

# ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

## Regulation No. 9

RECEIVED

JUL 17 2017

BUREAU OF  
LEGISLATIVE RESEARCH



## REGULATION NO. 9

### FEE REGULATION

## REVISED MARK – UP DRAFT

Submitted to the Pollution Control and Ecology Commission  
in July 2017

**REGULATION NO. 9**  
**FEE REGULATION**  
**TABLE OF CONTENTS**

|  |     |
|--|-----|
| CHAPTER 1: TITLE .....   | 1-1 |
| Reg.9.101 Title .....  | 1-1 |
| Reg.9.102 Purpose .....  | 1-1 |
| Reg.9.103 Applicability .....  | 1-1 |
| Reg.9.104 Severability .....   | 1-1 |
| CHAPTER 2: DEFINITIONS .....   | 2-1 |
| CHAPTER 3: PERMIT FEE PAYMENT .....  | 3-1 |
| Reg.9.301 Permit Fee Payment .....   | 3-1 |
| Reg.9.302 Refunds .....  | 3-2 |
| CHAPTER 4: WATER PERMIT FEES AND TRUST FUND CONTRIBUTION FEE .....   | 4-1 |
| Reg.9.401 Maximum Water Permit Fees .....  | 4-1 |
| Reg.9.402 General Provisions .....   | 4-1 |
| Reg.9.403 Fees for Permits Issued Under the National Pollutant Discharge<br>Elimination System (NPDES) Permits .....                           | 4-2 |
| Reg.9.404 General Permits .....  | 4-5 |
| Reg.9.405 Fees for Non-NPDES Permits .....   | 4-6 |
| Reg.9.406 Fees for Underground Injection Control (UIC) Permits (Injection<br>well classifications are defined in 40 CFR C.F.R. § 144.6.) ..... | 4-7 |
| Reg.9.407. Nonmunicipal Domestic Sewage Treatment Works Trust Fund<br>Contribution Fee .....   | 4-7 |
| Reg.9.407408 Administrative Permit Amendments .....  | 4-7 |
| CHAPTER 5: AIR PERMIT FEES .....   | 5-1 |
| Reg.9.501 Applicability .....  | 5-1 |
| Reg.9.502 Terms Used in Fee Formulas .....   | 5-1 |
| Reg.9.503 Initial Fees .....   | 5-1 |
| Reg.9.504 Annual Fees .....  | 5-2 |
| Reg.9.505 Modification Fees .....  | 5-2 |
| Reg.9.506 Administrative Permit Amendments and Renewal Permits .....   | 5-3 |
| Reg.9.507 General Permits .....  | 5-3 |
| Reg.9.508 Permit Fees for Certain Small Businesses Subject to Part 70<br>Permitting Requirements .....   | 5-3 |
| CHAPTER 6: SOLID WASTE PERMIT FEES .....   | 6-1 |
| Reg.9.601 Maximum Amount of Solid Waste Permit Fee Collections .....   | 6-1 |
| Reg.9.602 Fee Categories .....   | 6-1 |
| Reg.9.603 Initial Fees .....   | 6-1 |
| Reg.9.604 Annual Fees .....  | 6-2 |
| Reg.9.605 Modification Fees .....  | 6-2 |
| Reg.9.606 Permit Transfer Fees .....   | 6-2 |
| Reg.9.607 Post Closure Fees .....  | 6-2 |
| Reg.9.608 Administrative Permit Amendments .....   | 6-2 |
| Reg.9.609 General Permits .....  | 6-3 |
| CHAPTER 7: VARIANCES OR INTERIM AUTHORITY REQUESTS .....   | 7-1 |

|  |  |     |
|--|--|-----|
| Reg.9.701  | Processing Fee .....                               | 7-1 |
| Reg.9.702  | Fees Non-Refundable .....                          | 7-1 |
| CHAPTER 8: LABORATORY CERTIFICATION FEE PROGRAM..... |  | 8-1 |
| Reg.9.801  | Laboratory Certification Fees.....                 | 8-1 |
| Reg.9.802  | Laboratory Certification Travel Fees .....         | 8-1 |
| Reg.9.803  | Failure to pay Laboratory Certification Fees ..... | 8-1 |
| CHAPTER 9: ADMINISTRATIVE PROCEDURES .....           |  | 9-1 |
| Reg.9.901  | Department Review of Fees .....                    | 9-1 |
| Reg.9.902  | Appeals.....                                       | 9-1 |
| Reg.9.903  | Effective Date.....                                | 9-1 |

## CHAPTER 1: TITLE

### Reg.9.101 Title

This regulation shall be known by and may be cited by the short title "Regulation No. 9: Fees."

### Reg.9.102 Purpose

It is the purpose of this regulation to develop and implement a system of fees for permits issued by the Arkansas Department of Environmental Quality pursuant to the provisions of the Water and Air Pollution Control Act (Act 472 of 1949, as amended, ~~A.C.A.~~ Ark. Code Ann. § 8-4-101 *et seq.*) or the Solid Waste Management Act (Act 237 of 1971, as amended, ~~A.C.A.~~ Ark. Code Ann. § 8-6-201 *et seq.*). Act 817 of 1983, as amended, Act 1254 of 1993, as amended, and Act 1052 of 1999 (~~A.C.A.~~ Ark. Code Ann. § 8-1-101 *et seq.*) authorize the collection and enforcement of these fees and authorize their use to defray the costs of operating the Department.

It is also the purpose of this regulation to assess reasonable fees to establish and to administer the State Environmental Laboratory Certification Program Act (Act 876 of 1985, as amended, ~~A.C.A.~~ Ark. Code Ann. § 8-2-201 *et seq.*)

### Reg.9.103 Applicability

Permit fees established by this regulation shall be applicable to all water permits, including no-discharge and closed system permits, issued under the provisions of the Water and Air Pollution Control Act, as amended, all air permits issued under the Water and Air Pollution Control Act, as amended, or any federal water or air permit program where permitting authority has been delegated to the Department (unless fees for such a program are otherwise provided by law), and all solid waste disposal permits issued under the provisions of the Solid Waste Management Act, as amended, and the Solid Waste Management Code. Facilities operating under the provisions of the "Permits by Rule" or "Authorization by Rule" ~~will be exempted~~ are exempt from this regulation until such time that the facility submits an application for an individual permit within each applicable permit category.

Laboratory certification fees established by this regulation shall be applicable to all laboratories certified by the Department. The fees include, but are not limited to, the reasonable costs of administering the provisions of the program and the reasonable administrative costs of initial issuance, initial certificate, renewed certificates, and the expenses associated with conducting evaluations.

### Reg.9.104 Severability

If any provision of this Regulation or the application thereof to any person or circumstance is held invalid, ~~such its~~ its invalidity shall not ~~effect~~ affect other provisions or applications of this Regulation ~~which that~~ can be given effect without the invalid portion or application, and to this end the provisions of this Regulation are declared to be severable.



## CHAPTER 2: DEFINITIONS

All terms used in this regulation ~~shall have their usual meaning,~~ unless the context otherwise requires, or unless specifically defined in the enabling legislation or in federal regulations adopted by reference for program management, ~~shall have their usual meaning.~~ In addition, for purposes of this regulation, the following definitions apply:

**“Administrative Permit Amendment”** means a minor change or permit revision ~~which~~ that is not typically considered a permit modification, as defined by applicable statutes or regulations, or a minor modification ~~which~~ that does not require public notice and opportunity for comment. For example, typographical corrections or revisions, or other changes initiated by the Department, might be considered administrative permit amendments. Some minor changes requested by the permittee may also qualify as administrative permit amendments. For purposes of Chapter 5, administrative permit amendments are defined in Regulations 18, 19, and 26. The Director, in his or her discretion, may decide whether a revision would be considered an administrative amendment. No fee will be charged for administrative permit amendments.

**“Annual Fee”** means the fee required to be submitted upon the facility-specific annual invoice date for a permit issued pursuant to the Water and Air Pollution Control Act, as amended, or the Solid Waste Management Act, as amended.

**“Category”** means one type of laboratory test or group of laboratory tests for similar materials or classes of materials or ~~which utilize~~ that use similar methods or related methods.

**“Certificate”** means the annual document showing those parameters for which a laboratory has received certification. The annual period begins at receipt of fee payments or at the expiration of a current certificate.

