Facilities with MRAT less than 80 are subject to fees as follows:

(a) Initial and annual fees shall be calculated as follows:

$$\text{Fee} = \$200 + 5600 \times Q$$

with Maximum Fee = \$10,000

(b) Modification Fee

(i) Major \$2,000

(ii) Minor \$1,000

(3) Reg.9.403(C)(3) – Can you please provide me with the precise statutory authority on which the Department/Commission relies in implementing this fee?

RESPONSE: Ark. Code Ann. § 8-1-103 provides the specific legal authority for ADEQ and APC&EC to determine permit fees.

(4) Reg.9.407 – The amendment seems to merely set forth that the fee is authorized by statute; it does not state if the fee is required, will be collected, and/or how it will be calculated, despite Ark. Code Ann. § 8-4-203(b)(4) appearing to set forth some parameters. Is there a reason that this fee has not been expounded upon further as the other fees contained in the Regulation have been?

RESPONSE: Ark. Code Ann. § 8-4-203(b) requires that a Non-municipal Domestic Sewage Treatment Works pays the trust fund contribution fee and sets some parameters for those fees. The proposed revision below references Ark. Code Ann. § 8-4-203(b), and states that the assessment of trust fund contribution

fees are limited by it. Ark. Code Ann. § 8-4-203(b) was amended in the 2017 legislative session following the close of public comments on APC&EC Regulation No. 9. For that reason, further changes are not within the scope of this rulemaking or the public notice for this rulemaking.

Proposed revision of Reg.9.407 based on Comment:

9.407. Nonmunicipal Domestic Sewage Treatment Works Trust Fund Contribution Fee.

(A) A Nonmunicipal Domestic Sewage Treatment Work is required to pay a trust fund contribution fee for the Nonmunicipal Domestic Sewage Treatment Works Trust Fund.

(B) The trust fund contribution fee shall be assessed in accordance with Ark. Code Ann. § 8-4-203(b).

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: There is no financial impact.

LEGAL AUTHORIZATION: The Arkansas Department of Environmental Quality (“Department”) and the Arkansas Pollution Control and Ecology Commission (“Commission”) have the power and duty to “establish, by regulation, reasonable fees for initial issuance, annual review, and modification of water, air, or solid waste permits,” following “a public hearing and based upon a record calculating the reasonable administrative costs of evaluating and taking action on permit applications and of implementing and enforcing the terms and conditions of permits and variances.” Ark. Code Ann. § 8-1-103(1)(A). These fees shall consist of initial fees, annual review fees, and modification fees, as defined in Ark. Code Ann. § 8-1-102. *See id.* The Department is authorized to promulgate such rules and regulations necessary to administer the fees, rates, tolls, or charges for services established by section 8-1-103 and is directed to prescribe and collect such fees, rates, tolls, or charges for the services delivered by the Department in such manner as may be necessary to support the programs of the Department as directed by the Governor and the General Assembly. *See* Ark. Code Ann. § 8-1-103(5). **The proposed rule changes further include revisions made in light of Acts 94 and 575 of 2015, both of which amended Ark. Code Ann. § 8-4-203(b) that concerns a Nonmunicipal Domestic Sewage Treatment Works Trust Fund contribution fee.**

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

DEPARTMENT/AGENCY Arkansas Department of Environmental Quality (ADEQ)
 DIVISION Office of Water Quality (OWQ)
 DIVISION DIRECTOR Caleb Osborne, Associate Director, Office of Water Quality
 CONTACT PERSON Caleb Osborne, Associate Director, Office of Water Quality
 ADDRESS 5301 Northshore Drive, North Little Rock, AR 72118
 PHONE NO. 501-682-0655 FAX NO. 501-682-0891 E-MAIL osbornec@adeq.state.ar.us
 NAME OF PRESENTER AT COMMITTEE MEETING Caleb Osborne
 PRESENTER E-MAIL osbornec@adeq.state.ar.us

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
 Administrative Rules Review Section
 Arkansas Legislative Council
 Bureau of Legislative Research
 One Capitol Mall, 5th Floor
 Little Rock, AR 72201

1. What is the short title of this rule? APC&EC Regulation No. 9: Fee Regulation

2. What is the subject of the proposed rule? Regulation 9 contains provisions related to the assessment and regulation of fees.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
 Acts 94 and 575 of 2015 concerning contribution fees to the Nonmunicipal Domestic Sewage Treatment Works Trust Fund, codified at Ark. Code Ann. § 8-4-203
 If yes, please provide the federal rule, regulation, and/or statute citation. Ann. § 8-4-203

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? N/A

When does the emergency rule expire?

N/A

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. N/A

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. N/A

Is this an amendment to an existing rule?

Yes

No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Ark. Code Ann. §§ 8-4-201 and 8-4-202.

