

DEPARTMENT OF ENERGY AND ENVIRONMENT, DIVISION OF ENVIRONMENTAL QUALITY

SUBJECT: Rule No. 6: Rules for State Administration of the National Pollutant Discharge Elimination System (NPDES)

DESCRIPTION: The Department of Energy and Environment and the Division of Environmental Quality (DEQ) propose this rulemaking to modify Regulation 6: “Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES).” The Arkansas Pollution Control and Ecology Commission has general rulemaking authority through Ark. Code Ann. §8-1-203(b)(1)(A), and specific authority to promulgate this rule through Ark. Code Ann. § 8-4-202(a).

Background

The purpose of Regulation 6 is to adopt the federal regulations necessary to qualify the State of Arkansas to receive and maintain authorization to implement the state water pollution control permitting program, in lieu of the federal NPDES program, pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 et seq. In order for DEQ to maintain its delegated authority to administer the NPDES permit program, DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection Agency.

The Proposed Rule Amendments

The DEQ proposes this rulemaking to Regulation 6 before the Arkansas Pollution Control and Ecology Commission: to adopt federal revisions to the NPDES program, incorporate statutory revisions made by the Arkansas General Assembly, and make corrections and stylistic and formatting updates throughout the regulation. Regulation 6 establishes the parameters for the state water pollution control permitting program in lieu of the federal NPDES program and pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 et seq. The state legislative acts prompting the regulatory amendments are Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910 of 2019, Act 441 of 2021, and Act 46 of 2023. The federal regulatory changes prompting the amendments are 40 C.F.R §§ 122.21(e)(3), 122.44(i)(1)(iv), 136.1(c), 125(I) and (J), 423, 122, 123, 127, and 401.17.

Proposed changes to Rule 6 include:

Incorporation of Updates to Federal Regulations. Amendments to Regulation 6.104 to incorporate changes made to federal regulations;

Incorporation of Updates to Arkansas Law. Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910 of 2019, Act 441 of 2021, and Act 46 of 2023, were enacted by the Arkansas General Assembly and require revisions to Regulation 6;

Amendments to Provide Clarification and Minor Corrections. Corrections to the rule, including adding necessary definitions and corrections to be consistent with other state rules;

Amendments to Chapter 6. To amend Chapter 6 to be consistent with the Department of Agriculture’s rule for Liquid Animal Waste Management Systems.

Stylistic and Formatting Corrections. To make minor, non-substantive stylistic and formatting corrections throughout the regulation.

Necessity and Practical Impact of Rule Amendments

DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection Agency to maintain its delegated authority to administer the NPDES permit program. Pursuant to 40 C.F.R. § 123.62(e), states administering the NPDES program must make revisions to its rules to conform to the federal regulations within one year of the date of promulgation of the federal regulation, with the exception that if a state must amend or enact a statute in order to make the required revision, the revision shall take place within two years of promulgation of the federal regulations. The risk of not updating this rule is that EPA could attempt to remove Arkansas’s delegated authority to issue NPDES permits under the federal Clean Water Act. Loss of delegated authority would result in EPA becoming the permitting authority for Arkansas.

PUBLIC COMMENT: A public hearing was held on August 26, 2024. The public comment period was set to expire on September 5, 2024. The comment period was extended by the agency and ultimately expired on September 16, 2024. The agency provided a summary of public comments it received and its responses thereto. Due to its length, that summary is attached separately.

Jason Kearney, an attorney with the Bureau of Legislative Research, asked the following questions and was provided with the following agency responses:

1) Will the agency still recognize the NPDES financial assurance exceptions which were removed from Sections 6.205(B) and (D) of the amended rules, and those which are enumerated in Arkansas Code Annotated § 8-4-203(b)(1)(C), as amended by Act 46 of 2023? **RESPONSE:** Yes.

2) What was the agency’s reasoning for amending the permit restrictions under Section 6.602 of the proposed rules, which concerns the Buffalo National River Watershed? **RESPONSE:** The amendments to Section 6.602 do not change the current permit restrictions under that section. The amendments reflect the movement of the permitting program for Liquid Animal Waste Management Systems to Department of Agriculture. In addition, these amendments to Chapter 6 are consistent with the Department of Agriculture’s rule for Liquid Animal Waste Management Systems.

The proposed effective date is pending legislative review and approval.

FINANCIAL IMPACT: The agency has indicated that the amended rule does not have a financial impact. The agency further states that implementing the revised federal rules and clarification/correction of various sections of this rule is not expected to cause an increase in costs to private entities because permittees were expected to comply with these requirements prior to incorporation. Implementing the revised state rule should result in reduced costs to non-municipal domestic sewage treatment works permittees. Changes to the general permit process are expected to reduce costs to facilities.

LEGAL AUTHORIZATION: The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules implementing or effectuating the powers and duties of the Division of Environmental Quality and the commission under the Arkansas Water and Air Pollution Control Act, codified in Title 8, Chapter 4 of the Arkansas Code. *See* Ark. Code Ann. § 8-4-202(a). Without limiting the generality of this authority, these rules may, among other things, prescribe: 1) Effluent standards specifying the maximum amounts or concentrations and the physical, thermal, chemical, biological, and radioactive nature of the contaminants that may be discharged into the waters of this state or into publicly owned treatment facilities; 2) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, including publicly owned treatment facilities and industrial discharges into such facilities, the collection of samples, and the collection, reporting, and retention of data resulting from such monitoring; and 3) Water quality standards, performance standards, and pretreatment standards. *See* Ark. Code Ann. § 8-4-202(b).

The proposed amendments include those made in light of Act 46 of 2023, sponsored by Representative Richard McGrew, which amended the Arkansas Water and Air Pollution Control Act; and exempted certain property owners' associations and homeowners' associations from certain permit actions related to National Pollutant Discharge Elimination System permits or state permits for a municipal domestic sewage treatment works.

Per the agency, the amended rules are required to comply with federal law, specifically, 40 C.F.R. §§ 122.21(e)(3), 122.44(i)(1)(iv), 125 Subparts I and J, 127, and 136.1(c).

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BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

**IN THE MATTER OF APC&EC)
REGULATION 6: REGULATIONS FOR) DOCKET NO. 24-003-R
STATE ADMINISTRATION OF THE)
NATIONAL POLLUTANT DISCHARGE)
ELIMINATION SYSTEM (NPDES))**

RESPONSIVE SUMMARY

Comes now, the Department of Energy and Environment, Division of Environmental Quality (“Division”), by and through its attorney, Basil V. Hicks III, and provides this Responsive Summary as required under Arkansas Pollution Control and Ecology Commission (“APC&EC”) Rule 8.812.

I. INTRODUCTION

The public comment period for the proposed changes to APC&EC Regulation 6 began on August 3, 2024. The public hearing to receive comments on the proposed changes to APC&EC Regulation 6 occurred on August 26, 2024. During the public hearing, the Hearing Officer extended the public comment period to September 16, 2024.

The Division received 203 comments on the record for Docket No. 24-003-R pertaining to changes to APC&EC Regulation 6, Regulation for State Administration of the National Pollutant Discharge Elimination System (NPDES).

II. RESPONSES TO WRITTEN AND VERBAL COMMENTS

The following people or organizations submitted comments during the public comment period and public hearing.

Fay Knox; Brad Barnes; Daryl Boles; Caroline Rogers; Lowell Collins; Todd P. Dannenfelser; Katie Deakins; Dennis Larson; Derek Linn; Daniel Estes; Doug George; Jerri A. Holmes; Nan Johnson and Dave Spencer; Kevin Otterman; Patrick Lanford; littlehoss1958; Terry Martin; Ginny

Masullo; Victoria McClendon; James and Teresa McMains; Frank Meeks; Ann Mesrobian; Barbara Metzger; Ellen Mitchell; Joseph Morgan; Lisa Orton; Richard P. Osborne; Susan Parker; Scott Parson; Keith Peeples; Rex Porter; Rachel Henriques; John Ray; Roger Reep; Steve Miller; Roxanne Thompson; Gordon Watkins for Buffalo River Watershed Alliance; Cassie Wells; Linda Armerbingham; Evan Teague for Arkansas Farm Bureau Federation; Tommy Young; Tracy Lester (2); Tyler Robinson; Virginia Milan; Whitney Stoker; Wightman Harris; Susan Williams; Stephen Boyd; Steve Eddington; Steve Hignight, Sue Billiot; Susan Watkins; Tammi Dickson; Tammy Knowles; Tammy Smith; Tammy Thompson; Tanner Riggin; Terry Laster; Thomas Freeze; Todd Smith; Tommy Thompson; Donna Bemis; James Patton; Grant Pace; Gordon Greene; George E Tidwell; Gene Pharr; Fredese Wheetley; Ernie Coppock; Eric Mohike; Drew Lee; Ginny Poe; H.C. Chadbourn; Gary Speed; Ellen Corley; Lori Menichetti; Laura Villegas; Kristen Giffin; Helen Schlegel; Ginny Masullo; Chuck Davis; Cheryl Phipps; Carey Autrey; Caleb Plyler; Bruce Ferguson; Brian Roper; Brian Harris; Brett Mason; Brandon Martin; Bobby Cofer; Bill Shannon; Bill Sewell; Amelia Hoyt; Austin Lester; Frank W. Head Jr.; Whitney Stoker; Donna Bemis; Drew Lee; Tana Henson; Mandy Lester; Lauren Hawkins; Jennifer Heaney; James Meeks; James Harvey; Amy Young; Melanie Fosko; Matt Howton; Matt Jackson; Matt Shekels; Mary Stahl; Kathy Wallace; Kayla Pratt; Leslie Turner; Lisa Smith; Magen Allen; Marion Fletcher; Jennifer Sansom; Jeff Worlow; Jeff Felts; Jason Chaffin; Julie Campbell; Joe Thrash; Jasper Fant; Kathleen Marleneanu; Joy Holmes; Jonathan Holder; JM Binns; Jim Dudley; James Binns; Marti Olesen; Marlene Simmons; Darryl Sullivan; Danny Naegle; Daniel Free; Dan Wright; Donald Campbell; Don Hubbell; Denae Daniels; Delbert Walker; Deana Taylor; David Hoyt; David Arthur; Carroll Heustess; Caroline Lester; Carey Robertson; Clifton Gifford; Bruce Jackson; Clayton Davis; CJ Parker; Chris Schaefer; Chris Acre; Chris Heiser; Catrinia Rojas; Cathy Ross; Christina Day; Christy Lavelly; Allyson Peterson; Brian Roper; Brett Mason; Amanda Allen; Amber Dedman; Amelia Hoyt; Amy Young; Austin Lester; Ben Gander; Kathy Downs; Anita Orr; Ann Harris; Aurora Zisner; Beth Ardapple; Tim Neidecker; Stan Garner; Rubin Barnes; Rocky Harrell; Mike Pennington; Michael Richardson; Michael Fisher; Melissa Moore; Matt King; Luke Alston; John Sink; John McMinn; Joe Pattie; Lucas Whittenton; Larry Garlington; Karen Wood; Jake Cartwright; Jackie McMinn; Debbie Alexy; Colin Lockeby; Clay Parker; Brad Peacock; Dane Schumacher; Gordon Watkins

Commenter Fay Knox

Comment: Comments regarding Regulation 5 of the Arkansas Pollution Control and Ecology Commission “Liquid Animal Waste Management Systems.”

Response: APC&EC Regulation 5, “Liquid Animal Waste Management Systems,” is outside the scope of this rulemaking. The authority over permits issued under APC&EC Regulation 5 was transferred to the Department of Agriculture.

Commenters Brad Barnes, Dennis Larson, Derek Linn, Daniel Estes, Doug George, Kevin Otterman, Ginny Masullo, Victoria McClendon, Ann Mesrobian, Ellen Mitchell, Joseph Morgan, Lisa Orton, Susan Parker, Scott Parson, Rex Porter, Rachel Henriques, Steve Miller, Roxanne Thompson, Virginia Milan, Whitney Stoker, Wightman Harris, Susan Williams, Susan Watkins, Tammy Knowles, Tammy Smith, Drew Lee, Ginny Poe, Ellen Corley, Lori Menichetti, Laura Villegas, Kristen Giffin, Helen Schlegel, Frank W. Head Jr., Whitney Stoker, Drew Lee, Mary Stahl, Jasper Fant, Kathleen Marleneanu, Joy Holmes, Jonathan Holder, JM Binns, Jim Dudley, James Binns, Marti Olesen, Marlene Simmons, Donald Campbell, Denae Daniels, Clayton Davis, Cathy Ross, Christina Day, Christy Lavelly, Allyson Peterson, Amber Dedman, Anita Orr, Ann Harris, Aurora Zisner, Debby Alexy, Ginny Masullo

Comment: General support of the comments of the Buffalo River Watershed Alliance.