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

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

**“Department”** means the Arkansas Department of Environmental Quality (ADEQ) or its successor.

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

**“Discretionary Major Facility”** means an industrial facility discharging wastewater under the terms of a National Pollutant Discharge Elimination System (NPDES) permit that does not meet the numerical rating criteria as an NPDES non-municipal major facility, but ~~which~~ is designated as a major permittee by the Department or the U.S. Environmental Protection Agency (EPA). Such facilities are assigned ~~an~~ a Major Rating Code (MRAT) greater than 500.

**“EPA”** means the United States Environmental Protection Agency.

**“Evaluation”** means a review of the quality control and quality assurance procedures, records keeping, reporting procedures, methodology, and analytical techniques of a laboratory for measuring or establishing specific parameters.

**“Facility”** means an activity or operation within a specific geographical location including property contiguous thereto. A facility may consist of several manufacturing, treatment, storage, or disposal operational units. For purposes of this permit fee regulation, a facility shall be considered to be all property, facilities, or operations owned, leased, or operated by a single entity, whether a municipal, county, or state government, corporation, partnership, or proprietorship in the same geographical area, forming an integral part of the same activity or operation, whether or not such activity lies within the boundaries of the city or county. For purposes of permit fee assessment only, such property, facilities, or operations shall be considered as a single facility if they are regulated by a common state or federal permit within each permit category, or in the future such consolidation of multiple permits can be realized within the scope of applicable permitting regulations, and the facilities or operations are under the supervision of a single plant manager/superintendent.

**“Initial Fee”** means the fee ~~which~~ that is required by law to be submitted with all applications for permits issued pursuant to the Water and Air Pollution Control Act, as amended, and the Solid Waste Management Act, as amended, and ~~which that~~ must be received by the Department ~~prior to the issuance of such a permit~~ before a permit is issued.

**“Issue Date”** means the date the Department signed the permit.

**“Laboratory”** “Laboratory” means any facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, soil or subsoil materials, or any other analyses related to environmental quality evaluations.

**“Major Municipal Facility”** means a publicly owned treatment works (POTW) with a design flow or daily average flow of 1.0 million gallons per day (mgd) or greater, or a POTW designated as a major facility by the Department or EPA.

**“Modification Fee”** means that fee required by law to be submitted for modification of any existing or future permit required by the Water and Air Pollution Control Act, as amended, or the Solid Waste Management Act, as amended, such modification being either at the request of the permittee or as required by law or regulation. The fee may vary ~~depending upon whether~~ if the permit modification or renewal is considered to be a minor or major modification, as defined in applicable statutes or regulations, or otherwise determined by the Director.

**“Non-Municipal Major Facility”** means a facility subject to the National Pollution Discharge Elimination System (NPDES) whose status is determined following completion of an NPDES Permit Rating Worksheet (current version) in which points are allocated on the basis of toxic pollutant potential, permitted flow or the ratio of wastewater to stream flow volume, conventional pollutants mass loadings, public health impacts (including proximity to drinking

water supplies and potential for human health toxicity), and water quality factors. Additional points can be assessed for certain steam electric power plants or for separate storm sewers serving a population greater than 100,000. The total points accumulated is known as the Major Rating Code or MRAT, which is the numeric total of ranking points assigned to non-municipal facilities and used to delineate them as a major or minor facility. Currently, a facility with an MRAT of eighty (80) points or more is designated as a “non-municipal major” facility. Additionally, EPA or the Department may designate an NPDES permittee as a “discretionary major” facility. Once an MRAT for a major facility is calculated and approved by EPA, the Department may recommend increases or decreases to an MRAT, but only EPA is authorized to change an individual permittee’s MRAT or designation as a “major” facility.

**“Non-Part 70 Permit”** means an air permit that is issued pursuant to a regulation other than Part 70 of Title 40 of the Code of Federal Regulations (40 ~~CFR~~ C.F.R. § Part 70).

**~~“Parameter”~~“Parameter”** means the characteristic or characteristics of a laboratory sample determined by an analytic laboratory testing procedure.

**“Part 70 Permit”** means an air permit that is issued pursuant to 40 ~~CFR~~ C.F.R. § Part 70.

**“Program”** means the Arkansas State Environmental Laboratory Certification Program.

**“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.

**“Renewal Permit”** means a permit issued to a facility upon expiration of an existing permit. A modification fee may be assessed, depending upon whether the renewal is considered to be a minor or major modification, as defined in applicable statutes or regulations, or otherwise determined by the Director.



## CHAPTER 3: PERMIT FEE PAYMENT

### Reg.9.301 Permit Fee Payment

#### (A) Fee Calculation

The applicant may calculate the initial permit application fee or permit modification fee and include it with the permit application, or the applicant may request that the Department calculate the fee after reviewing the application and forward an invoice to the applicant for payment.

#### (B) Fee Payment

Applicable permit fees shall be paid by check or money order payable to the Department for deposit in the State Treasury. The permit ~~will~~ shall not be issued until ~~such~~ the fee is received by the Department.

#### (C) Annual Fee Payment

Annual fees shall be due forty-five (45) days after the first day of the month ~~in which that~~ the Permittee is billed for the required annual fee. Failure to receive this bill does not relieve the Permittee from liability for the annual fee, but late charges ~~will~~ shall not be assessed until forty-five (45) days after the Permittee has been notified that the annual fee is due. The Director may waive annual fees or a portion thereof, for new facilities ~~which that~~ are not in operation, unless ~~such~~ the waiver is otherwise prohibited by State or Federal law.

#### (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~~ may result in revocation of the permit. When payment of fees is made by check ~~which 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.

#### (E) First Annual Fee Payment

The annual fee shall be assessed upon the facility-specific annual invoice date. The Department shall credit the first annual fee, on a prorated basis, if the initial fee for the permit was assessed within 12 months of the first annual fee for the permit. The Department may credit the annual fee, on a prorated basis, if a modification fee for the permit was assessed within 12 months of the annual fee for the permit.



(F) Annual Fee Late Payment Charge

A late payment charge shall be assessed to facilities failing to pay the annual fee within forty-five (45) days of the billing date, and shall be assessed at the rate of ten percent (10%) of the annual fee.

**LATE PAYMENT CHARGE = TEN PERCENT (10%) OF ANNUAL FEE**

**Reg.9.302 Refunds**

Except for pre-site investigation fees and interim authority or variance application fees as described in Chapters 6 and 7, up to forty percent (40%) of a fee submitted pursuant to this regulation is refundable ~~in the event that~~ if the request for the permit action for which the fee was submitted is withdrawn by the applicant ~~prior to~~ before the final permit decision. The Director ~~shall~~ has the discretion to retain as much of the above-cited forty percent (40%) as he or she ~~in his sole discretion~~, determines is necessary to cover the reasonable administrative and technical review costs incurred in the review process.

## **CHAPTER 4: WATER PERMIT FEES AND TRUST FUND**

### **CONTRIBUTION FEE**

**WATER PERMIT FEES.** The following permit fee schedule in Reg.9.401 — 9-406 shall be applicable applies to the affected water permit programs in the state of Arkansas.

#### **Reg.9.401      Maximum Water Permit Fees**

The following maximum fees for water permits, including construction permits and initial, annual, renewal and modified permits, shall apply to each ~~such~~ permit issued by the Department. Actual permit fees ~~will~~ shall be calculated and assessed in accordance with the provisions of this section.

(A)    Construction Permits

Construction permits issued pursuant to the Water and Air Pollution Control Act, as amended, for construction, alteration, or modification, or any combination thereof, of a treatment system shall not exceed \$500 per permit.

(B)    NPDES and UIC Program Permits

Permits issued under the National Pollutant Discharge Elimination System (NPDES) and the Underground Injection Control (UIC) Programs.

(1)    Initial and Annual ..... \$30,000

(2)    Modification of Permit

(a)    Major Modification ..... \$10,000

(b)    Minor Modification\* ..... \$1,000

NOTE:      \*Minor modifications for NPDES and UIC permits are restricted to those as defined in 40 ~~CFR~~ C.F.R. § 122.63 and 144.41, respectively.