7. What is the purpose of this proposed rule? Why is it necessary? (A) Amend the definitions: The definition of "Q" or "Quantity" was added for clarification because it is used in formulas in Chapter 4 concerning the calculation of water permit fees; (B) Amend Chapter 4 Formulas for Clarification: Clarification to formulas in Chapter 4 concerning water permit fees to make the regulation easier to understand; (C) Incorporate a proposed fee calculation for minor municipal and non-municipal facilities with National Pollutant Discharge Elimination System (NPDES) permits under Reg.9.403 for limits of toxic pollutants based solely on Total Maximum Daily Load (TMDL) to allow ADEQ to assess lower water permit fees for qualifying facilities; (D) Update the fee schedule in Chapter 4 to reflect permits currently offered by the Office of Water Quality and eliminate four (4) General Permits under Reg.9.404 no longer issued by the Office of Water Quality; (E) Incorporate Updates to Arkansas Law: Acts 94 and 575 of 2015 were enacted by the Arkansas General Assembly and require revisions to Chapter 4 concerning contribution fees to the Nonmunicipal Domestic Sewage Treatment Works Trust Fund; and (F) To make minor, non-substantive stylistic and formatting corrections throughout the Regulation.

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). http://www.adeq.state.ar.us/regs/draft_regs.htm

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

If yes, please complete the following:

Date: October 18, 2016

Time: 10:00 a.m.

Arkansas Pollution Control & Ecology

Place: Commission Meeting Room

Arkansas Department of
Environmental Quality (ADEQ)
5301 Northshore Drive, North Little
Rock, AR 72118

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

Ten (10) business days after the public hearing, which will be November 1, 2016

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

Ten (10) days after filing the final regulation with the Secretary of State, which will be March 2, 2017

12. Do you expect this rule to be controversial? Yes No

If yes, please
explain.

N/A

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.

N/A

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Environmental Quality (ADEQ)
DIVISION Office of Water Quality (OWQ)
PERSON COMPLETING THIS STATEMENT Caleb Osborne, Associate Director
TELEPHONE NO. 501-682-0655 **FAX NO.** 501-682-0891 **EMAIL:** osbornec@adeq.state.ar.us

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

SHORT TITLE OF THIS RULE APC&EC Regulation No. 9: Fee Regulation

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

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

- (a) How the additional benefits of the more costly rule justify its additional cost;
N/A
- (b) The reason for adoption of the more costly rule;
N/A
- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;
N/A
- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.
N/A

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

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

Current Fiscal Year

General Revenue	<u>\$0</u>
Federal Funds	<u>\$0</u>
Cash Funds	<u>\$0</u>
Special Revenue	<u>\$0</u>
Other (Identify)	<u>\$0</u>

Next Fiscal Year

General Revenue	<u>\$0</u>
Federal Funds	<u>\$0</u>
Cash Funds	<u>\$0</u>
Special Revenue	<u>\$0</u>
Other (Identify)	<u>\$0</u>

Total \$0

Total \$0

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

Current Fiscal Year

Next Fiscal Year

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

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

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

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

Implementing the revisions will not cause an increase in costs to any private individual because application of the proposed fee calculation for qualifying facilities will allow ADEQ to assess a lower permit fee.

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

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

There is no total estimated cost to implement changes to this rule.

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

Yes No

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

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:

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

APC&EC REGULATION NO. 9
FEE REGULATION
Proposed Amendments – Executive Summary
September 23, 2016

The Arkansas Department of Environmental Quality (ADEQ) proposes this rulemaking before the Arkansas Pollution Control and Ecology Commission (APC&EC) to Regulation No. 9 concerning Fee Regulation. The regulatory amendment is not pursuant to federal mandate. The Commission's authority for amending Regulation 9 is found in Ark. Code Ann. §§ 8-4-201 and 8-4-202.

Proposed changes to Regulation 9 include:

- **Amend the definitions.** The definition of “Q” or “Quantity” was added for clarification because it is used in formulas in Chapter 4 concerning the calculation of water permit fees;
- **Amend Chapter 4 Formulas for Clarification.** Clarification to formulas in Chapter 4 concerning water permit fees to make the regulation easier to understand;
- **Incorporate a proposed fee calculation for minor municipal and non-municipal facilities with National Pollutant Discharge Elimination System (NPDES) permits** under Reg.9.403 for limits of toxic pollutants based solely on Total Maximum Daily Load (TMDL) to allow ADEQ to assess lower water permit fees for qualifying facilities;
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- **Incorporate Updates to Arkansas Law.** Acts 94 and 575 of 2015 were enacted by the Arkansas General Assembly and require revisions to Chapter 4 concerning contribution fees to the Nonmunicipal Domestic Sewage Treatment Works Trust Fund; and
- **Stylistic and Formatting Corrections.** To make minor, non-substantive stylistic and formatting corrections throughout the Regulation.