Response: The Division acknowledges these comments. See response to Buffalo River Watershed Alliance below.

Commenter Daryl Boles

Comment: We need food, but at what expense to the environment? CAFOs in watershed areas should be off limits, for all environmental means! Please be proactive not reactive with our natural resources.

Response: Any CAFO situated within the State of Arkansas would be in a “watershed area” in the same way that any parcel of land in Arkansas is within a watershed. As proposed, APC&EC Rule 6 maintains the status quo with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed.

Commenters Caroline Rogers, Lowell Collins, John Ray, Cassie Wells, Jerri A. Holmes, Nan Johnson and Dave Spencer, Patrick Lanford, David Arthur, littlehoss1958, Ginny Masullo, Victoria McClendon, Katie Deakins, James and Teresa McMains, Frank Meeks, Ann Mesrobian, Barbara Metzger, Richard P. Osborne, Keith Peeples, Roger Reep, H.C. Chadbourn, Gary Speed, Lauren Hawkins, Marti Olesen, Jennifer Heaney, Todd P. Dannenfeler

Comment: Comments supporting the status quo with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed

Response: APC&EC Rule 6 maintains the status quo with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed. The Division recognizes the differences of

opinion with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed.

Commenters Lowell Collins, John Ray, Cassie Wells, Patrick Lanford, David Arthur, Ginny Masullo, Victoria McClendon, Katie Deakins, James and Teresa McMains, Keith Peeples, Rex Porter, Susan Watkins, H.C. Chadbourn, Jennifer Heaney, Todd P. Dannenfeler

Comment: Please void the four non-operational permits currently located in the BRW, so they cannot be reactivated in the future. Preserve and protect Arkansas extraordinary rivers and streams.

Response: Permits issued under APC&EC Regulation 5, “Liquid Animal Waste Management Systems,” are outside the scope of this rulemaking. The authority over permits issued under APC&EC Regulation 5 was transferred to the Department of Agriculture.

Commenters Kevin Otterman, Todd P. Dannenfeler

Comment: We should take great pride in our “natural state” and in doing so do everything in our power to protect it for future generations. While the Buffalo is an area of critical concern, it is my sincere hope that we will take greater care of our watersheds, such as the White River, Kings, Mulberry, Eleven Point, Crooked Creek, War Eagle and many others than we have in recent years. While one part of our state and economic development is chasing every growing tourism dollars, it seems we have competing interests that are taking a very damaging toll on those same resources, destroying water quality. We have to do better.

Response: The Division acknowledges the comment. APC&EC Rule 2 establishes water quality standards for waters in the State of Arkansas and is outside the scope of this rulemaking.

Commenter Terry Martin

Comment: I support the Buffalo River, not the farmers.

Response: The Division acknowledges the comment.

Commenter Ginny Masullo

Comment: Some folks are saying they use this email address and get an invalid address message.

Response: The Division acknowledges the comment. The Division verified that it was receiving emails via the email address provided in the public notice.

Commenters Gordon Watkins for Buffalo River Watershed Alliance, Kathy Downs, Beth Ardapple

Comment: Of interest to BRWA and our supporters are the changes to Chapter 6, “Specific Watershed Requirements” which establishes a permanent moratorium, stating in part, “The Director shall not issue a permit pursuant to this rule for a new swine CAFO in the Buffalo National River Watershed” We fully support this language. The Buffalo National River only comprises 11% of the watershed which feeds it. Quality of the river for recreational purposes, including primary contact, is dependent on the quality of the water in its tributaries. Due to the karst nature of the watershed, the river is particularly vulnerable to pollutants, such as liquid animal waste, which can penetrate the porous surface and emerge in springs which feed the river. Dye trace studies have verified this risk. Because of the importance of the Buffalo River to the economy of Arkansas, and particularly to those communities within its watershed, it behooves the state to take appropriate steps such as this to preserve and protect this state icon for future generations to enjoy.

Response: APC&EC Rule 6 maintains the status quo with respect to with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed. The Division recognizes the differences of opinion with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed.

Comment: However, 6.602(C) says, “This rule does not prohibit the Director from issuing a new Rule 6 permit for a facility that holds an active Liquid Animal Waste Management Systems permit as of the effective date of this rule.” The section does allow for the issuance of new Reg 6 permits to holders of existing Reg 5 permits in the watershed but does not allow for any increase in the number of animals. Because this rule making makes direct reference to “Liquid Animal Waste Management Systems” (ie: Reg 5 permits), the following comments regarding Reg 5 permits are within the scope of this rule making and therefore require a response. BRWA has identified four facilities in the Buffalo River watershed with “Active” Reg 5 permits, although none are currently operational most have been effectively closed for several years, are in violation of regulations, and should be voided. They include the following permits: 4067-W in Marshall, AR, issued in 1991 for 60 dairy cows. A 2013 inspection report stated it was “not in operation” and recommended a closure plan be prepared. DEQ requested annual reports or a closure plan in 2010 but none have been submitted since 2009. 3121-WR-4, Deer, AR issued in 1998 for 400 sows. Inspection reports in 2007, 2008, 2011 and 2012 all indicated “no animals are present, ponds are essentially empty.” In 2018 DEQ requested annual

reports or a closure plan. No annual reports are posted for this permit since its issuance. 3823-WR-5, Lurton, AR issued in 2003 for 425 sows. Inspection report in 2017 stated “not operating for some time”. In 2017 DEQ issued an enforcement report indicating the facility “has not been in operation for some time” and requesting a closure plan of annual reports. In 2018 DEQ again requested annual reports or a closure plan. Neither have been posted since the permit was issued. 3540-WR-7, Vendor, AR issued in 2012 for “land application of swine waste from C&H Farms only”. C&H ceased operations in 2019. No annual reports or closure plan have been posted since 2019. Although these four facilities have not completed the required closure procedures, none have any animals and none have submitted annual reports since 2019 or earlier which places these facilities in violation of the law and these permits should be immediately voided. Further, we would like clarification from DEQ as to whether any of these permits, if they are not voided, could be reactivated to either 1) restock animals and resume previous operations, or 2) accept waste from other facilities for field application, including industrial waste. If these facilities could be reactivated, or they can accept transferred waste, we do not support this language. While BRWA generally supports this rulemaking we would like clarification regarding section 6.502(c) referencing existing Reg 5 permits in the watershed.

Response: Permits issued under APC&EC Regulation 5, “Liquid Animal Waste Management Systems,” are outside the scope of this rulemaking. The authority to act on permits issued under APC&EC Regulation 5 was transferred to the Department of Agriculture. An existing permit must be in good standing at the time of that transfer. The Division notes that APC&EC Regulation 5 does not authorize any land application of industrial waste and is limited to liquid animal waste management systems.

Comment: In response to the previous commentor, APC&EC Rule 6 does not apply to small farms, only to CAFOs medium and large CAFOs, as defined in the federal rules.

Response: The Division acknowledges the comment. APC&EC Rule 6 requires a person to obtain permit coverage for the discharge of a pollutant or pollutants from a point source into a water of the state.

Commenter Linda Armerbingham

Comment: Leave the Buffalo River alone.

Response: The Division acknowledges the comment.

Commenter Evan Teague for Arkansas Farm Bureau Federation

Comment: Our comments will be focused on Chapter 6, specifically Rule 6.602—Buffalo River Watershed. While we understand and appreciate the need for sensible and

pragmatic regulations to protect the environment, we do not believe that is what this rulemaking represents. Banning an agricultural activity, hog farming in this instance, from a watershed implies that activity is a significant threat. Previous scientific studies have refuted these assertions, and an ongoing yet to be published USGS study also suggests that agricultural production is not likely the cause of ongoing issues in the Buffalo River. Singling out one economic sector without the supporting science is regulation by the precautionary principle.

The “right to farm” is a foundational principle that supports the continuation of agricultural operations without unreasonable interference. This rule not only affects swine producers but could also have a lasting impact on the broader farming community and future generations of farmers. The proposed moratorium sets a precedent that could potentially lead to further restrictions on various types of farming within the watershed and beyond.

Our continued engagement in this issue is based on insistence from our county Farm Bureau members, especially those involved in animal agriculture who live in the impacted area. These farmers believe these proposed changes not only infringe on their right-to-farm and private property rights, but are potentially contrary to existing state statutes, lack scientific justification, are arbitrary and capricious, and do not comport with the “reasonableness clause.”

Response: APC&EC Rule 6 maintains the status quo with respect to with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed, which does include the continuation of ongoing agricultural operations. In its rulemakings, the Pollution Control and Ecology Commission considers scientific data and studies that were readily available or provided. The Division recognizes the differences of opinion with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed.

Comment: Specifically regarding Chapter 6.602, this language was originally included as part of a third-party rulemaking that was initiated in 2014 and finalized in 2015. This language provided an exemption for small farms which has been removed in this proposed draft. All parties involved in the original process understood that Section 6.602(E) of Regulation 6 was intended to serve as a sunset clause by requiring the Department to initiate rulemaking within 5 years to remove Rule 6.602(E) or 6.602 in its entirety. If the Department chose to initiate rulemaking to make the moratorium permanent and the rulemaking failed, the moratorium language (Section 6.602) was to be stricken from the rule. If the department chose to remove the moratorium language and that failed, the moratorium would become permanent. In July 2019 the Commission initiated rulemaking to make the moratorium permanent. During the 2020 legislative review process the Public Health Committee refused to review the rulemaking and the Administrative Rule Committee voted unanimously to disapprove the rulemaking. This moratorium should have ended at that point, but the Department chose to not take action and left the language in the rule. Given this history, the current decision to pursue the same course of action raises significant concerns about the process and the

justification for such a measure. We request the Department and Commission cite which section(s) of the Arkansas code grants the Department and Commission the authority to disregard the unanimous decision of a legislative committee by not removing this language.

We strongly urge the Department and the Commission to strike Section 6.602. As you are aware, this should have been done after the 2020 legislative review process when the ALC – Administrative Rules Committee unanimously voted to disapprove the previous rulemaking attempt. The basis for their disapproval was that a permanent moratorium is not consistent with legislative intent, and, since this disapproval, absolutely nothing has changed in the level of swine based agriculture activity in the region.

Response: APC&EC Regulation 6.602(E) is not written as a “sunset clause.” APC&EC Regulation 6.602(E) states, “Five years from the effective date of this regulation the Director shall initiate rulemaking to either delete this paragraph, Reg. 6.602(E), or delete the entirety of Reg. 6.602.” As written, APC&EC Regulation 6.602(E) required the Director to initiate the rulemaking process within the timeframe, and an approved rulemaking is required to change APC&EC Regulation 6.602.

The 2019 rulemaking to change APC&EC Regulation 6.602 was not reviewed and approved by the legislature, and therefore the language of APC&EC Regulation 6.602 could not be changed by the 2019 rulemaking. Thus, the result of the failed rulemaking maintained the status quo with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed.

Comment: Our policy supports the use of sound science to develop legislative and regulatory policies; however, the proposed revisions to Section 6.602 of Rule 6 are not founded in sound science. Scientific studies performed in the Buffalo River watershed, such as those completed by the Big Creek Research and Extension Team (BCRET), United States Geological Survey (USGS), Buffalo River National Park Service (BRNPS), FTN & Associates (FTN), Harbor Environmental (Harbor), Beautiful Buffalo River Action Committee (BBRAC), and the Department itself over the last decade and even scientific studies performed all the way back in the 1970s, do not support a permanent moratorium on permitting swine farms in the Buffalo River watershed. We respectfully request on behalf of our members, especially those who live and work in the counties impacted by these regulatory changes, that you strike the language in Section 6.602.

Long-term monitoring dating back to the mid-1980s shows nitrate concentrations, while still extremely low, have been consistently trending upward. However, over the same time frame the number of animal units associated with production agriculture in the watershed has remained relatively stable and has actually been trending downward since the mid-1990s. Swine numbers peaked in the early-1990s and have precipitously declined since that time. Obviously, something other than agriculture, particularly swine farms, is affecting the perception, albeit unfounded,

that there is an impact on the Buffalo River as its water quality remains extremely high.