(C)    Non-NPDES “No-Discharge” Permits..... \$500

(D)    Short Term Activity Authorizations

Fees for Short Term Activity Authorizations under the provisions of Regulation No. 2: Water Quality Standards shall not exceed \$200.

#### **Reg.9.402      General Provisions**

(A)    Construction Permits

All applicants for construction permits required by ~~A.C.A.~~ Ark. Code Ann. § 8-4-217(b) shall be assessed a fee ~~which that~~ shall not exceed \$500 for each permit or modification thereto, except ~~for~~ that liquid animal waste management systems

~~which will~~ shall be assessed a fee of \$200 for each permit or modification thereto. Construction permit fees shall be in addition to any water permit fees required in Reg.9.403, Reg.9.404, and Reg.9.405 below.

(B) ~~Permits~~ Permit Fees

Permit fees (initial, annual, or modification) shall be required for each water permit, as described below.

(C) Inactive Status Fees

The owner or operator of a hog farm that has been issued a permit under Regulation No. 5, Liquid Animal Waste Management Systems, shall not pay an annual fee if the permit is placed on inactive status by the Department. An NPDES or non-NPDES permit may be placed on inactive status if the owner's or operator's contract with the integrator has been terminated by the integrator. To obtain inactive status, the owner or operator must submit a written request to the Department seeking inactive status and provide the Department with a copy of the integrator's letter terminating the contract. The Department shall notify the owner or operator that the permit has been placed on inactive status. The owner or operator ~~will~~ shall not pay an annual fee during the time the permit is on inactive status. A permit that is placed on inactive status may remain on inactive status for a maximum of two (2) years following the date of contract termination. The owner or operator must comply with all permit conditions in order for the permit to remain on inactive status. Failure to comply with permit condition may result in the possible repayment of the annual fees, in addition to any assessed penalties. If the permit has not been reactivated at the end of the two (2) year period, the owner or operator must file a closure plan with the Department. The owner or operator must reactivate the permit if the owner or operator begins operating the hog farm and shall notify the Department within thirty (30) days after the owner or operator begins operating the hog farm that the permit is being reactivated.

**Reg.9.403      Fees for Permits Issued Under the National Pollutant Discharge Elimination System (NPDES) Permits.**

(A) Non-Municipal Major Facilities

(1) All facilities classified as Non-Municipal Major Facilities, as defined in Chapter 2, with a Major/Minor Permit Rating (MRAT) equal to or greater than 100, except for Discretionary Major Facilities [see Reg.9.403(A)(2)], are subject to fees as follows:

- (a) Initial Fee..... \$15,000
- (b) Annual Fee..... \$15,000
- (c) Modification Fee
  - (i) Major..... \$5,000

(ii) Minor\*..... \$1,000

~~(3)~~(2) Non-Municipal Major Facilities with MRAT less than 100 and Discretionary Major Facilities are subject to fees as follows:

(a) Initial Fee..... \$11,000

(b) Annual Fee..... \$11,000

(c) Modification Fee

(i) Major..... \$5,000

(ii) Minor\*..... \$1,000

(B) Major Municipal Facilities

All Major Municipal Facilities, as defined in Chapter 2, are subject to fees as follows:

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

$$\text{Fee} = \$5,000 + (900 \text{ } Q' \text{ (mgd)} \times (Q-1))$$

~~where  $Q' = \text{Design flow (Q)} - 1 \text{ mgd}$~~

~~(4)~~(2) Modification Fee

(a) Major..... \$5,000

(b) Minor\*..... \$1,000

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

(1) Facilities without toxics, priority pollutants, or hazardous substances, as defined in 40 ~~CFR~~ C.F.R. § 122, Appendix D, Tables II, III, and V, or Whole Effluent Toxicity (WET) limits, limited in the permit:

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

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

~~with Maximum Fee = \$10,000~~ \$5,800

(b) Modification Fee

(i) Major..... \$2,000

(ii) Minor\*..... \$1,000



- (2) Facilities with toxics, priority pollutants or hazardous substances, as defined in 40 CFR C.F.R. § 122, Appendix D, Tables II, III and V, or Whole Effluent Toxicity (WET) limits, limited in the permit:

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

$$\text{Fee} = \$200 + (21500 \times Q(\text{mgd}))$$

with Maximum Fee = \$15,000

- (b) Modification Fee

- (i) Major..... \$2,000
- (ii) Minor\*..... \$1,000

- (3) Facilities with toxic pollutants based solely on a Total Maximum Daily Load (TMDL), limited in the permit:

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

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

with Maximum Fee = \$5,800

- (b) Modification Fee

- (i) Major..... \$2,000
- (ii) Minor\*..... \$1,000

(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

- ~~(5)~~(E) Non-contact cooling water (including discharges from power plants not subject to fees described in Reg.9.403(A) above) and non-contaminated storm water discharges:

~~(a)~~(1) Initial and annual fees shall be calculated as follows:

$$\text{Fee} = \$200 + (700 \times Q(\text{mgd}))$$

with Maximum Fee = \$10,000

~~(b)~~(2) Modification Fee

~~(i)~~(a) Major..... \$2,000

~~(ii)~~(b) Minor\*..... \$1,000

~~(6)~~(F) Aquatic animal production facilities (fish hatcheries, etc.) with flow-through systems shall be subject to the following fees:

~~(a)~~(1) Initial and Annual Fees..... \$2,500

~~(b)~~(2) Modification

~~(i)~~(a) Major..... \$2,000

~~(ii)~~(b) Minor\*..... \$ 500

~~(7)~~(G) Variable Discharge (i.e., storm water and land clearing not addressed in Reg.9.403(C), aggregate facilities, mining, etc.)

~~(a)~~(1) Initial and Annual ..... \$ 300

~~(b)~~(2) Modification (Major and Minor)..... \$ 300

(Major and Minor)..... \$ 300

NOTE:

\*Minor modifications to NPDES permits are restricted to those defined in 40 CFR C.F.R. § 122.63

**Reg.9.404      General Permits**

- (A) In lieu of the fee schedules described above, and except as provided in Reg.9.404(B) below, permittees authorized to discharge wastewater under a Water Division general permit issued by the Department shall be subject to an initial fee and an annual fee as described below. The initial fee shall be remitted with the Notice of Intent (NOI) for coverage under the applicable general permit. Until a Notice of Termination (NOT) is submitted to and approved by the Department, the Permittee shall be billed annually thereafter by the Department on the anniversary date of coverage. When general permits are revised, ~~no~~ an additional initial fee ~~will be~~ is not required to be submitted if the currently permitted facility has maintained coverage under the existing general permit.

General Permit Number & Name

ARG040000 (Coal Mining).....\$400

|   |                  |
|---|------------------|
| ARG160000 (Sanitary Landfill Runoff)              | \$400            |
| <del>ARG340000 (Bulk Petroleum Storage)</del>     | <del>\$400</del> |
| ARG550000 (Individual Treatment Unit)             | \$200            |
| ARG640000 (Water Plant Backwash Filters)          | \$400            |
| ARG670000 (Pipeline Hydrostatic Testing)          | \$200            |
| ARG750000 (Car/Truck Wash Facilities)             | \$200            |
| ARG790000 (Ground Water Clean-up)                 | \$500            |
| <del>ARG190000 (Laundromats)</del>                | <del>\$200</del> |
| ARR000000 (Storm Water - Mfg)                     | \$200            |
| ARR150000 (Storm Water- Construction)             | \$200            |
| ARR040000 (Storm Water – MS4 Phase II)            | \$200            |
| ARG500000 (Aggregate Facilities)                  | \$200            |
| <del>00000-WG-P (Oil and Gas Drilling Pits)</del> | <del>\$300</del> |
| 00000-WG-LA (Land Application of Drilling Fluids) | \$500            |
| 0000-WG-CW (Carwash)                              | \$200            |
| 0000-WG-WR (Wastewater Treatment Plant Residuals) | \$500            |
| 0000-WG-SW (Salt Water Disposal)                  | \$250            |
| 0000-WG-AW (Confined Animal)                      | \$200            |

- (B) Homeowners covered under general permit ARG550000 (Individual Treatment Units) are exempt from fees required herein.
- (C) Miscellaneous general permits not specifically mentioned above that are issued by the Water Division shall be subject to an initial fee not to exceed \$500 and an annual fee not to exceed \$500.