Response: APC&EC Rule 6 maintains the status quo with respect to with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed, which does include the continuation of ongoing agricultural operations. In its rulemakings, the Pollution Control and Ecology Commission considers scientific data and studies that are readily available or provided . The Division recognizes the differences of opinion with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed.

The Division does not concur with Commenter’s conclusion regarding the history of swine farms in the Buffalo River Watershed. The potential impacts of swine farms, including farms large enough to be considered CAFOs, on the Buffalo River have been an ongoing concern in Arkansas, and the Division (or its predecessors) have taken action to mitigate the impacts of existing farms in that watershed. In 1992, APC&EC Regulation 5 was adopted to address how liquid waste from swine farms should be handled. Also in 1992, the Arkansas Department of Pollution Control and Ecology (the Division’s predecessor) issued an administrative notice regarding its intent not to issue permits in the Buffalo River Watershed. Following the adoption of APC&EC Regulation 5 and that notice, Arkansas participated in the Buffalo River Swine Waste Demonstration Project, which was initiated in 1995, to improve swine manure management in the Buffalo River watershed.

After that work in the 1990s, APC&EC Regulation 6.602 was promulgated through a third-party rulemaking, Pollution Control and Ecology Commission Docket #14-003-R. That 2014 third-party rulemaking describes the real and potential impact medium and large swine CAFOs can have on this Extraordinary Resource Water.

That third-party rulemaking came about as part of the reaction to C&H Hog Farm’s 2012 notice of intent for coverage under the Division-issued NPDES general permit for CAFOs and the Division’s subsequent approval for that coverage. The litigation about that farm’s application for a permit under APC&EC Regulation 5 is outside the scope of this rulemaking.

While the commenter focuses on the trend for nitrogen in the watershed, the Division assesses water quality based on APC&EC Rule 2, which establishes water quality standards for surface waters in the State of Arkansas. For example, the 2018 303(d) List of Impaired Waterbodies resulted in four Assessment Units (two sections of Big Creek and two sections of the Buffalo National River) being identified as impaired—three for bacteria and one for dissolved oxygen.

Comment: Why is the Arkansas Department of Energy & Environment (Department) reinitiating rulemaking after the Arkansas Legislative Council denied the request in 2020? In 2020, the Division sought to make the moratorium permanent, but the Arkansas Legislative Council (ALC) unanimously voted to disapprove the rule. The primary reason was that the Department already has the authority to deny

permits on a case-by-case basis, making a permanent moratorium unnecessary. Furthermore, the ALC noted that the denial of C&H Hog Farms' Regulation 5 permit effectively halted operations in the watershed, raising questions about the need for additional regulations. Since the ALC's disapproval, there has been no increase in swine farming in the area to justify revisiting this measure. Given that legislative approval is required for the rule to become final, why has the Commission not removed Section 6.602 following the ALC's vote?

Why is a moratorium necessary when the Department has authority to deny permits on a case-by-case basis? Arkansas Code §§ 8-4-203 and 8-4-207 require the Department to evaluate permit applications on their individual merits. This ensures that each application is fairly considered, with the opportunity for appeal to the Commission. The proposed moratorium undermines this established process by imposing a blanket restriction, disregarding the unique circumstances of individual applications and violating property owners' rights.

Response: APC&EC Rule 6 maintains the status quo with respect to with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed, which does include the continuation of ongoing agricultural operations. The Division recognizes the differences of opinion with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed.

The example of C&H Hog Farm demonstrates that the Division's authority to deny permits on a case-by-case basis is different for permit coverage under NPDES general permits as compared to individual permits. Permittees meeting the qualifications for coverage under a general permit will receive coverage. Applications for individual permits are evaluated on a case-by-case basis and in compliance with the applicable rules and criteria.

Comment: Why does the moratorium now include small hog farms when the original regulations targeted only medium and large farms? In the current Regulation finalized in 2015, the temporary moratorium applied only to medium and large swine farms. However, with the proposed rule, the Department has now included small farms in the moratorium, going beyond the scope of the original rules. This extension of the moratorium to small farms has been proposed without any scientific or regulatory justification. This further demonstrates the arbitrary nature of these proposed changes, which we believe lack sound reasoning or evidence-based support.

Response: APC&EC Rule 6 maintains the status quo with respect to with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed, which does include the continuation of ongoing agricultural operations. APC&EC Rule 6.602 applies to CAFOs, which are defined as medium and large CAFOs. The Division recognizes the differences of opinion with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed.

Comment: Why is Big Creek listed as impaired with an unknown cause, yet has been used to justify the moratorium? Big Creek (middle) is listed on the 303(d) list as impaired, but the cause of impairment is stated as “unknown.” This indicates that the Department lacks sufficient data to conclusively link the impairment to swine farming or any other scientifically sound reason/cause. Additionally, other water bodies on the 303(d) list have not been subject to similar moratoriums?

Response:

APC&EC Rule 6 maintains the status quo with respect to with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed. The 2014 third-party rulemaking in Pollution Control and Ecology Commission Docket #14-003-R that promulgated APC&EC Regulation 6.602 occurred independently of the 2018 303(d) List of Impaired Waterbodies.

Comments concerning the 2018 303(d) List of Impaired Waterbodies are outside the scope of this rulemaking. However, at the time, the Division received comments on the 2018 303(d) List of Impaired Waterbodies. While some comments expressed concerns that the listing of Big Creek resulted from sampling that targeted C&H Hog Farm, The Division stated that the majority of data used for assessment was provided by NPS and USGS. In its 305(b) Report, DEQ identified the potential sources of the impairment for pathogens as manure application (hog and chicken), leaking septic tanks, tourism, and wildlife. The Division then stated that future surveys using Phylo-chip technology are planned for the watershed to help identify the sources. In addition, the Division’s use of “unknown” to categorize the source for this impairment is in line with the Watershed Management Plan that contemplates implementing best management practices (BMPs) only after sources of pathogen, particularly *E. coli*, have been identified.

Comment: Why invoke karst topography as justification when existing regulations address the risks and please explain why the land application of swine manure in fields underlain by karst is considered unacceptable in the Buffalo River watershed, while the application of other forms of nutrients is allowed? The presence of karst terrain has been cited as a rationale for the moratorium. However, the USDA’s Agricultural Waste Management Field Handbook (AWMFH) allows for the siting of farms in karst regions with additional safeguards. Moreover, the Buffalo River National Park Service (BRNPS) permits nutrient applications on fields adjacent to the Buffalo River under nutrient management plans. If karst terrain poses such a significant risk, it seems inconsistent to allow nutrient applications by the BRNPS while prohibiting swine farms farther away from the river.

Response: APC&EC Rule 6 maintains the status quo with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed. The Division recognizes the differences of opinion with respect to NPDES permits for swine CAFOs in the Buffalo River

Watershed. USDA's Agricultural Waste Management Field Handbook (AWMFH) is mentioned in APC&EC Regulation 5, not in APC&EC Rule 6, and is therefore outside of the scope of this rulemaking. APC&EC Rule 6 is applicable to point source discharges, including discharges to surface waters and discharges from CAFOs. Permits for land application of wastes are outside the scope of this rulemaking.

Comment: Why use “unnecessary risk” as justification for an emergency moratorium when the law requires “imminent peril”? The justification for the emergency moratorium does not meet the statutory threshold of “imminent peril,” as required by law. The use of “unnecessary risk” lacks the urgency necessary for emergency rulemaking and raises concerns about the overreach of regulatory authority. We also question whether the original issuance of the temporary 2015 moratorium was correctly applied under emergency provisions. The lack of an actual emergency at that time—and now—suggests that the emergency rulemaking process was, and continues to be, improperly used to justify unnecessary regulatory action. Why invoke emergency authority when no clear emergency exists? The Department has invoked emergency authority without evidence of an immediate crisis to justify bypassing the standard regulatory process. This approach, both in 2015 and now, undermines the legitimacy of the emergency moratorium and calls into question the necessity of such measures.

Response: APC&EC Rule 6 maintains the status quo with respect to with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed. The Division recognizes the differences of opinion with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed. The Division followed its normal rulemaking process and did not seek an emergency rulemaking. Comments regarding the procedures followed for the 2014 third-party rulemaking are outside the scope of this rulemaking.

Comment: Is EPA requiring the Commission or the Department to implement a moratorium in the Buffalo River watershed? According to rulemaking documents, “The risk of not updating this rule is that the EPA could attempt to remove Arkansas’s delegated authority to issue NPDES permits under the federal Clean Water Act. The loss of delegated authority would result in the EPA becoming the permitting authority for Arkansas.” Although parts of the rule making may be necessary, we do not believe the language in Section 6.202, whether retained or removed, is required as part of the programmatic updates mandated by the EPA.

Response: EPA is not requiring Pollution Control and Ecology Commission or the Division to maintain the status quo with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed. This rulemaking is necessary to ensure that APC&EC Rule 6 for the regulation of NPDES permits is compliant with federal law. The Division administers over 5000 NPDES permits. None of those active permits are for a CAFO. Arkansas’s loss of its delegated authority to issue NPDES permits

under the federal Clean Water Act would directly impact over 5000 current NPDES permittees.

Commenters Tommy Young, Tracy Lester, Tyler Robinson, Stephen Boyd, Steve Eddington, Steve Hignight, Sue Billiot, Tammi Dickson, Tammy Thompson, Tanner Riggan, Terry Laster, Thomas Freeze, Todd Smith, Tommy Thompson, Donna Bemis, James Patton, Grant Pace, Gordon Greene, George E Tidwell, Gene Pharr, Fredese Wheatley, Ernie Coppock, Eric Mohike, Chuck Davis, Cheryl Phipps, Carey Autrey, Caleb Plyler, Bruce Ferguson, Bruce Ferguson, Brian Roper, Brian Harris, Brett Mason, Brandon Martin, Bobby Cofer, Bill Shannon, Bill Sewell, Amelia Hoyt, Austin Lester, Donna Bemis, Tana Henson, Mandy Lester, James Meeks, James Harvey, Amy Young, Melanie Fosko, Matt Howton, Matt Jackson, Matt Shekels, Kathy Wallace, Kayla Pratt, Leslie Turner, Lisa Smith, Magen Allen, Marion Fletcher, Jennifer Sansom, Jeff Worlow, Jeff Felts, Jason Chaffin, Julie Campbell, Joe Thrash, Darryl Sullivan, Danny Naegle, Daniel Free, Dan Wright, Don Hubbell, Delbert Walker, Deana Taylor, David Hoyt, Carroll Heustess, Caroline Lester, Bruce Jackson, Carey Robertson, Clifton Gifford, CJ Parker, Chris Schaefer, Chris Acre, Chris Heiser, Catrinia Rojas, Brian Roper, Brett Mason, Amanda Allen, Amelia Hoyt, Amy Young, Austin Lester, Ben Gander, Tim Neidecker, Stan Garner, Rubin Barnes, Rocky Harrell, Mike Pennington, Michael Richardson, Michael Fisher, Melissa Moore, Matt King, Luke Alston, John Sink, John McMinn, Joe Pattie, Lucas Whittenton, Larry Garlington, Karen Wood, Jake Cartwright, Jackie McMinn, Colin Lockeby, Clay Parker, Brad Peacock

Comment: I am writing to express my strong opposition to the proposed rulemaking that seeks to establish a permanent moratorium on hog farms in the Buffalo River watershed. This moratorium represents a significant overreach that undermines the existing regulatory framework, disregards individual property rights, and threatens the long-standing tradition of agricultural production in our state. The Arkansas Department of Environmental Quality (ADEQ) already possesses the statutory authority and expertise to review, approve, or deny permits. The current regulatory framework ensures compliance with state and federal environmental laws through environmental assessments, public input, and enforceable permit conditions. ADEQ should be trusted to fulfill its responsibilities by addressing potential impacts on a case-by-case basis. Water quality is addressed through the existing permitting and enforcement mechanisms. A moratorium is both unnecessary and disproportionate given ADEQ's authority and capabilities. The proposed moratorium reaches well beyond protection and erodes an individuals' rights to farm on their own land. Agriculture is a foundational part of Arkansas' heritage and economy, especially in rural areas. Rather than implementing a moratorium that

could limit agricultural opportunities in the watershed, we encourage the Department to rely on its existing regulatory authority to evaluate permits based on scientific evidence and site-specific conditions. If we begin to selectively prohibit farming activities in certain areas without solid science and case-by-case review, it undermines the right to farm that has long been respected in Arkansas. I urge the Arkansas Pollution Control and Ecology Commission to reject this rulemaking and instead allow ADEQ to continue overseeing the permitting process under the current framework.

Response: APC&EC Rule 6 maintains the status quo with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed. The Division has no active NPDES permits for a CAFO in Arkansas, and the Division has no pending applications for an NPDES permit for a CAFO in Arkansas. The Division recognizes the differences of opinion with respect to NPDES permits for swine CAFOs in the Buffalo River Watershed.

Commenter Carey Robertson

Comment: Right to farm and use of your owned property is a fundamental area of equality in Arkansas. Don't let special Interest groups dictate land use. We have plenty of monitoring programs and expansive knowledge of farming practices in all kinds of situations. Moratoriums are inflexible and detrimental to innovation. At this point with wild hogs populations very large in Arkansas, that should be the priority issue to ensure safe and sound practices are in place.

Response: The Division acknowledges the comments.

Commenter Debbie Alexy

Comment: It is a blatant conflict of interest to move oversight of the Buffalo River to State agency with commercial interests supporting agriculture CAFOs. We have been there done that. Governor Hutchinson directed the Buffalo River to have permanent protection.

Response: The Division acknowledges the comments.

Commenter Dane Schumacher

Comment: What is the nature of DEQ's role as a consultant to the Division of Agriculture prior to issuance of new Rule Reg 6 permit?

Response: APC&EC Rule 6 is for the regulation of NPDES permits, and the Division has authority to issue NPDES permits pursuant to Rule 6. The Department of Agriculture does not have regulatory authority to issue NPDES permits.

Comment: What criteria will inform the DEQ State Director's decision to issue a new Rule 6 permit for a swine AFO that holds an active Liquid Animal Waste Management Systems permit as of the effective date of this rule?

Response: APC&EC Rule 6 is for the regulation of NPDES permits and provides the requirements for NPDES permit applications.

Comment: Will this criteria be applied before, during, or after possible discharge and/or pollutant enters waters of the United States?

Response: Arkansas Code Annotated § 8-4-217(b) prohibits the discharge of wastes into waters of the state without first having obtained a permit from the Division.

Comment: Will a Rule 5 No Discharge facility AFO that is issued a Rule 6 NPDES permit be deemed a CAFO under the Clean Water Act?

Response: CAFO is defined in 40 C.F.R. § 122.23.

Comment: Will DEQ receive notice of Reg 5 No Discharge Swine AFO's permitted to operate in the Buffalo River Watershed?

Response: APC&EC Regulation 5, "Liquid Animal Waste Management Systems," is outside the scope of this rulemaking. The authority over permits issued under APC&EC Regulation 5 was transferred to the Department of Agriculture.

Comment: Does the proposed new Rule 6.602(B) exempt small and medium size AFO's, which as defined in the Clean Water Act are not CAFOs?

Response: CAFO is defined in 40 C.F.R. § 122.23 as "an AFO that is defined as a Large CAFO or as a Medium CAFO..."

Comment: The mere use of the words "No Discharge" is in no way a safeguard against pollutants entering surface water or groundwater due to improper and faulty design of a liquid waste facility and storage area, faulty calculations of liquid waste amounts in storage ponds, and/or faulty nutrient management plans which allow for land applications in excess of nutrients, i.e., phosphorus, which in turn allows for waste disposal instead of appropriate agronomic utilization.

Response: APC&EC Rule 6 is for the regulation of NPDES permits, and the Division issues NPDES permits authorizing discharges into waters of the state. State "no-discharge" permits are outside the scope of this rulemaking.

Comment: I urge the Division of Environmental Quality to lean heavily on its role as a consultant in regard to the planning process, site-specific considerations, hydrogeology, surface and groundwater interactions, for liquid animal waste systems, especially swine AFOs, regardless of size, in karst terrain.

Response: This request is outside the scope of this rulemaking.

Comment: Resident taxpayers and concerned citizens do not need another round of litigious battles and/or a state sanctioned 6.2 million buyout agreement related to ill-placed, insufficient design, and woefully lacking liquid waste management protocols.

Response: The Division acknowledges the comment.

Commenter Brian Thompson for The Ozark Society

Comment: We ask that Regulation 6, reference guidance to the Agricultural Waste Management Field Handbook, as well as ANRCS Field Office Technical Guide, similar to the former Regulation 5. These sources provide sound guidance from agricultural experts in regard to siting and building CAFO. Please include these reference in the update Reg 6.

Response: The Division acknowledges the comment. The Division will take the comment regarding the Agricultural Waste Management Field Handbook and the ANRCS Field Office Technical Guide under consideration for the Division's internal processing procedures.

Comment: We agree with, and we sincerely appreciate retaining watershed specific rules prohibiting the issuance of industrial swine CAFO permits in the Buffalo National River watershed. This moratorium was suggested and promoted by Governor Asa Hutchinson after seven long years of controversy over a large industrial hog farm that was divisively permitted with inadequate public notification in perhaps the most environmentally sensitive location in the entire state. While we are not insensitive to property rights, property rights end at the fence line while contaminated runoff and ground water do not. We do not agree that one segment of one industry (agriculture) can be allowed to overwhelm and diminish the livelihoods of those in another industry (tourism) via unavoidable environmental degradation. There is a lot of room in Arkansas for raising swine, but large industrial swine CAFOs have no business in the ecologically sensitive karst geology of the Buffalo National river, the crown jewel of our great state.

Response: The Division acknowledges the comment.


Commenter Jim Petersen

Response: Q7-10 is defined in Rule 2 as “A flow volume equal to or less than the lowest mean discharge during 7 consecutive days of a year which, on the average, occurs once every 10 years.

Comment: How is the 30% loss determined? Let’s assume for illustration that the 7Q10 is 2 cubic feet per second. The 7Q10 is a statistical value of a streamflow that is expected to occur for 7 consecutive days once every 10 years on average. So it is a relatively rare occurrence. But let’s assume that the investigator is lucky enough to be at the discharge location at a time where the streamflow is 2 cubic feet per second. In that case the downstream streamflow would need to be less than 1.4 cubic feet per second for the segment to qualify as a losing stream segment. However, what if at the time of the permitting process, streamflow at the discharge location is consistently 5 to 10 cubic feet per second because the year has been relatively wet? What downstream streamflow value would be used?

Response: For a losing stream, the 30% loss is determined by measuring flow. Hypothetical scenarios are outside the scope of this rulemaking.

PREPARED BY:
ARKANSAS DEPARTMENT OF ENERGY AND
ENVIRONMENT, DIVIISION OF ENVIRONMENTAL
QUALITY

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DIVISION OF ENVIRONMENTAL QUALITY

Sarah Huckabee Sanders
GOVERNOR

Shane E. Khoury
SECRETARY

Proposed amendments to APC&EC REGULATION 6: “REGULATIONS FOR STATE ADMINISTRATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)”

May, 2024

PURPOSE AND AUTHORITY

The Department of Energy and Environment and the Division of Environmental Quality (DEQ) propose this rulemaking to modify Regulation 6: “Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES).”

The Arkansas Pollution Control and Ecology Commission has general rulemaking authority through Ark. Code Ann. § 8-1-203(b)(1)(A), and specific authority to promulgate this rule through Ark. Code Ann. § 8-4-202(a).

BACKGROUND

The purpose of Regulation 6 is to adopt the federal regulations necessary to qualify the State of Arkansas to receive and maintain authorization to implement the state water pollution control permitting program, in lieu of the federal NPDES program, pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* In order for DEQ to maintain its delegated authority to administer the NPDES permit program, DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection Agency.

THE PROPOSED RULE AMENDMENTS

The DEQ proposes this rulemaking to Regulation 6 before the Arkansas Pollution Control and Ecology Commission: to adopt federal revisions to the NPDES program, incorporate statutory revisions made by the Arkansas General Assembly, and make corrections and stylistic and formatting updates throughout the regulation. Regulation 6 establishes the parameters for the state water pollution control permitting program in lieu of the federal NPDES program and pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* The state legislative acts prompting the regulatory amendments are Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910 of 2019, Act 441 of 2021, and Act 46 of 2023. The federal regulatory changes prompting the amendments are 40 C.F.R §§ 122.21(e)(3), 122.44(i)(1)(iv), 136.1(c), 125(I) and (J), 423, 122, 123, 127, and 401.17.

Proposed changes to Rule 6 include:

- **Incorporation of Updates to Federal Regulations.** Amendments to Regulation 6.104 to incorporate changes made to federal regulations;
- **Incorporation of Updates to Arkansas Law.** Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910 of 2019, Act 441 of 2021, and Act 46 of 2023, were enacted by the Arkansas General Assembly and require revisions to Regulation 6;
- **Amendments to Provide Clarification and Minor Corrections.** Corrections to the rule, including adding necessary definitions and corrections to be consistent with other state rules.;
- **Amendments to Chapter 6.** To amend Chapter 6 to be consistent with the Department of Agriculture’s rule for Liquid Animal Waste Management Systems.
- **Stylistic and Formatting Corrections.** To make minor, non-substantive stylistic and formatting corrections throughout the regulation.

NECESSITY AND PRACTICAL IMPACT OF RULE AMENDMENTS

DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection

Agency to maintain its delegated authority to administer the NPDES permit program. Pursuant to 40 C.F.R. § 123.62(e), states administering the NPDES program must make revisions to its rules to conform to the federal regulations within one year of the date of promulgation of the federal regulation, with the exception that if a state must amend or enact a statute in order to make the required revision, the revision shall take place within two years of promulgation of the federal regulations. The risk of not updating this rule is that EPA could attempt to remove Arkansas's delegated authority to issue NPDES permits under the federal Clean Water Act. Loss of delegated authority would result in EPA becoming the permitting authority for Arkansas.

**QUESTIONNAIRE FOR FILING PROPOSED RULES WITH
THE ARKANSAS LEGISLATIVE COUNCIL**

DEPARTMENT Energy & Environment Division of Environmental Quality
BOARD/COMMISSION _____
BOARD/COMMISSION DIRECTOR _____
CONTACT PERSON Peter Alberg
ADDRESS 5301 Northshore Drive, North Little Rock, AR 72118
PHONE NO. (501) 335-7025 EMAIL peter.alberg@adeq.state.ar.us
NAME OF PRESENTER(S) AT SUBCOMMITTEE MEETING _____
Lauren Ballard, Michael McAlister, Stacie Wassell
PRESENTER EMAIL(S) lauren.ballard@arkansas.gov; michael.mcalister@arkansas.gov; stacie.wassell@adeq.state.a

INSTRUCTIONS

In order to file a proposed rule for legislative review and approval, please submit this Legislative Questionnaire and Financial Impact Statement, and attach (1) a summary of the rule, describing what the rule does, the rule changes being proposed, and the reason for those changes; (2) both a markup and clean copy of the rule; and (3) all documents required by the Questionnaire.

If the rule is being filed for permanent promulgation, please email these items to the attention of Rebecca Miller-Rice, miller-ricer@blr.arkansas.gov, for submission to the Administrative Rules Subcommittee.

If the rule is being filed for emergency promulgation, please email these items to the attention of Director Marty Garrity, garritym@blr.arkansas.gov, for submission to the Executive Subcommittee.

Please answer each question completely using layman terms.

1. What is the official title of this rule?
Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)
2. What is the subject of the proposed rule? NPDES permit program
3. Is this rule being filed under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, please attach the statement required by Ark. Code Ann. § 25-15-204(c)(1).

If yes, will this emergency rule be promulgated under the permanent provisions of the Arkansas Administrative Procedure Act? Yes No

4. Is this rule being filed for permanent promulgation? Yes No

If yes, was this rule previously reviewed and approved under the emergency provisions of the Arkansas Administrative Procedure Act? Yes No

If yes, what was the effective date of the emergency rule? _____

On what date does the emergency rule expire? _____

5. Is this rule required to comply with a *federal* statute, rule, or regulation? Yes No

If yes, please provide the federal statute, rule, and/or regulation citation.

[40 C.F.R. §§ 122.21\(e\)\(3\), 122.44\(i\)\(I\)\(iv\), 125 Subparts I and J, 127, and 136.1 \(c\)](#)

6. Is this rule required to comply with a *state* statute or rule? Yes No

If yes, please provide the state statute and/or rule citation.

[Arkansas Code § 8-4-202](#)
[APC&EC Rule 6.104\(B\)](#)

7. Are two (2) rules being repealed in accord with Executive Order 23-02? Yes No

If yes, please list the rules being repealed.