**Reg.9.405 Fees for Non-NPDES Permits.**

- (A) Salt Water Disposal
- (1) Initial Fee ..... \$250
  - (2) Annual Fee..... \$250
  - (3) Modification Fee \* ..... \$250
- (B) Confined Animal and Small Commercial Septic Tank Systems (<5000 gallons per day (gpd))
- (1) Initial Fee ..... \$200
  - (2) Annual Fee..... \$200
  - (3) Modification Fee..... \$200
- (C) Commercial or industrial (non-agricultural, non-UIC, commercial septic tank systems) (> 5000 gallons per day (gpd))
- (1) Initial Fee ..... \$500
  - (2) Annual Fee ..... \$500
  - (3) Modification Fee \* ..... \$500

(D) Industrial sludge application (i.e. food processing, reserve pit, hatchery systems, etc.)

- (1) Initial Fee ..... \$500
- (2) Annual Fee..... \$500
- (3) Modification Fee \*..... \$500

(E) Publicly Owned Treatment Works (POTW) Non-NPDES with Land Application of Wastewater

- (1) Initial Fee.....\$500
- (2) Annual Fee.....\$500
- (3) Modification Fee \*.....\$500

NOTE: \*Defined as a ten percent (10%) or greater change in application or storage volumes or a change in the method of application or disposal

**Reg.9.406 Fees for Underground Injection Control (UIC) Permits (Injection well classifications are defined in 40 CFR C.F.R. § 144.6.)**

(A) Class I, III and IV

- (1) Initial Fee.....\$15,000
- (2) Annual Fee.....\$15,000
- (3) Modification Fee\*
  - (a) Major.....\$10,000
  - (b) Minor\*.....\$1,000

NOTE: \*Minor modifications are limited to those actions defined in 40 CFR C.F.R. § 144.41.

(B) Class V

- (1) Initial Fee.....\$500
- (2) Annual Fee.....\$500
- (3) Modification Fee.....\$500

**Reg.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).



**Reg.9.407408 Administrative Permit Amendments**

There shall be no fee charged for minor water permit modifications involving only administrative amendments or revisions to a permit. For purposes of this Chapter, minor modifications are restricted to those defined in 40 ~~CFR~~ C.F.R. § 122.63 or 40 ~~CFR~~ C.F.R. § 144.41. The Director, in his or her discretion, may decide whether a minor modification is considered to be an administrative amendment.

## CHAPTER 5: AIR PERMIT FEES

### AIR PERMIT FEES.

#### Reg.9.501      **Applicability**

The air permit fees contained in this section are applicable to (1) non-part 70 permits, (2) part 70 permits, and (3) general permits.

#### Reg.9.502      **Terms Used in Fee Formulas**

- (A) **\$/ton factor** is \$16/ton until September, 1994, after which time it shall be increased annually by the percentage, if any, by which the federal Consumer Price Index exceeds that of the previous year. The Director may, after considering the factors contained in Reg.9.901 of this regulation, decide not to increase the \$/ton factor in a year when the fee fund has a balance greater than 150% of the amount of money expended from that fund in the previous year.
- (B) **tons/year predominant air contaminant** is the permitted emission rate of the most predominant air contaminant (other than carbon monoxide, carbon dioxide and methane). The maximum value shall be no greater than 4,000 tons/year per facility.
- (C) **tons/year chargeable emissions** is the sum of the permitted emission rates of all air contaminants (other than carbon monoxide, carbon dioxide and methane). The maximum value per air contaminant shall not exceed 4,000 tons/year per facility.

#### Reg.9.503      **Initial Fees**

Initial fees shall be assessed according to the following formulas:

- (A) Non-part 70 permits

$$\text{initial fee} = \text{\$/ton factor} \times \text{tons/year predominant air contaminant}$$

Provided, however, no initial fee shall be less than \$500 except for general permits issued to Non-part 70 sources.

- (B) Part 70 permits

- (1) Permits issued to part 70 sources already holding an active air permit not issued pursuant to Department Regulation #26:

$$\begin{aligned} \text{initial fee} = & \text{\$/ton factor} \times \text{tons/year chargeable emissions} \\ & - \text{amount of last annual air permit fee invoice} \end{aligned}$$

Provided, however, that no initial fee shall be less than \$1,000.

- (2) Permits issued to part 70 sources ~~which~~ that do not hold an active air permit:

**initial fee = \$/ton factor x tons/year chargeable emissions**

Provided, however, that no initial fee shall be less than the \$/ton factor x 100.

**Reg.9.504      Annual Fees**

Annual fees shall be assessed according to the following formulas:

- (A) Non-part 70 permits

**annual fee = \$/ton factor x tons/year predominant air contaminant**

Provided, however, that no annual fee shall be charged for a permit in which the tons/year predominant air contaminant is less than 10 tons/year.

- (B) Part 70 permits

**annual fee = \$/ton factor x tons/year chargeable emissions**

Provided, however, that no annual fee shall be less than the \$/ton factor x 100.

**Reg.9.505      Modification Fees**

Modification and renewal fees for air permits shall be assessed according to the following formulas:

- (A) Non-part 70 permits

**modification fee = \$/ton factor x tons/year net emissions increase of predominant air contaminant**

However, no modification fee shall be less than \$400, or more than the \$/ton factor x 4,000.

- (B) Part 70 permits

- (1) For each non-minor permit modification or each renewal permit involving a non-minor permit modification:

**fee = \$/ton factor x tons/year net emission increase of chargeable emissions**

However, no fee shall be less than \$1,000 or more than the \$/ton factor x 4,000.

- (2) \$500 for each minor permit modification or each renewal permit involving only a minor permit modification.

**Reg.9.506        Administrative Permit Amendments and Renewal Permits**

There shall be no fee charged for administrative permit amendments or renewal permits not involving a permit modification, as such are defined in Regulation 26: Arkansas Operating Air Permit Program, Regulation 19: State Implementation Plan for Air Pollution Control, or Regulation 18: Arkansas Air Pollution Control Code, as applicable.

**Reg.9.507        General Permits**

- (A) In lieu of the fees schedules above, and except as provided in Reg.9.507(B) below, sources ~~which~~ that qualify for a General Air Permit issued pursuant to APC&EC ~~Reg. Nos.~~ Regulations 18, 19, or 26 shall be subject to an Initial Fee and Annual Fee as described below:
- (1) The Initial Fee of \$200.00 shall be remitted with the Notice of Intent (NOI) for coverage under the applicable General Permit.
  - (2) Until a Notice of Termination (NOT) is submitted and approved by the Department, the Permittee shall be billed \$200.00 annually thereafter on the anniversary date of coverage.
  - (3) When general permits are revised, no additional initial fee ~~will~~ shall be required to be submitted if the currently permitted facility has maintained coverage under the existing general permit.
- (B) The following General Permit holders shall not be assessed or billed an Annual Fee:
- (1) Non-part 70 General Permits in which the tons/year predominant air contaminant is less than 10 tons per year.

**Reg.9.508        Permit Fees for Certain Small Businesses Subject to Part 70 Permitting Requirements**

- (A) For purposes of this section, the term “small business stationary source” means a stationary source that:
- (1) ~~is~~ Is owned or operated by a person that employs 100 or fewer individuals
  - (2) ~~is~~ Is a small business concern as defined in the federal Small Business Act ([www.sba.gov](http://www.sba.gov));
  - (3) ~~is~~ Is not a major stationary source;
  - (4) ~~is~~ Is permitted to emit less than 50 tons per year of any regulated pollutant; and
  - (5) ~~is~~ Is permitted to emit less than 75 tons per year of all regulated pollutants.



- (B) Upon written request, the Director may reduce the Part 70 initial, Part 70 annual, or Part 70 modification fee for a small business stationary source if the source demonstrates to the satisfaction of the Director that they do not have the financial resources to pay the fee as calculated.
- (C) When reducing permit fees in accordance with Reg.9.508(B), the Director shall calculate the fee as if the source is a non-Part 70 source.