If no, please explain.

[See attachment.](#)

8. Is this a new rule? Yes No

Does this repeal an existing rule? Yes No

If yes, the proposed repeal should be designated by strikethrough. If it is being replaced with a new rule, please attach both the proposed rule to be repealed and the replacement rule.

Is this an amendment to an existing rule? Yes No

If yes, all changes should be indicated by strikethrough and underline. In addition, please be sure to label the markup copy clearly as the markup.

9. What is the state law that grants the agency its rulemaking authority for the proposed rule, outside of the Arkansas Administrative Procedure Act? Please provide the specific Arkansas Code citation(s), including subsection(s).

[Arkansas Code §§ 8-1-203\(b\)\(1\)\(A\) and 8-4-202\(a\)](#)

10. Is the proposed rule the result of any recent legislation by the Arkansas General Assembly?
Yes No

If yes, please provide the year of the act(s) and act number(s).

[Acts 94 and 575 of 2015](#)

11. What is the reason for this proposed rule? Why is it necessary?

[See attachment.](#)

12. Please provide the web address by which the proposed rule can be accessed by the public as provided in Ark. Code Ann. § 25-19-108(b)(1).

https://www.adeg.state.ar.us/regs/draft_regs.aspx

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

If yes, please complete the following:

Date: 08/26/2024

Time: 2:00 pm

Place: Commission Room, E&E Headquarters, 5301 Northshore Drive, North Little Rock, AR 72118

Please be sure to advise Bureau Staff if this information changes for any reason.

14. On what date does the public comment period expire for the permanent promulgation of the rule? Please provide the specific date. 09/05/2024

15. What is the proposed effective date for this rule? On or about December, 2024

16. Please attach (1) a copy of the notice required under Ark. Code Ann. § 25-15-204(a)(1) and (2) proof of the publication of that notice.

17. Please attach proof of filing the rule with the Secretary of State, as required by Ark. Code Ann. § 25-15-204(e)(1)(A).

18. Please give the names of persons, groups, or organizations that you anticipate will comment on these rules. Please also provide their position (for or against), if known.

[See attachment.](#)

19. Is the rule expected to be controversial? Yes No

If yes, please explain.

Answers to BLR Questionnaire

Question 7:

Arkansas Pollution Control and Ecology Commission is given the power to adopt, modify, or repeal rules implementing substantive statutes charged to the Division of Environmental Quality for administration. See Ark. Code Ann. §§ 8-1-203 and 8-4-202. Arkansas Pollution Control and Ecology Commission rules are necessary for the Division of Environmental Quality to implement Arkansas's environmental laws and the environmental programs delegated to the State of Arkansas by the responsible federal agencies.¹

The repeal of two rules would jeopardize Arkansas's ability to maintain environmental programs delegated to the State of Arkansas and to implement Arkansas's environmental laws. The loss of a federally delegated environmental program would require that the EPA become the regulatory authority administering that program in Arkansas. Also, the loss of an Arkansas environmental program would eliminate protections provided to the citizens of Arkansas by Arkansas's environmental laws.

Arkansas Pollution Control and Ecology Commission Regulation 6, "Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)," is one of Arkansas's environmental rules required to maintain Arkansas's delegated federal authority to administer the National Pollutant Discharge Elimination System program.

This rulemaking to amend Regulation 6 fulfills Arkansas's responsibilities under the federal Clean Water Act to maintain appropriate legal authority to implement and administer the National Pollutant Discharge Elimination System program. The Clean Water Act requires states with delegated authority to administer the National Pollutant Discharge Elimination System, to review the applicable rules, and to determine whether any modifications are appropriate. This rulemaking is required to update Regulation 6 to incorporate changes to federal rules that have occurred since the last revision. For example, this update will incorporate the rule concerning the e-reporting requirements.

Under the Clean Water Act, Arkansas's failure to maintain its appropriate legal authority to implement and administer the National Pollutant Discharge Elimination System program could ultimately result in Arkansas losing its delegated authority and EPA becoming the permitting authority in Arkansas. The proposed revisions are necessary to ensure that Arkansas will maintain its delegated authority to administer the National Pollutant Discharge Elimination System program.

¹ Arkansas's environmental laws authorize DEQ to maintain and implement those environmental programs that have been delegated to the State of Arkansas by the responsible federal agencies.

Question 11:

The proposed revisions to Regulation 6 are necessary updates to ensure that Arkansas maintains its delegated authority under the Clean Water Act to administer the National Pollutant Discharge Elimination System program.

These revisions fall into the following categories:

- 1) to update to the incorporation date in Regulation 6.104 to incorporate revisions to the applicable federal rules, specifically required updates to 40 C.F.R. §§ 122.21 (e)(3), 122.44(i)(1)(iv), 125 Subparts f and J, 127 (e-reporting) and 136.1(c).
- 2) to make revisions to Regulation 6.205 required by Acts of the Arkansas General Assembly.
- 3) To make changes to:
 - a. Regulation 6.103 concerning definitions;
 - b. Regulation 6.105 changing him to him or her;
 - c. Regulation 6.204 concerning industrial user pretreatment requirements; and
 - d. Chapter Six's title has been revised to more accurately describe the chapter's content due to inclusion of Buffalo National River Watershed;
- 4) To make Regulation 6 consistent with the rule proposed by the Department of Agriculture for Liquid Animal Waste Management Systems.

Question 18:

The Division expects to receive comments from NPDES permittees. The position of these permittees in regard to the rule amendments is unknown.

The Division expects to receive comments from residents of the Buffalo National River Watershed, recreational users of the river, and those who own and operate businesses in the watershed.

The Division expects broad support for the rule change. The Division has not identified a group or individual who intends to oppose this rule change but acknowledges that such opposition is possible.

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY.

DEPARTMENT Energy & Environment Division of Environmental Quality

BOARD/COMMISSION _____

PERSON COMPLETING THIS STATEMENT Stacie Wassell

TELEPHONE NO. (501) 682-0886 **EMAIL** stacie.wassell@adeq.state.ar.us

To comply with Ark. Code Ann. § 25-15-204(e), please complete the Financial Impact Statement and email it with the questionnaire, summary, markup and clean copy of the rule, and other documents. Please attach additional pages, if necessary.

TITLE OF THIS RULE Regulations for State Administration of the National Pollutant Discharge Elimination System (N

- 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 no, please explain:

(a) how the additional benefits of the more costly rule justify its additional cost;

(b) the reason for adoption of the more costly rule;

(c) whether the reason for adoption of the more costly rule is based on the interests of public health, safety, or welfare, and if so, how; and

(d) whether the reason for adoption of the more costly rule is within the scope of the agency’s statutory authority, and if so, how.

- 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? \$0.00

Current Fiscal Year

General Revenue \$0.00
 Federal Funds \$0.00
 Cash Funds \$0.00
 Special Revenue \$0.00
 Other (Identify) \$0.00

Total \$0.00

Next Fiscal Year

General Revenue \$0.00
 Federal Funds \$0.00
 Cash Funds \$0.00
 Special Revenue \$0.00
 Other (Identify) \$0.00

Total \$0.00

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

Current Fiscal Year

General Revenue \$0.00
 Federal Funds \$0.00
 Cash Funds \$0.00
 Special Revenue \$0.00
 Other (Identify) \$0.00

Total \$0.00

Next Fiscal Year

General Revenue \$0.00
 Federal Funds \$0.00
 Cash Funds \$0.00
 Special Revenue \$0.00
 Other (Identify) \$0.00

Total \$0.00

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

Current Fiscal Year

\$ 0.00

Next Fiscal Year

\$ 0.00

Implementing the revised federal rules and clarification/correction of various sections of this rule is not expected to cause an increase in costs to private entities because permittees were expected to comply with these requirements prior to incorporation. Implementing the revised state rule should result in reduced costs to nonmunicipal domestic sewage treatment works permittees. Changes to the general permit process are expected to reduce costs to facilities.

6. What is the total estimated cost by fiscal year to a state, county, or 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

\$ 0.00

Next Fiscal Year

\$ 0.00

There is no additional 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.



DIVISION OF ENVIRONMENTAL QUALITY

Sarah Huckabee Sanders
GOVERNOR

Shane E. Khoury
SECRETARY

Notice of Proposed Rule Changes, Public Hearing, and Comment Period

The Division of Environmental Quality (DEQ) has proposed amendments to Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 6: “Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)” pursuant to Arkansas Code Annotated § 8-1-203(b)(1)(A) and Arkansas Code Annotated §8-4-202(a). Oral and written comments by stakeholders and the public will be received and made a part of the record during the public comment period.

Pursuant to APC&EC Rule 8, DEQ by this notice solicits comments of any interested party to the proposed rule amendments by submitting comments in writing on or before the end of the public comment period, which is September 5, 2024. All comments should be sent to Carol Booth at the address below.

Full and complete copies of the proposed changes to Regulation 6 are available for inspection and review after making an appointment during regular business hours at the DEQ headquarters building, 5301 Northshore Drive, North Little Rock, AR 72118. The proposed rule changes are also available at DEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy, Stuttgart, Texarkana, and West Memphis; and in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway.

A public hearing will be held on August 26, 2024, beginning at 2:00 p.m., Central Time, to accept comments on the proposed amendments to Regulation 6, “Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES).” The hearing will be held in the Commission Room at the Department of Energy and Environment headquarters building at 5301 Northshore Drive, North Little Rock, AR 72118. The public hearing may be viewed via live broadcast on the E&E YouTube channel at https://www.youtube.com/channel/UCMr_txISHivnxRjg3dmOZ0A. If the hearing is postponed and rescheduled, a new legal notice will be published to announce the details of the new hearing

date.

Oral and written comments regarding the rule amendments will be accepted at the hearing, but written comments are preferred in the interest of accuracy. In addition, written and electronic mail comments will be considered if received no later than 4:30 p.m., Central Time, September 5, 2024. Written comments should be delivered or mailed to: Carol Booth, Department of Energy and Environment, 5301 Northshore Drive, North Little Rock, AR 72118. Submit electronic comments on the proposed rule amendments: comment@adeq.state.ar.us.

The proposed amendment to Regulation 6, “Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)” include:

- **Incorporation of Updates to Federal Regulations.** Amendments to Regulation 6.104 to incorporate changes made to federal regulations;
- **Incorporation of Updates to Arkansas Law.** Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910 of 2019, Act 441 of 2021, and Act 46 of 2023, were enacted by the Arkansas General Assembly and require revisions to Regulation 6;
- **Amendments to Provide Clarification and Minor Corrections.** Corrections to the rule, including adding necessary definitions and corrections to be consistent with other state rules;
- **Amendments to Chapter 6.** To amend Chapter 6 to be consistent with the Department of Agriculture’s rule for Liquid Animal Waste Management Systems; and
- **Stylistic and Formatting Corrections.** To make minor, non-substantive stylistic and formatting corrections throughout the regulation.

A complete listing of the proposed changes to Regulation 6 can be found on the “Draft Rules” page of the DEQ’s website: https://www.adeq.state.ar.us/regs/draft_regs.aspx under APC&EC Docket No. 24-003-R.

The deadline for submitting written comments on the proposed rule revisions is 4:30 p.m., Central Time, September 5, 2024.

Published August 3rd and 4th, 2024.

Bailey Taylor, Interim Chief Administrator of Environment,
Department of Energy and Environment



ARKANSAS

ENERGY & ENVIRONMENT

Sarah Huckabee Sanders
GOVERNOR

Shane E. Khoury
SECRETARY

10/17/2024

Bureau of Legal Research
Legal Division
One Capitol Mall, 5th Floor
Little Rock, AR 72201

Sent via email to miller-ricer@blr.arkansas.gov

Re: Statement that APC&EC Rule 6 cannot wait to be heard

To whom it may concern:

By email of October 17, 2024, the Department of Energy and Environment requested that the amendment of APC&EC Rule 6 be reviewed by the House and Senate Public Health, Welfare and Labor Committees on October 28, 2024, and reviewed and approved by the Administrative Rules Subcommittee of the Legislative Council on November 14, 2024. Pursuant to the Rules of the Administrative Rules Subcommittee, the deadline for this request was the 15th of the month. The Department of Energy and Environment submits that this rule cannot wait to be heard and asks that the rules be suspended to allow APC&EC Rule 6 to be placed on the agendas.