## CHAPTER 6: SOLID WASTE PERMIT FEES

### SOLID WASTE PERMIT FEES.

#### **Reg.9.601      Maximum Amount of Solid Waste Permit Fee Collections**

In accordance with ~~A.C.A.~~ Ark. Code Ann. § 8-1-103, the total amount of fees for solid waste management facility permits shall be calculated to generate revenues in any fiscal year not to exceed 4.25 times the total amount collected from Class 1 and Class 3 landfills in fiscal year 1992-93, provided that the total fee revenues cannot exceed one and one-quarter (1.25) times the total amount collected from solid waste permit fees in fiscal year 1994-95. Further, ~~should~~ if the amount of permit fees levied on or received from permit holders exceed the amount specified above in a fiscal year, the over-collections may be retained by the Department to be used to reduce permit fees in subsequent years by relative amounts.

#### **Reg.9.602      Fee Categories**

Separate fees for the Initial fees (Pre-Application and Application), Annual Fees, Modification Fees, Permit Transfer Fees, and Post Closure Fees will be assessed for each applicable permit category. For purposes of assessing fees, permit categories include the following types of solid waste management facilities: Class 1, Class 3C (Commercial), Class 3N (Non-Commercial), Class 3T (Tire), and Class 4 Landfills; Transfer Stations, Composting Facilities and Solid Waste Material Recovery Facilities; provided, however, fees for a Solid Waste Material Recovery Facility will not be assessed where limited recycling and material recovery activities occur at a Transfer Station site. Solid waste management facilities, subject to the permit fees as set forth in this regulation, are further defined and regulated under Regulation No. 22: Solid Waste Management.

#### **Reg.9.603      Initial Fees**

Due to the unique requirements for a preliminary site survey (pre-site), which may include a geotechnical site review, of a proposed solid waste management facility prior to the submission of a permit application, the initial fee for solid waste permits is composed of two parts, i.e., (A) the pre-application fee, and (B) the application fee. The pre-application fee will help to recover the costs of the preliminary engineering site survey conducted by the various regulating agencies in association with this Department. This pre-site fee shall be nonrefundable and shall be paid prior to conducting the pre-site investigation. Upon a finding of site suitability based on the pre-site investigation, or at the owner's risk if the site is judged to be unsuitable and the owner continues to seek a permit for the site, the initial fee shall be paid as specified in Chapter 3. These fees are applicable to all types of facilities permitted under the Solid Waste Management Act, as amended, and any regulations promulgated thereto.

##### **(A)      Pre-Application Fees**

- |     |   |         |
|-----|---|---------|
| (1) | Class 1, Class 3C, Class 3N, Class 3T ..... | \$2,000 |
| (2) | Class 4 .....                               | \$1,000 |

(B) Application Fees

|     |   |          |
|-----|---|----------|
| (1) | Class 1, Class 3C .....   | \$10,000 |
| (2) | Class 3N, Class 3T .....  | \$5,000  |
| (3) | Class 4 .....   | \$1,000  |
| (4) | Transfer Stations, Composting, Material Recovery Facilities ..... | \$900    |

**Reg.9.604 Annual Fees**

Annual Fees are payable in accordance with Chapter 3 and are assessed for each calendar year that the solid waste management facility is in operation. For all solid waste management facilities, subject to fees named herein, annual fees are assessed each calendar year until the solid waste management facility stops receiving waste and the Department places the facility in post-closure status under Regulation No. 22: Solid Waste Management. No partial year refund of annual fees will be made.

|     |   |         |
|-----|---|---------|
| (A) | Class 1 .....   | \$6,000 |
| (B) | Class 3C .....  | \$5,000 |
| (C) | Class 3N, Class 3T .....  | \$3,000 |
| (D) | Class 4 .....   | \$500   |
| (E) | Transfer Stations, Composting, Material Recovery Facilities ..... | \$450   |

**Reg.9.605 Modification Fees**

|     |   |         |
|-----|---|---------|
| (A) | Class 1 Major Modification .....                                  | \$4,000 |
| (B) | Class 1 Minor Modification .....                                  | \$3,000 |
| (C) | Class 3C, Class 3N, Class 3T .....                                | \$2,000 |
| (D) | Class 4 .....   | \$1,000 |
| (E) | Transfer Stations, Composting, Material Recovery Facilities ..... | \$450   |

**Reg.9.606 Permit Transfer Fees**

|     |   |         |
|-----|---|---------|
| (A) | Class 1, Class 3C, Class 3N, Class 3T, Class 4 .....              | \$1,000 |
| (B) | Transfer Stations, Composting, Material Recovery Facilities ..... | \$500   |

**Reg.9.607 Post Closure Fees**

Post Closure Fees are assessed annually throughout the post closure period for each permit category subject to post closure monitoring.

|  |       |
|--|-------|
| Class 1, Class 3C, Class 3N, Class 3T, Class 4 ..... | \$500 |
|--|-------|

**Reg.9.608 Administrative Permit Amendments**

For purposes of this Chapter, there shall be no fee charged for minor permit modifications involving only administrative permit amendments or corrections.

**Reg.9.609**

**General Permits**

- (A) In lieu of the fees schedules above in Reg.9.603 through Reg.9.606, solid waste management facility permit applicants ~~which~~ that qualify for a General Solid Waste Permit shall be subject to an Initial Fee, an Annual Fee, a Modification Fee and a Permit Transfer Fee as described below:
- (1) An Initial Fee of \$900.00 shall be remitted with the Notice of Intent (NOI) for coverage under the applicable solid waste General Permit.
  - (2) Until the Permittee notifies the Department to terminate its solid waste General Permit and the permit is voided, the Permittee shall be billed an Annual Fee of \$450.00 annually thereafter on the anniversary date of coverage.
  - (3) An application for the modification of an existing solid waste General Permit shall be accompanied by a \$450.00 permit Modification Fee.
  - (4) An application for the transfer of an existing solid waste General Permit shall be accompanied by a \$450.00 permit Transfer Fee.
  - (5) When solid waste General Permits are revised, no additional initial fee will be required to be submitted if the currently permitted facility has maintained coverage under the existing General Permit.



## **CHAPTER 7: VARIANCES OR INTERIM AUTHORITY REQUESTS**

### **Reg.9.701      Processing Fee**

In accordance with ~~A.C.A.~~ Ark. Code Ann. § 8-4-230(a)(3), as amended, there may be an initial processing fee of two hundred dollars (\$200.00) assessed for all requests for variances from the requirements of any permit issued by the Department, or any interim authority request to construct or operate during the permit application review and issuance process. The fee shall not be required for a request for an extension of any existing variance or interim authority.

### **Reg.9.702      Fees Non-Refundable**

If a variance or interim authority request is denied, the processing fee is non-refundable.

## CHAPTER 8: LABORATORY CERTIFICATION FEE PROGRAM

### Reg.9.801 Laboratory Certification Fees

All laboratory certificates previously issued under Regulation Number 13, Laboratory Certification Fee Regulation, shall remain in effect for the full period of time for which they were issued. Application for initial certificate and application for renewed certificate, whether issued under Regulation Number 13 or under Regulation Number 9, shall comply with the requirements of Reg.9.801 through Reg.9.803 and other applicable requirements of Regulation Number 9.

- (A) Initial certificate, including up to ten parameters .....\$500
- (B) Renewed certificate, including up to ten parameters .....\$500
- (C) For each parameter in addition to the first ten .....\$ 10
- (D) Each of the following categories:
  - (1) Dioxins and Furans .....\$ 50
  - (2) Herbicides .....\$ 50
  - (3) Volatile organics .....\$ 50
  - (4) Semivolatile organics.....\$ 50
  - (5) Pesticides and PCB's .....\$ 50
  - (6) Acute and/or Chronic Toxicity Testing .....\$250

### Reg.9.802 Laboratory Certification Travel Fees

- (A) The Department will assess reasonable fees for the cost of all expenses incurred during the evaluation of certified laboratories. This includes, ~~but is not limited to,~~ without limitation the reasonable cost of travel and travel related expenses related to the evaluation.
- (B) The Department will submit an itemized invoice for the incurred expenses, ~~and payment~~ Payment of the expenses ~~will be~~ is due within thirty (30) days ~~of invoicing~~ from the date of the invoice for the expenses.

### Reg.9.803 Failure to pay Laboratory Certification Fees

- (A) A laboratory ~~which that~~ fails to remit payment of any fee assessed pursuant to this Chapter, including ~~but not limited to,~~ without limitation initial certificate, renewed certificate, fees for additional parameters; fees for categories, reasonable

cost of travel, or travel related expenses ~~will~~ shall be assessed a late payment charge of ten percent (10%) forty five (45) days after the invoice date.

- (B) A certified laboratory ~~which~~ that refuses to pay fees upon reasonable notice will be subject to enforcement action ~~which~~ that may include revocation of the certificate.

## **CHAPTER 9: ADMINISTRATIVE PROCEDURES**

### **Reg.9.901      Department Review of Fees**

The Department shall undertake a biennial re-evaluation of the permit fee schedule as contained in this regulation within sixty (60) days of receiving its approved budget for the next biennium. The evaluation shall reflect the current needs of the Department to perform essential permitting, compliance, enforcement, and monitoring activities; the resources available; the balance of the permit fee fund from the previous biennium; anticipated state and federal appropriations; status of delegation of federal programs; and any other factors deemed relevant to the study by the Department.

### **Reg.9.902      Appeals**

If any applicant/permittee disagrees with the Department's decision on an assessment of fees, the applicant/permittee may appeal ~~sueh~~ the decision in accordance with the applicable provisions of the Water and Air Pollution Control Act, the Solid Waste Management Act, the State Environmental Laboratory Certification Program Act, and Pollution Control and Ecology Commission Regulation No. 8, Administrative Procedures.

### **Reg.9.903      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.



State of Arkansas  
90th General Assembly  
Regular Session, 2015

# A Bill

SENATE BILL 157

By: Senators Hickey, Hester, E. Williams  
By: Representative Vaught

## For An Act To Be Entitled

AN ACT TO AMEND THE FINANCIAL ASSURANCE REQUIREMENTS  
FOR THE RENEWAL OF WATER POLLUTION PERMITS; AND FOR  
OTHER PURPOSES.

## Subtitle

TO AMEND THE FINANCIAL ASSURANCE  
REQUIREMENTS FOR THE RENEWAL OF WATER  
POLLUTION PERMITS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 8-4-203(b)(10), concerning water pollution permits, is amended to read as follows:

(10) 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:

(A) For a renewal permit, during the five (5) years preceding the application for a renewal permit, the nonmunicipal domestic sewage treatment works has:

(i) Maintained the nonmunicipal domestic sewage treatment works in continuous operation;

(ii) Maintained the nonmunicipal domestic sewage treatment works in substantial compliance with the existing discharge permit issued by the department, which shall be demonstrated by submitting the following:

(a) All discharge monitoring reports;



(b) Evidence that the nonmunicipal domestic sewage treatment works has not exceeded the same permit effluent criteria in any two (2) consecutive monitoring periods during the previous three (3) years;

(c) Evidence that no more than ten percent (10%) of the nonmunicipal domestic sewage treatment ~~works's~~ works' submitted discharge monitoring reports show effluent violations; and

(d) Evidence that there have not been any administrative or judicial orders entered against the owner or operator for violations of state or federal environmental laws, rules, or regulations or permits issued by the department;

(iii) Maintained the services of a certified wastewater treatment operator, where applicable;

(iv)(a) Remained financially solvent, which shall be demonstrated by either:

(1) The nonmunicipal domestic sewage treatment works' federal tax returns for the five (5) years preceding the application for a renewal permit and a sworn affidavit from a corporate official or other responsible official representing the nonmunicipal domestic sewage treatment works that lists all assets and liabilities for the nonmunicipal domestic sewage treatment works; or an

(2) An independent certified public accountant's report on the examination of the owner's or operator's independently audited reviewed financial statements.

(b) The ~~examination~~ review of financial statements under subdivision (b)(10)(A)(iv)(a)(2) of this section shall be conducted in accordance with the American Institute of Certified Public Accountants' Professional Standards, as they existed on January 1, 2013; and

(v) Operated the nonmunicipal 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

(B)(i) ~~For a new permit, that the:~~

(i) The reduction or waiver is necessary to accommodate important economic or social development in the area of the

1 proposed nonmunicipal domestic sewage treatment works; and

2 (ii) The applicant has shown a history of financial  
3 responsibility and compliance with regulatory requirements.

4

5

6

**APPROVED: 02/13/2015**

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36





State of Arkansas  
90th General Assembly  
Regular Session, 2015

As Engrossed: H3/6/15

## A Bill

HOUSE BILL 1314

By: Representative Davis  
By: Senator Rapert

### For An Act To Be Entitled

AN ACT TO AMEND THE LAWS CONCERNING NONMUNICIPAL  
DOMESTIC SEWAGE TREATMENT WORKS; TO REPEAL THE  
FINANCIAL ASSURANCE REQUIREMENTS FOR NONMUNICIPAL  
*DOMESTIC SEWAGE TREATMENT WORKS; TO CREATE THE*  
*NONMUNICIPAL DOMESTIC SEWAGE TREATMENT TRUST FUND;*  
*AND FOR OTHER PURPOSES.*

### Subtitle

TO AMEND THE LAWS CONCERNING NONMUNICIPAL  
DOMESTIC SEWAGE TREATMENT WORKS; AND TO  
REPEAL THE FINANCIAL ASSURANCE  
REQUIREMENTS FOR NONMUNICIPAL DOMESTIC  
SEWAGE TREATMENT WORKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*SECTION 1. DO NOT CODIFY. Legislative findings.*

*The General Assembly finds that:*

*(1) The existing financial assurance requirements for nonmunicipal  
domestic sewage treatment works that are in place to ensure that funding is  
available to properly operate these sewage treatment systems for the  
permitted term can create hardships for those facilities that cannot secure  
readily available and affordable financial assurance mechanisms;*

*(2) In lieu of each permit applicant and each owner or operator of a  
nonmunicipal domestic sewage treatment works providing individual financial  
assurance to the Arkansas Department of Environmental Quality, the need for*



1 financial assurance for nonmunicipal domestic sewage treatment facilities may  
2 be met through the creation of a trust fund to be funded jointly by the  
3 nonmunicipal domestic wastewater treatment facilities permitted to operate in  
4 Arkansas; and

5 (3) The total funding for the trust fund is anticipated to be  
6 approximately ten percent (10%) of the total amount currently required to be  
7 assured by individual permittees.

8  
9 SECTION 2. Arkansas Code § 8-4-203(b), as amended by Section 1 of Act  
10 94 of 2015 and concerning water pollution permits, is amended to read as  
11 follows:

12 ~~(b)(1)(A)(i)~~ The department shall not issue, modify, renew, or  
13 transfer a National Pollutant Discharge Elimination System permit or state  
14 permit for a nonmunicipal domestic sewage treatment works without the permit  
15 applicant first demonstrating to the department its financial ability to  
16 cover the estimated costs of operating and maintaining the nonmunicipal  
17 domestic sewage treatment works for a minimum period of five (5) years paying  
18 the trust fund contribution fee required under subdivision (b)(2) of this  
19 section.

20 ~~(ii)~~ (B) As used in this section, "nonmunicipal  
21 domestic sewage treatment works" means a device or system operated by an  
22 entity other than a city, town, county, or sewer improvement district that  
23 treats, in whole or in part, waste or wastewater from humans or household  
24 operations and must continuously operate to protect human health and the  
25 environment despite a permittee's failure to maintain or operate the device  
26 or system.

27 ~~(iii)~~ (C) ~~State or federal facilities, schools,~~  
28 ~~universities, and colleges~~ The following are specifically exempted from the  
29 requirements of this section:

30 (i) State or federal facilities;  
31 (ii) Schools;  
32 (iii) Universities and colleges; and  
33 (iv) Entities that continuously operate due to a  
34 connection with a city, town, county, or sewer improvement district.