This request is made in accordance with a request from a member of the Legislature for the Department of Energy & Environment to have the proposed rule ready for review at the Arkansas Legislative Council's November meeting and would allow the rule to be reviewed at the same time as a related rule from the Department of Agriculture. Expediting review of this rule is beneficial to the regulated community because it would provide clarity on pending permitting matters. If the rule is not reviewed until the December meeting of ALC, any concerns raised at that time may not be resolved until after the upcoming regular session.

Sincerely,

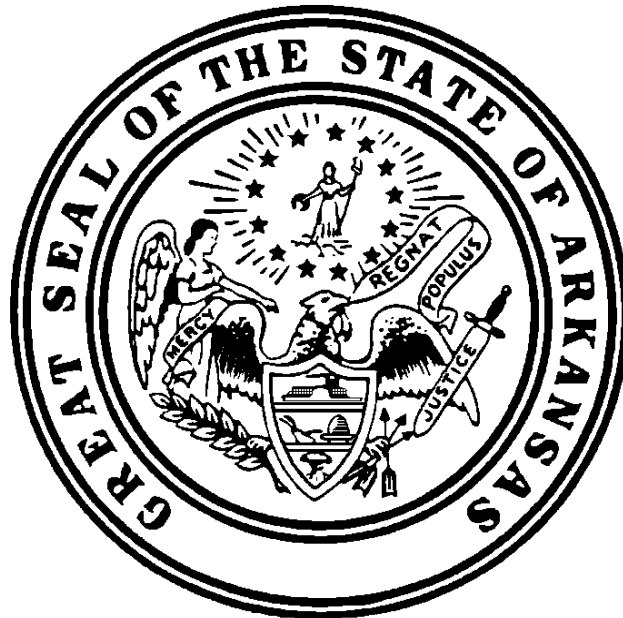
A handwritten signature in blue ink that reads "Kesia Morrison".

Kesia Morrison
Chief Counsel
Department of Energy & Environment

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

~~REGULATION~~ RULE NO. 6

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



INITIAL MARK-UP DRAFT

Submitted to the Pollution Control and Ecology Commission
in July, 2024

EXHIBIT A

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CHAPTER ONE 1: GENERAL PROVISIONS

Reg-Rule 6.101 Adoption

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

Reg-Rule 6.102 Purpose

~~It is the~~ The purpose of this ~~regulation~~rule is to adopt ~~regulations~~rules necessary to qualify the State of Arkansas to receive authorization to implement the State water pollution control permitting program, in lieu of the federal ~~National Pollutant Discharge Elimination System~~NPDES program, pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* ~~In order to~~ To receive ~~such~~ the authorization, it is necessary for the ~~Arkansas Department~~Division of Environmental Quality to have ~~regulations~~rules as stringent as the federal program administered by the United States Environmental Protection Agency.

Reg-Rule 6.103 Definitions

- (A) The definitions set forth in 40 C.F.R. §§ 122.2 and 124.2 are all adopted herein by reference in Reg-Rule 6.104.
- (B) In addition, the following definitions also apply to this ~~Regulation~~rule:

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

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

“Approved Publicly Owned Treatment Works Pretreatment Program” or “Pretreatment Program” means a program administered by a Publicly Owned Treatment Work that meets the criteria established in 40 C.F.R. §§ 403.8 and 403.9 and that has been approved by the Director in accordance with 40 C.F.R. § 403.11.

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

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

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

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

“Concentrated Animal Feeding Operation” or (“CAFO)” means an AFO that is defined as a Large CAFO or as a Medium CAFO pursuant to 40 C.F.R. §_122.23, or that is designated as a CAFO in accordance with 40 C.F.R. §_122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

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

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

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

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

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

“General Permit” means a permit issued by the Division to a category of qualifying sources in lieu of individual permits for every source.

“Indirect Discharge” means the introduction of pollutants into a Publicly Owned Treatment Works from any non-domestic source regulated under section 307(b), (c), or (d) of the Clean Water Act.

“Industrial User” or “User” means a source of Indirect Discharge.

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

demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

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

“Non-domestic Wastewater” means any wastewater that does not meet the definition of domestic wastewater.

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

“National Pollutant Discharge Elimination System” or “NPDES” means the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 318, 402, and 405 of the Clean Water Act.

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

“Pesticide” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 201(w) of the FFDCFA, 21 U.S.C. § 321(w), that has been determined by the Secretary of United States Department of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of the FFDCFA, 21 U.S.C. § 321(x), bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the FFDCFA, 21 U.S.C. § 321. For purposes of the preceding sentence, the term “critical device” includes any device introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device that contacts intact mucous membranes but ~~which~~ that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body, FIFRA Section 2(u), 7 U.S.C. § 136(u). The term “pesticide” applies to

insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA), 7 U.S.C. § 136.

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

“Pesticide Residue” ~~includes~~includes that portion of a pesticide application that is discharged from a point source to ~~Waters of the State~~ waters of the state and no longer provides pesticidal benefits but ~~which~~ that may impact non-target species. It may include the pesticide and ~~degradates~~degradents of the pesticide.

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

“Publicly Owned Treatment Works” or “POTW” means a treatment works, owned by a State or municipality, as defined by ~~section~~Section 212 of the Clean Water Act.

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

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

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

“Ten States Standards” mean the latest edition of the “Recommended Standards for Wastewater Facilities” or “Recommended Standards for Water Works” published by Health Research, Inc., Health Education Services Division.

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

Reg. Rule 6.104 Incorporation of Federal Regulations

- (A) The following regulations promulgated by the U.S. Environmental Protection Agency are hereby adopted as provisions of this ~~Regulation~~rule as though set forth herein line for line and word for word of the most current version of the Code of Federal Regulations with the exception that, and unless the context otherwise dictates, all references therein to “Administrator,” “Regional Administrator,” “Director,” or “State Director” shall be considered references to the “Director of the ~~Arkansas Department~~Division of Environmental Quality,”; and all references to the “U.S. Environmental Protection Agency” or “EPA” shall be considered references to the “~~Arkansas Department~~Division of Environmental Quality”; and all references elsewhere in this ~~Regulation~~rule to any of the following regulations shall constitute a reference to the regulation as herein adopted; and provided that the effective date of provisions adopted herein by reference as provisions of this ~~Regulation~~Rule shall be the date ~~such~~ when the provisions are specified as being effective by the Commission in its rulemaking and the effective date of the federal regulations adopted herein shall have no bearing on the effective date of any provisions of this ~~regulation~~rule:

Portions of Title 40 of the Code of Federal Regulations adopted verbatim:

- (1) Part 116;
- (2) Part 117;
- (3) Subparts A, B, C, and D of Part 122 with the following exceptions: §§ 122.6(a) ~~(for analogous provision, see Reg. 7)~~; 122.7(a); 122.21(l); 122.29(c) and (d); and 122.49;
- (4) The following sections, only, of Part 123: §§ 123.25(b), 123.26(d), 123.27(d), 123.41(a), and 123.62(e);
- (5) The following sections, only, of Part 124: §§ 124.2; 124.3(a); 124.5(a), (c), (d), and (f); 124.6(a), (c), (d), and (e); 124.7; 124.8; 124.10(a)(1)(ii), (iii), and (v); 124.10(b), (c), (d), and (e); 124.11; 124.12(a), (b), (c), and (d); 124.13; 124.14; 124.17(a) and (c); 124.19; 124.56; 124.57(a); 124.59; and 124.62;
- (6) Subparts A, B, C, D, H, I, J, K, and L, only, of Part 125;
- (7) Part 127;
- ~~(7)~~(8) Part 129;
- ~~(8)~~(9) Part 133;
- ~~(9)~~(10) Part 136;
- ~~(10)~~(11) Part 257; and

~~(11)~~(12) Parts 400 through 471 with the following exceptions: § 401.17.

All as adopted as final rules (including “interim final rules” and “technical amendments”) by the United States Environmental Protection Agency on or before ~~August 24, 2012~~ January 1, 2024.

- (B) The Director, within 180 days after the date of promulgation of any new or revised federal ~~National Pollutant Discharge Elimination System~~ NPDES regulations, shall conduct rulemaking procedures with reference to this ~~Regulation~~ rule necessary to maintain a state ~~National Pollutant Discharge Elimination System~~ NPDES program as stringent as the federal program. ~~Such~~ The new or revised federal regulations, upon their publication as final rules by Environmental Protection Agency, shall constitute minimum guidelines to the Director in formulating rulemaking proposals to this ~~regulation~~ rule but shall not be construed to limit or interfere with the adoption of provisions more stringent than federal regulations.

Reg-Rule 6.105 Confidentiality

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

- (A) Any information submitted to the ~~Department~~ Division may be claimed as confidential by the submitter. Any ~~such~~ claim must be asserted at the time of submission in accordance with the provisions of this section. If no claim is made at the time of submission, the ~~Department~~ Division may make the information available to the public without further notice. If a claim is asserted, the Director will make a determination of whether the material, if made public, would divulge trade secrets entitled to protection.
- (B) It shall be the responsibility of the person claiming any information as confidential under the provisions of subsection (A) above to clearly ~~make~~ mark each page containing such information with the words “CONFIDENTIAL” and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection as a trade secret.
- (C) Any document submitted to the ~~Department~~ Division ~~which that~~ contains information for which the claim of confidential information is made shall be submitted in a sealed envelope marked “CONFIDENTIAL” and addressed to the Director. The document shall be submitted in two separate parts. The first part shall contain all information ~~which that~~ is not deemed by the submitter as confidential and shall include appropriate cross references to the second part ~~which that~~ contains data, words, phrases, paragraphs or pages, and appropriate affidavits containing or relating to information ~~which that~~ is claimed to be confidential.
- (D) No information shall be protected as confidential information by the Director unless it is submitted to ~~him/her~~ the Director in accordance with the provisions of subsections (B) and (C) above. No information shall be afforded protection as confidential information unless the Director finds that such protection is necessary to protect trade secrets and that such protection will not hide from public view the characteristics of waste materials and probable effects of the introduction of such waste or by-products into the environment. The person

who submits information claimed as confidential shall receive written notice from the Director as to whether the information has been accepted as confidential or not.

- (E) All information ~~which~~ that the Director determines is entitled to protection shall be marked with the term “ACCEPTED” and shall be protected as confidential information. Whenever the Director finds that the submitted information ~~which has been submitted~~ does not meet the criteria of subsection (D) above, ~~he~~ the Director shall promptly notify the person submitting ~~such~~ the information of his/ or her finding and shall give that person reasonable opportunity to further justify his/ or her contention that the information deserves protection as a trade secret or to further limit the scope of information for which the request for protection is made. If ~~said~~ the person fails to satisfactorily demonstrate to the Director that ~~such~~ the information in the form presented to him/ or her meets the criteria of subsection (D) above, the Director shall mark the information “REJECTED” and promptly return ~~such~~ the information to the person submitting ~~such~~ the information. ~~Such~~ The person shall have thirty (30) days to resubmit the information in acceptable form or request review of the decision of the Director in accordance with Chapter 6 of Arkansas Pollution Control and Ecology Commission ~~Regulation~~Rule No. 8.
- (F) All information which is accepted by the Director as confidential shall be stored in locked filing cabinets and only those personnel of the ~~Department~~Division specifically designated by the Director shall have access to the information contained therein. The Director shall not designate any persons to have access to confidential information unless the person requires ~~such~~ the access ~~in order to carry out~~ perform his/ or her responsibilities and duties. No person shall disclose any confidential information except in accordance with the provisions of this section.
- (G) National Pollutant Discharge Elimination System permits and permit applications and all information contained in them are required by 40 C.F.R. § 122.7 to be publicly available. No claim of confidentiality will be accepted hereunder for ~~such~~ this material. Consequently, applications containing confidential information will be returned to the applicant.

Reg. Rule 6.106 Violations

Violation of any of the following prohibitions shall be considered a violation of this ~~regulation~~rule and shall be subject to the penalties provided in the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, specifically Ark. Code Ann. § 8-4-103:

- (A) No person shall construct, install, alter, modify, or operate any disposal system or any part thereof or any extension or addition thereto that will discharge into any of the waters of the State state without first having obtained a permit from the ~~Department~~Division for ~~such~~ the activity.
- (B) No person shall increase in volume or strength any sewage, industrial waste, or other wastes in excess of the permitted discharges specified under any existing permit.
- (C) No person shall construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which

would result in discharge of any wastes into the waters of the ~~State~~ state or would otherwise alter the physical, chemical, or biological properties of any waters of the ~~State~~ state in any manner not already lawfully authorized.