35 ~~(iv)~~ Each permit application for a nonmunicipal  
36 domestic sewage treatment works submitted under this section shall be

1 ~~accompanied by a cost estimate for a third party to operate and maintain the~~  
2 ~~nonmunicipal domestic sewage treatment works each year for a period of five~~  
3 ~~(5) years.~~

4 ~~(v) A commercial nonmunicipal domestic sewage~~  
5 ~~treatment works that does not include residential services is not required to~~  
6 ~~post financial assurance under this section.~~

7 ~~(B)(i) The department shall not issue, modify, renew, or~~  
8 ~~transfer a National Pollutant Discharge Elimination System permit or a state~~  
9 ~~permit for a nonmunicipal domestic sewage treatment works that proposes to~~  
10 ~~use a new technology that, in the discretion of the department, cannot be~~  
11 ~~verified to meet permit requirements without the applicant first~~  
12 ~~demonstrating its financial ability to replace the new technology with a~~  
13 ~~nonmunicipal domestic sewage treatment works that uses technology acceptable~~  
14 ~~to the department.~~

15 ~~(ii) Each permit application for a nonmunicipal~~  
16 ~~domestic sewage treatment works that proposes to use a new technology that in~~  
17 ~~the discretion of the department cannot be verified to meet permit~~  
18 ~~requirements shall be accompanied by a cost estimate to replace the proposed~~  
19 ~~system with a nonmunicipal domestic sewage treatment works that uses~~  
20 ~~technology acceptable to the department.~~

21 ~~(2) The applicant's financial ability to operate and maintain~~  
22 ~~the nonmunicipal domestic sewage treatment works for a period of five (5)~~  
23 ~~years shall be demonstrated to the department by:~~

24 ~~(A) Obtaining insurance that specifically covers operation~~  
25 ~~and maintenance costs;~~

26 ~~(B) Obtaining a letter of credit;~~

27 ~~(C) Obtaining a surety bond;~~

28 ~~(D) Obtaining a trust fund or an escrow account; or~~

29 ~~(E) Using a combination of insurance, letter of credit,~~  
30 ~~surety bond, trust fund, or escrow account.~~

31 ~~(3) The financial assurance required under subdivision (b)(2) of~~  
32 ~~this section shall:~~

33 ~~(A) Be posted to the benefit of the department;~~

34 ~~(B) Provide that the financial instrument underlying the~~  
35 ~~financial assurance cannot be cancelled without ninety (90) days prior~~  
36 ~~written notice addressed to the department's legal division chief as~~

1 evidenced by a signed notice sent by certified mail with a return receipt  
2 requested; and

3 ~~(C) Be reviewed by the department upon receipt of the~~  
4 ~~cancellation notice to determine whether to initiate procedures to:~~

5 ~~(i) Revoke or suspend the permit for the~~  
6 ~~nonmunicipal domestic sewage treatment works; and~~

7 ~~(ii) Take possession of the funds guaranteed by the~~  
8 ~~financial instrument underlying the financial assurance.~~

9 ~~(4)(A) The owner or operator of a nonmunicipal domestic sewage~~  
10 ~~treatment works shall establish and maintain financial assurance that~~  
11 ~~demonstrates to the department's satisfaction the applicant's financial~~  
12 ~~ability to ensure adequate operation and maintenance costs as required under~~  
13 ~~subdivision (b)(2) of this section.~~

14 ~~(B) Financial assurance shall provide that the department~~  
15 ~~is the obligee or payee of the financial instrument underlying the financial~~  
16 ~~assurance and shall otherwise comply with the regulations promulgated under~~  
17 ~~this subchapter.~~

18 ~~(C) The amount of financial assurance required under this~~  
19 ~~subsection shall be equal to or greater than the detailed cost estimate for a~~  
20 ~~third party to maintain and operate the permitted nonmunicipal domestic~~  
21 ~~sewage treatment works in accordance with the permit and applicable~~  
22 ~~regulations.~~

23 ~~(D) The owner or operator shall provide continuous~~  
24 ~~financial assurance for the operation and maintenance costs of a nonmunicipal~~  
25 ~~domestic sewage treatment works until the department:~~

26 ~~(i) Releases the owner or operator from the~~  
27 ~~financial assurance requirements under this subchapter and the permit;~~

28 ~~(ii) Approves the closure of the nonmunicipal~~  
29 ~~domestic sewage treatment works; or~~

30 ~~(iii) Approves the transfer of a permit and the~~  
31 ~~replacement financial assurance under subdivision (b)(9) of this section.~~

32 ~~(5)(A) Operation and maintenance costs shall be updated with~~  
33 ~~each permit renewal to account for inflation and the condition of the~~  
34 ~~nonmunicipal domestic sewage treatment works.~~

35 ~~(B) The updated operation and maintenance costs based on~~  
36 ~~the condition of the nonmunicipal domestic sewage treatment works required~~



1 under subdivision (b)(5)(A) of this section shall be provided in a report  
2 certified by a professional engineer registered in the State of Arkansas and  
3 submitted to the department with each permit renewal.

4 (6)(A) If an owner or operator establishes a trust as financial  
5 assurance, the owner or operator shall either fully fund the trust or make  
6 payments into a trust fund.

7 (B)(i) If the owner or operator elects to make payments  
8 into a trust fund, the payments shall be made in equal monthly installments  
9 by the owner or operator.

10 (ii) The trust fund shall be fully funded within  
11 five (5) years of the issuance of the permit unless otherwise approved by the  
12 Director of the Arkansas Department of Environmental Quality.

13 (7)(A) The director may order that any financial assurance filed  
14 pursuant to this section be forfeited to the department if the director  
15 determines that the owner or operator has not adequately operated,  
16 maintained, or completed closure of the nonmunicipal domestic sewage  
17 treatment works.

18 (B) Following the determination of the director under  
19 subdivision (b)(7)(A) of this section, the department shall commence  
20 proceedings to collect on the financial assurance on which the department is  
21 the obligee or payee.

22 (C) For each permit, the financial instrument underlying  
23 the financial assurance shall be renewed or an alternate financial instrument  
24 shall be issued to maintain continuous financial assurance.

25 (D) If documentation of the renewed financial assurance or  
26 alternate financial assurance is not received by the department at least  
27 sixty (60) days before the expiration date of the existing financial  
28 instrument underlying the financial assurance, the department shall:

29 (i) Take possession of the funds guaranteed by the  
30 financial instrument underlying the financial assurance; and

31 (ii)(a) Initiate procedures to suspend or revoke the  
32 permit under which the nonmunicipal domestic sewage treatment works is  
33 operated.

34 (b) A permit shall remain suspended until  
35 financial assurance is provided to the department in accordance with this  
36 subsection.

1                   ~~(E) The permittee is responsible for ensuring that~~  
2 ~~documentation of the financial assurance and all renewals of financial~~  
3 ~~instruments underlying the financial assurance are received by the department~~  
4 ~~by the due date.~~

5                   ~~(8) The department shall deposit all forfeited funds into the~~  
6 ~~Water Performance Bond Fund.~~

7                   ~~(9)(A)(i) Existing responsibilities and financial instruments~~  
8 ~~underlying the financial assurance remain in full force and effect, and a~~  
9 ~~permit shall not be transferred until the proposed new owner or operator has~~  
10 ~~filed and the department has approved the required replacement financial~~  
11 ~~assurance in accordance with the requirements of this section and applicable~~  
12 ~~regulations.~~

13                   ~~(ii) The department shall approve or deny the~~  
14 ~~replacement financial assurance offered under subdivision (b)(9)(A)(i) of~~  
15 ~~this section within thirty (30) days of receipt of the completed permit~~  
16 ~~transfer request.~~

17                   ~~(B) The department shall release to the former owner,~~  
18 ~~operator, or issuing institution, if appropriate, the financial assurance~~  
19 ~~that the former owner or operator filed if the department does not.~~

20                   ~~(i) Object to the replacement financial assurance~~  
21 ~~within thirty (30) days of receipt of the completed permit transfer request;~~  
22 ~~and~~

23                   ~~(ii) Deny the permit transfer.~~

24                   ~~(C) A completed permit transfer request shall be submitted~~  
25 ~~on the forms required by the department and shall include the following:~~

26                   ~~(i) A disclosure statement, unless the nonmunicipal~~  
27 ~~domestic sewage treatment works is exempt under § 8-1-106 or an Arkansas~~  
28 ~~Pollution Control and Ecology Commission rule; and~~

29                   ~~(ii) Acceptable replacement financial assurance.~~

30                   ~~(D) The new owner or operator is responsible for ensuring~~  
31 ~~that the financial assurance meets all applicable requirements.~~

32                   ~~(10) The (2) Until January 1, 2016, the department may reduce~~  
33 ~~or waive the amount of the required financial assurance if the permit~~  
34 ~~applicant can demonstrate to the department's satisfaction that:~~

35                   ~~(A) For a renewal permit, during the five (5) years~~  
36 ~~preceding the application for a renewal permit, the nonmunicipal domestic~~

1 *sewage treatment works has:*

2 *(i) Maintained the nonmunicipal domestic sewage*  
3 *treatment works in continuous operation;*

4 *(ii) Maintained the nonmunicipal domestic sewage*  
5 *treatment works in substantial compliance with the existing discharge permit*  
6 *issued by the department, which shall be demonstrated by submitting the*  
7 *following:*

8 *(a) All discharge monitoring reports;*

9 *(b) Evidence that the nonmunicipal domestic*  
10 *sewage treatment works has not exceeded the same permit effluent criteria in*  
11 *any two (2) consecutive monitoring periods during the previous three (3)*  
12 *years;*

13 *(c) Evidence that no more than ten percent*  
14 *(10%) of the nonmunicipal domestic sewage treatment works' submitted*  
15 *discharge monitoring reports show effluent violations; and*

16 *(d) Evidence that there have not been any*  
17 *administrative or judicial orders entered against the owner or operator for*  
18 *violations of state or federal environmental laws, rules, or regulations or*  
19 *permits issued by the department;*

20 *(iii) Maintained the services of a certified*  
21 *wastewater treatment operator, where applicable;*

22 *(iv)(a) Remained financially solvent, which shall be*  
23 *demonstrated by either:*

24 *(1) The nonmunicipal domestic sewage*  
25 *treatment works' federal tax returns for the five (5) years preceding the*  
26 *application for a renewal permit and a sworn affidavit from a corporate*  
27 *official or other responsible official representing the nonmunicipal domestic*  
28 *sewage treatment works that lists all assets and liabilities for the*  
29 *nonmunicipal domestic sewage treatment works; or*

30 *(2) An independent certified public*  
31 *accountant's report on the owner's or operator's independently reviewed*  
32 *financial statements.*

33 *(b) The review of financial statements under*  
34 *subdivision ~~(b)(10)(A)(iv)(a)(2)~~ (b)(2)(A)(iv)(a)(2) of this section shall be*  
35 *conducted in accordance with the American Institute of Certified Public*  
36 *Accountants' Professional Standards, as they existed on January 1, 2013; and*



1 (v) Operated the nonmunicipal domestic sewage  
2 treatment works to prevent the discharge of waterborne pollutants in  
3 unacceptable concentrations to the surface waters or groundwater of the state  
4 as defined in the permit or as defined in the state's water quality  
5 standards; or

6 (B) For a new permit:

7 (i) The reduction or waiver is necessary to  
8 accommodate important economic or social development in the area of the  
9 proposed nonmunicipal domestic sewage treatment works; and

10 (ii) The applicant has shown a history of financial  
11 responsibility and compliance with regulatory requirements.

12 ~~(11)~~ (3) The department may withdraw a reduction or waiver  
13 granted under this subsection at any time ~~in order to protect human health or~~  
14 ~~the environment~~ if the permittee has a permit violation in three (3) or more  
15 consecutive discharge monitoring periods.

16 ~~(12) The department shall not directly operate nor be~~  
17 ~~responsible for the operation of a nonmunicipal domestic sewage treatment~~

18 4)(A) A permittee shall pay the trust fund contribution fee determined  
19 by the department under this subdivision (b)(4) to the department.

20 (B)(i) The department shall determine the required initial  
21 and annual trust fund contribution fees for each nonmunicipal domestic sewage  
22 treatment works based on each nonmunicipal domestic sewage treatment works'  
23 actual flow and existing and projected number of residential end users.

24 (ii) However, the trust fund contribution fee  
25 required by the department shall not exceed two hundred dollars (\$200) per  
26 year for no-discharge permits or one thousand dollars (\$1,000) per year for  
27 discharge permits.

28 (C) The trust fund contribution fee required under this  
29 subdivision (b)(4):

30 (i) May be collected in conjunction with any other  
31 permit fees;

32 (ii) Shall be paid before a permit is issued or  
33 renewed; and

34 (iii) Shall be deposited into the Nonmunicipal  
35 Domestic Sewage Treatment Works Trust Fund.

36 (D) If the total amount in the fund equals or exceeds two



million one hundred thousand dollars (\$2,100,000), additional trust fund contribution fees shall not be collected by the department until the total amount of the fund equals or is less than one million five hundred thousand dollars (\$1,500,000), at which time the collection of required trust fund contribution fees shall resume.

(5)(A) A permittee is responsible for ensuring that the required trust fund contribution fee is received by the department by the due date determined by the department.

(B) If the department does not timely receive the required trust fund contribution fees for a nonmunicipal domestic sewage treatment works, the department may initiate procedures to suspend or revoke the permit under which the nonmunicipal domestic sewage treatment works is operated.

(C) A permit applicant's or permit transfer applicant's failure to pay the required trust fund contribution fee assessed by the department under this section is:

(i) Grounds for denying the permit or the permit transfer; and

(ii) A violation of this chapter and subjects the applicant to the penalties described in § 8-4-103.

(6) Sanctions for violating this subsection may include without limitation civil penalties and suspension or revocation of a permit.

(7) The department may seek cost recovery from an owner or operator and reimbursement to the fund of any moneys expended under this section, including without limitation the institution of a civil action against the owner or operator.

(8) The department shall not directly operate or be responsible for the operation of a nonmunicipal domestic sewage treatment works.

SECTION 3. Arkansas Code § 8-4-203(h), concerning water pollution permits, is amended to read as follows:

(h)(1) Permits for the discharge of pollutants into the waters of the state or for the prevention of pollution of the waters of the state shall remain freely transferable if the applicant for the transfer:

(A) Notifies the director at least thirty (30) days in advance of the proposed transfer date;

(B) Submits a disclosure statement as required under § 8-

1 1-106; and

2 (C) Provides any replacement financial assurance required  
3 under this section; and

4 (D) Ensures that all past and currently due annual permit  
5 fees and the trust fund contribution fees for the nonmunicipal domestic  
6 sewage treatment works have been paid.

7 (2) Only the reasons stated in § 8-1-103(4), § 8-1-106(b)(1) and  
8 (c), and ~~subdivision (b)(9)~~ of this section constitute grounds for denial of  
9 a transfer.

10 (3) The permit is automatically transferred to the new permittee  
11 unless the director denies the request within thirty (30) days of the receipt  
12 of the disclosure statement.

13  
14 SECTION 4. Arkansas Code Title 19, Chapter 5, Subchapter 11, is  
15 amended to add an additional section to read as follows:

16 19-5-1142. Nonmunicipal Domestic Sewage Treatment Works Trust Fund.

17 (a) There is created on the books of the Treasurer of State, the  
18 Auditor of State, and the Chief Fiscal Officer of the State a trust fund to  
19 be known as the "Nonmunicipal Domestic Sewage Treatment Works Trust Fund".

20 (b) The fund shall consist of:

21 (1) Funds appropriated by the General Assembly;

22 (2) Trust fund contribution fees under § 8-4-203(b);

23 (3) Grants made by any person, state agency, or federal  
24 government agency;

25 (4) Gifts and donations; and

26 (5) Interest earned on the moneys deposited into the fund.

27 (c)(1) The fund shall be used by the Arkansas Department of  
28 Environmental Quality to ensure adequate operation, maintenance, and  
29 completed closure of a nonmunicipal domestic sewage treatment works if the  
30 Director of the Arkansas Department of Environmental Quality determines that  
31 an owner or operator has not adequately operated, maintained, or completed  
32 closure of the nonmunicipal domestic sewage treatment works.

33 (2) If the director determines that an owner or operator has not  
34 adequately operated, maintained, or completed closure of the nonmunicipal  
35 domestic sewage treatment works, the department may use moneys in the fund to  
36 hire a third-party contractor to:

1 (A) Take remedial action, including without limitation  
2 corrective action;

3 (B) Initiate or complete the closure of a nonmunicipal  
4 domestic sewage treatment works;

5 (C) Maintain and operate a nonmunicipal sewage treatment  
6 works; or

7 (D) Take any other action the director determines to be  
8 necessary to carry out the purposes of this section and § 8-4-203(b).

9

10 /s/Davis

11

12

13 **APPROVED: 03/20/2015**

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