- (D) No person shall construct or use any new outlet for the discharge of any wastes into the waters of the ~~State~~ state without ~~having first obtained~~ first obtaining a permit for ~~such~~ the activity from the ~~Department~~ Division.
- (E) No person shall discharge sewage, industrial wastes, or other wastes into any of the waters of the ~~State~~ state without ~~having first obtained~~ first obtaining a permit for ~~such~~ the activity from the ~~Department~~ Division.
- (F) No person shall violate any other provision of this ~~regulation~~ rule or the Arkansas Water and Air Pollution Control Act.

CHAPTER TWO 2: PERMIT PROCEDURES

Reg-Rule 6.201 Status and Continuation of Permits

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

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

Reg-Rule 6.202 Application Requirements for Construction and Operation of Wastewater Facilities

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

The following exceptions to 10 States Standards, as provisions adopted through Arkansas Pollution Control and Ecology Commission Minute Order 80-21, are allowed:

Combined Sewer Interceptors

- Combined sewers will not be approved

(1) Biological Treatment

Waste Sludge Facilities

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

(2) Disinfection

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

(3) Wastewater Treatment Ponds (Lagoons)

Basis of Design

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

Multiple Units

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

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

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

(4) Control Structures and Interconnecting Piping

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

(5) Appendix – Ground Disposal of Wastewaters

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

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

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

Reg-Rule 6.203 Permitting Requirements for Stormwater Discharges Associated with a Small Construction Site

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

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

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

Reg. Rule 6.204 Permitting Pretreatment Requirements for Industrial Users of Publicly Owned Treatment Works (POTWs)

- (A) An industrial user may not introduce into a POTW any pollutants that will pass through the treatment system, cause interference with the operation, or inhibit or disrupt the process, use, or disposal of sludge of the POTW as defined by 40 C.F.R. § 403.3. This prohibition applies to each user introducing pollutants into a POTW whether or not the user is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.
- (B) An industrial user discharging or proposing to discharge to a POTW with an approved POTW pretreatment program must comply with the more stringent of either the pretreatment standards in 40 C.F.R. §§ 400–471 or an approved POTW pretreatment program’s local limits and Pretreatment Standards.
- (C) An industrial user discharging or proposing to discharge to a POTW without an approved POTW pretreatment program must comply with the more stringent of either the Federal Pretreatment Standards in applicable Categories (Effluent Guidelines) located in 40 C.F.R.

§§ 400–471 or with conditions of pretreatment in the POTW’s NPDES permit or local ordinances.

(D) An industrial user discharging to a POTW must comply with the federal pretreatment reporting requirements located in 40 C.F.R § 403.12.

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

~~(1) The industrial user is discharging into a receiving publicly owned treatment works with an approved local pretreatment program; or~~

~~(2) The industrial user is not subject to categorical pretreatment standards set forth in 40 C.F.R. Parts 400-471 (Subchapter N) and not likely to introduce pollutants to the publicly owned treatment works which would pass through or interfere with the treatment works or which would contaminate the sewage sludge of the treatment works.~~

~~An “approved pretreatment program” means a program approved by either the Environmental Protection Agency pursuant to 40 C.F.R. § 403.11 or the Department pursuant to 40 C.F.R. § 403.11, as incorporated in Reg. 6.102. The determination of which industrial users are likely to introduce pollutants which would pass through or interfere with a publicly owned treatment works or which are likely to contaminate sewage sludge from the treatment works shall be made by the Director subject to the provisions of Arkansas Pollution Control and Ecology Commission Regulation No. 8 and Ark. Code Ann. § 8-4-216.~~

~~(B) With the exception of industrial users qualifying for a permit by rule pursuant to Reg.6.204(A) above, all industrial users discharging or proposing to discharge to publicly owned treatment work shall obtain a permit hereunder in accordance with Reg.6.202 prior to construction or modification of the disposal system, and a permit prior to discharge in accordance with the requirements incorporated in Reg.6.104 and the other applicable provisions of this regulation.~~

Reg-Rule 6.205 Trust Fund Permitting Requirements ~~Financial Assurance Permitting Requirements~~

The Division shall not issue, modify, renew, or transfer a NPDES permit for a non-municipal domestic sewage treatment works without the permit applicant first complying with Ark. Code Ann. § 8-4-203(b).

~~(A) The Department shall not issue, modify, renew, or transfer a National Pollutant Discharge Elimination System permit for a non municipal domestic sewage treatment works without the permit applicant first demonstrating to the Department its financial ability to~~

~~cover the estimated costs of operating and maintaining the non-municipal domestic sewage treatment works for a minimum period of five (5) years.~~

- ~~(B) State or federal facilities, schools, universities, and colleges are specifically exempted from the requirements of this section.~~
- ~~(C) Each permit application for a non-municipal domestic sewage treatment works submitted under this section shall be accompanied by a cost estimate for a third party to operate and maintain the non-municipal domestic sewage treatment works each year for a period of five (5) years.~~
- ~~(D) A commercial nonmunicipal domestic sewage treatment works that does not include residential services is not required to post financial assurance.~~
- ~~(E) The department shall not issue or, modify, renew, or transfer a National Pollutant Discharge Elimination System permit for a non-municipal domestic sewage treatment works that proposes to use a new technology that, in the discretion of the Department, cannot be verified to meet permit requirements without the applicant first demonstrating its financial ability to replace the new technology with a non-municipal domestic sewage treatment works that uses technology acceptable to the Department.~~
- ~~(F) Each permit application for a non-municipal domestic sewage treatment works that proposes to use a new technology that, in the discretion of the Department, cannot be verified to meet permit requirements shall be accompanied by a cost estimate to replace the proposed system with a non-municipal domestic sewage treatment works that uses technology acceptable to the Department.~~
- ~~(G) The applicant's financial ability to operate and maintain the non-municipal domestic sewage treatment works for a period of five (5) years shall be demonstrated to the Department by:
 - ~~(1) Obtaining insurance that specifically covers operation and maintenance costs;~~
 - ~~(2) Obtaining a letter of credit;~~
 - ~~(3) Obtaining a surety bond;~~
 - ~~(4) Obtaining a trust fund or an escrow account; or~~
 - ~~(5) Using a combination of insurance, letter of credit, surety bond, trust fund, or escrow account.~~~~
- ~~(H) The financial assurance required under this section shall:
 - ~~(1) Be posted to the benefit of the department;~~
 - ~~(2) Provide that the financial instrument underlying the financial assurance cannot be cancelled without ninety (90) days prior written notice addressed to the department's~~~~

~~legal division chief as evidenced by a signed notice sent by certified mail with a return receipt requested; and~~

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

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

~~(b) Take possession of the funds guaranteed by the financial instrument underlying the financial assurance.~~

~~(I) (1) The owner or operator of a nonmunicipal domestic sewage treatment works shall establish and maintain financial assurance that demonstrates to the department's satisfaction the applicant's financial ability to ensure adequate operation and maintenance costs as required under this section.~~

~~(2) Financial assurance shall provide that the department is the obligee or payee of the financial instrument underlying the financial assurance and shall otherwise comply with the regulations promulgated under this subchapter.~~

~~(3) The amount of financial assurance required under this subsection shall be equal to or greater than the detailed cost estimate for a third party to maintain and operate the permitted nonmunicipal domestic sewage treatment works in accordance with the permit and applicable regulations.~~

~~(4) The owner or operator shall provide continuous financial assurance for the operation and maintenance costs of a nonmunicipal domestic sewage treatment works until the department:~~

~~(a) Releases the owner or operator from the financial assurance requirements under this section and the permit;~~

~~(b) Approves the closure of the nonmunicipal domestic sewage treatment works;
or~~

~~(c) Approves the transfer of a permit and the replacement financial assurance under subsection (O) of this section.~~

~~(J) (1) Operation and maintenance costs shall be updated with each permit renewal to account for inflation and the condition of the nonmunicipal domestic sewage treatment works.~~

~~(2) The updated operation and maintenance costs based on the condition of the nonmunicipal domestic sewage treatment works required under this section shall be provided in a report certified by a professional engineer registered in the State of Arkansas and submitted to the department with each permit renewal.~~

- ~~(K) — (1) If an owner or operator establishes a trust as financial assurance, the owner or operator shall either fully fund the trust or make payments into a trust fund.~~
- ~~(2) — (a) If the owner or operator elects to make payments into a trust fund, the payments shall be made in equal monthly installments by the owner or operator.~~
- ~~(b) The trust fund shall be fully funded within five (5) years of the issuance of the permit unless otherwise approved by the Director of the Arkansas Department of Environmental Quality.~~
- ~~(L) — (1) The director may order that any financial assurance filed pursuant to this section be forfeited to the department if the director determines that the owner or operator has not adequately operated, maintained, or completed closure of the nonmunicipal domestic sewage treatment works.~~
- ~~(2) Following the determination of the director under this section, the department shall commence proceedings to collect on the financial assurance on which the department is the obligee or payee.~~
- ~~(3) For each permit, the financial instrument underlying the financial assurance shall be renewed or an alternate financial instrument shall be issued to maintain continuous financial assurance.~~
- ~~(4) If documentation of the renewed financial assurance or alternate financial assurance is not received by the department at least sixty (60) days before the expiration date of the existing financial instrument underlying the financial assurance, the department shall:~~
- ~~(a) Take possession of the funds guaranteed by the financial instrument underlying the financial assurance; and~~
- ~~(b) — (i) Initiate procedures to suspend or revoke the permit under which the nonmunicipal domestic sewage treatment works is operated.~~
- ~~(ii) A permit shall remain suspended until financial assurance is provided to the department in accordance with this subsection.~~
- ~~(M) — The permittee is responsible for ensuring that documentation of the financial assurance and all renewals of financial instruments underlying the financial assurance are received by the department by the due date.~~
- ~~(N) — The department shall deposit all forfeited funds into the Water Performance Bond Fund.~~
- ~~(O) — (1) — (a) Existing responsibilities and financial instruments underlying the financial assurance remain in full force and effect, and a permit shall not be transferred until the proposed new owner or operator has filed and the department has approved the required replacement financial assurance in accordance with the requirements of this section and applicable regulations.~~

~~(b) The department shall approve or deny the replacement financial assurance offered under subdivision (O)(1)(a) of this section within thirty (30) days of receipt of the completed permit transfer request.~~

~~(2) The department shall release to the former owner, operator, or issuing institution, if appropriate, the financial assurance that the former owner or operator filed if the department does not:~~

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

~~(b) Deny the permit transfer.~~

~~(3) A completed permit transfer request shall be submitted on the forms required by the department and shall include the following:—~~

~~(a) A disclosure statement, unless the nonmunicipal domestic sewage treatment works is exempt under Ark. Code Ann. § 8-1-106 or an Arkansas Pollution Control and Ecology Commission rule; and~~

~~(b) Acceptable replacement financial assurance.~~

~~(4) The new owner or operator is responsible for ensuring that the financial assurance meets all applicable requirements.~~

~~(P) The Department may reduce or waive the amount of the required financial assurance if the permit applicant can demonstrate to the Department's satisfaction that:~~

~~(1) For a renewal permit, during the five (5) years preceding the application for a renewal permit, the nonmunicipal domestic sewage treatment works has:~~

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

~~(b) 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:~~

~~(i) All discharge monitoring reports;~~

~~(ii) 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;~~

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

~~(iv) 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;~~

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

~~(d) (i) Remained financially solvent, which shall be demonstrated by an independent certified public accountant's report on the examination of the owner's or operator's independently audited financial statement.~~

~~(ii) The examination of financial statements under subdivision (P)(1)(d)(i) above 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~~

~~(e) 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~~

~~(2) For a new permit, that the reduction or waiver is necessary to accommodate important economic or social development in the area of the proposed nonmunicipal domestic sewage treatment works and the applicant has shown a history of financial responsibility and compliance with regulatory requirements.~~

~~(Q) The Department may withdraw a reduction or waiver granted under this subsection at any time in order to protect human health or the environment.~~

~~(R) The Department shall not directly operate nor be responsible for the operation of a nonmunicipal domestic sewage treatment works.~~

Reg-Rule 6.206 Permitting Requirements for Discharges of Pesticides

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

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

(1) Mosquito and Other Flying Insect Pest Control – to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other

flying insect pests in this use category include, but are not limited to, mosquitoes and black flies.

- (2) Weed and Algae Control – to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches or irrigation canals. This use pattern is understood to include right-of-way maintenance for utilities and forest lands, as well as other applicable uses.
 - (3) Aquatic Nuisance Animal Control – to control invasive or other nuisance animals in water and at water's edge. Aquatic nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks.
 - (4) Forest Canopy Pest Control – aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.
- (B) A completed Notice of Coverage must be posted at the site or kept at the physical address of the owner or operator for automatic permit coverage prior to commencing the pesticide application;
- (C) Pesticides must be handled, used, or applied in accordance with state laws and regulations rules and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, which include all instructions on the pesticide label; and
- (D) ~~Operators~~An owner or operator must comply with all requirements of the ~~National Pollutant Discharge Elimination System~~NPDES General Permit for Pesticide Discharges Located within the State of Arkansas.

Reg. Rule 6.207 Public Notice Requirements of ~~Notice of Intent~~ for Concentrated Animal Feeding Operation (CAFO) ~~General Permit~~Permits

Public notification requirements for any NPDES permit application for a notice of intent filed with the Department for a general permit for a proposed Concentrated Animal Feeding Operation (CAFO) in Arkansas (ARG59000) are as follows:

- (A) The applicant shall provide written notice by letter, certified mail, return receipt requested, to the following people:
- (1) Property owners adjacent to the CAFO production site and property owners adjacent to manure spreading sites;
 - (2) The County Judge of the county where the CAFO production site and any manure spreading site is located;
 - (3) Mayors of incorporated municipalities within ten (10) miles of the CAFO production site; and

- (4) The superintendent of the school district that serves the CAFO production site.
- (B) It shall be the applicant's responsibility to retain return receipts for the active life of the permit.
- (C) ADEQ shall provide the contents of the written public notice distributed by the applicant in a form letter made available to the applicant.
- (D) The form letter shall include, at a minimum, the following:
- (1) Notice of the proposed CAFO, including the address of the production site, and the name of the applicant and farm;
 - (2) An explanation of the thirty-day public comment period and the right to comment;
 - (3) The telephone number of a person to contact at ADEQ with questions;
 - (4) Directions to ADEQ's website, including directions regarding how an interested party may submit his or her name to receive electronic ~~notification of~~ notices of intent for coverage under the CAFO general notifications regarding the sought-after CAFO permit; and
 - (5) All letters shall include the certified mail, return receipt number.
- (E) The applicant shall publish notice one (1) time of the proposed CAFO in the paper of the largest circulation in the county of the CAFO production site. ADEQ shall determine the form of that notice, and determine the proper paper for publication.
- (F) The applicant shall post a sign measuring at least two-feet-by-three-feet (2' x 3') on a public road nearest the entrance to the CAFO production site. The sign shall be clearly legible and conspicuous in such a manner that passersby can clearly see from the public road the applicant's requirements set forth in this section. - will prescribe the sign's minimum requirements which, at a minimum, will contain the same information as that which ADEQ requires the applicant to publish in the paper. The sign shall be posted prior to any submittals to ADEQ ~~submittal of an NOI~~ and shall remain in place until thirty (30) days following ADEQ approval.
- (G) Applicants for a CAFO ~~general~~ NPDES permit must certify compliance with the public notification requirements in subsections (A)—(F) of this section ~~when submitting the Notice of Intent (NOI) and Nutrient Management Plan (NMP) to ADEQ.~~

CHAPTER THREE 3: LOSING STREAM SEGMENTS

Reg. Rule 6.301 Effluent Discharges to Losing Stream Segments

- (A) In addition to all applicable effluent standards and conditions required by State and federal laws, rules, and regulations, wastewater discharged to losing stream segments shall comply with subsections (B) through (E) below.
- (B) For purposes of this ~~regulation~~rule, a “losing stream segment” is defined as a stream segment ~~which, that~~ beginning at the point of existing or proposed discharge and extending two (2) miles downstream, ~~contribute~~ loses thirty percent (30%) or more of its flow at a 7Q10 flow or one (1) ~~cfs~~ cubic feet per second (cfs), whichever is greater, through natural processes such as permeable subsoil or cavernous bedrock into an aquifer.
- (C) Effluent Limitations for Discharges into Losing Stream Segments:
- (1) Discharges to losing stream segments shall be permitted only after other alternatives including (a) land application of wastewater, (b) discharge to non-losing stream segment, and (c) connection to a regional wastewater treatment facility, have been evaluated and determined to be unacceptable for environmental and/or economic reasons.
- (2) If the ~~Department~~Division agrees to allow a discharge to a losing stream segment, the permit will be written using the limitations described below, as a minimum. Discharges from wastewater treatment facilities, which receive primarily domestic waste, or from publicly owned treatment works shall undergo treatment sufficient to ~~conform to~~ meet the following limitations:
- (a) Carbonaceous Biochemical Oxygen Demand (CBOD₅) ~~CBOD₅ or Biochemical Oxygen Demand (BOD₅)~~ equal to or less than a monthly average of ~~ten (10)~~ mg/4L and a seven (7) day average of ~~fifteen (15)~~ mg/4L;
- (b) Total Suspended Solids (TSS) equal to or less than a monthly average of ~~fifteen (15)~~ mg/4L and a seven (7) day average of ~~twenty three (23)~~ mg/4L;
- (c) Provisions of 40 C.F.R. § 133.102(c);
- (d) The fecal coliform content of discharges shall not exceed a monthly geometric mean average of 200 colonies per 100 milliliters and a weekly geometric mean average of 400 colonies per 100 milliliters. However, at no time shall the fecal coliform content exceed a geometric mean of 200 colonies per 100 milliliters in any water defined as an Extraordinary Resource Water or Natural and Scenic Waterway;

- (e) Nitrate plus nitrite nitrogen levels shall not exceed ~~ten~~(10) mg/4L;
 - (f) Ammonia, NH₃-N, (~~as Nitrogen~~) limitations shall be included as necessary to prevent ammonia toxicity in-stream ~~and/or~~ and to maintain instream dissolved oxygen; and
 - (g) Other parameters as deemed appropriate by the ~~Department~~Division.
- (D) Implementation of Losing Stream Regulation Rule
- (1) Existing discharges. At the time of permit renewal, or when deemed necessary by the ~~Department~~Division, ~~National Pollutant Discharge Elimination System~~NPDES permittees discharging to stream segments which may be losing stream segments, as defined above, shall submit documentation as part of the renewal permit application, showing that the segment is or is not a losing stream segment. If the discharge is into a losing stream segment, then the facility must be capable of meeting the effluent limitations described above, as a minimum.
 - (2) New discharges. New facilities proposing to discharge to a stream which may be a losing stream segment shall submit documentation as part of the initial ~~National Pollutant Discharge Elimination System~~NPDES permit application demonstrating that the segment is or is not a losing stream segment. This documentation includes, but is not limited to, stream studies or other data, showing the stream segment does or does not meet the criteria in Reg-Rule 6.301 (B) above. If the proposed discharge is into a losing stream segment, then the facility must be designed and operated to meet the effluent limitations described above, as a minimum.
 - (3) For facilities in both Reg-Rule 6.301(D)(1) and (2) above, stream studies for determining classification as a losing stream segment must be conducted during the critical low flow season, when stream flow is at least 1 cfs and representative of seasonal flow. Effluent flow, when existing, can be included in the minimum 1 cfs stream flow.
 - (4) The ~~Department~~Division shall determine the requirement for, and the content and level of detail of, stream studies, based on local topography, geological data, file data, other dischargers in area, stream flow, etc.
- (E) Review of Applications by Arkansas Department of Health for Discharges of Domestic Effluents.

Nothing in this ~~regulation~~rule limits the authority of the Arkansas Department of Health to include additional requirements as a prerequisite to

its approval of the treatment/disposal system.

CHAPTER FOUR 4: WASTEWATER DISCHARGES

Reg. Rule 6.401 Determination of Domestic Wastewater Effluent Limitations

- (A) Small discharges (less than or equal to 0.05 MGD)
- (1) The most stringent effluent limitations for oxygen demanding flows from small dischargers will be 10/15 mg/L (~~CBOD₅~~/ TSS), with nutrient removal where appropriate, which is considered as Best Conventional Treatment for dischargers in this flow range.
 - (2) On a case-by-case basis, less stringent effluent limitations may be permitted if stream modeling shows that water quality standards will be maintained.
 - (3) In all cases, applicable water quality standards shall be met.
- (B) Outstanding State Resource Waters
- Outstanding State Resource Waters include all water bodies designated in the Arkansas Water Quality Standards, Arkansas Pollution Control and Ecology Commission ~~Regulation~~ Rule No. 2, as Extraordinary Resource Waters, Natural and Scenic Waterways, or Ecologically Sensitive Waterbodies.
- (1) For Extraordinary Resource Waters and Natural and Scenic Waterways: In no event shall the effluent limitations be greater than 10/15 mg/L (~~CBOD₅/Total Suspended Solids (TSS)~~).
 - (2) For Ecologically Sensitive Waterbodies: Limitations shall be determined on a case-by-case basis to protect the specific species in the waterbody.
- (C) Reservoirs/Domestic Water Supply
- (1) In all cases, applicable water quality standards shall be met.
 - (2) All oxygen demanding effluent flows ~~which~~ that are discharged into any lake shall have effluent limitations of 10/15 mg/L (~~CBOD₅/TSS~~ ~~Total Suspended Solids~~) with nutrient removal as appropriate.
- (D) Discharge of Domestic Wastewater to the Illinois River Basin
- (1) No permit for discharge of domestic wastewater into the Illinois River or its tributaries by the cities of Fayetteville, Springdale, Rogers, and Siloam Springs, shall authorize more than 1.0 mg/L Total Phosphorus based on a monthly average.
 - (2) Compliance with (D)(1) of this section shall be attained as soon as feasible, but no

later than January 1, 2012.

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

Reg. Rule 6.402 Discharge of Treated Wastewater to the Ouachita River

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

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

- (D) At the ~~director's~~Director's discretion, the permit may include concentration limits in addition to the mass limit(s).

CHAPTER ~~FIVE~~ 5: RESERVED

CHAPTER SIX 6: LAKE MAUMELLE BASIN SPECIFIC WATERSHED REQUIREMENTS

Reg. Rule 6.601 Lake Maumelle Watershed Basin

All surface discharges of wastewater in the Lake Maumelle ~~Watershed Basin~~ are prohibited, with the exception of discharges permitted under the NPDES stormwater discharge program.

Reg. Rule 6.602 Buffalo National River Watershed

- (A) ~~The following definitions apply Reg. 6.602: “Buffalo National River Watershed” means the area within United States Geologic Service Hydrologic Unit Code 11010005.~~
- (1) ~~The “Buffalo National River Watershed” is the area within United States Geologic Service Hydrologic Unit Code 11010005.~~
- (2) ~~“Coverage” means a notice of coverage issued pursuant to a general permit.~~
- (B) The Director shall not issue a permit ~~or coverage pursuant to Regulation No. 6~~ this rule for a new swine CAFO in the Buffalo National River Watershed, ~~with:~~
- ~~— (1) — 750 or more swine weighing 55 pounds or more; or~~
- ~~— (2) — 3,000 or more swine weighing less than 55 pounds.~~
- (C) ~~Reg. 6.602(B)~~ This rule does not prohibit the Director from: issuing a new Rule 6 permit for a facility that holds an active Liquid Animal Waste Management Systems permit as of the effective date of this rule.
- (1) ~~Issuing a permit or coverage renewal or modification for a CAFO in the Buffalo National River Watershed with an active permit or coverage as of the effective date of this regulation; or~~
- (2) ~~Issuing a new Regulation No. 6 permit or coverage for a facility which holds an active Regulation No. 5 permit as of the effective date of this regulation.~~
- (D) A ~~permit or coverage renewal, modification, or new permit~~ or subsequent permit renewals ~~or coverage issued pursuant to Reg. Rule 6.602(C)~~ shall not increase the number of swine permitted at a facility.
- (E) ~~Five years from the effective date of this regulation the Director shall initiate rulemaking to either delete this paragraph, Reg. 6.602(E), or delete the entirety of Reg. 6.602.~~

CHAPTER SEVEN 7: ADMINISTRATIVE PROCEDURES

~~Reg.~~Rule 6.701 Penalty Policy and Administrative Procedures

Arkansas Pollution Control and Ecology Commission ~~Regulation No.~~Rule 7, Civil Penalties, and ~~Regulation No.~~Rule 8, Administrative Procedures, apply to this ~~regulation~~rule.

~~Reg.~~Rule 6.702 Severability

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

CHAPTER ~~EIGHT~~ 8: EFFECTIVE DATE

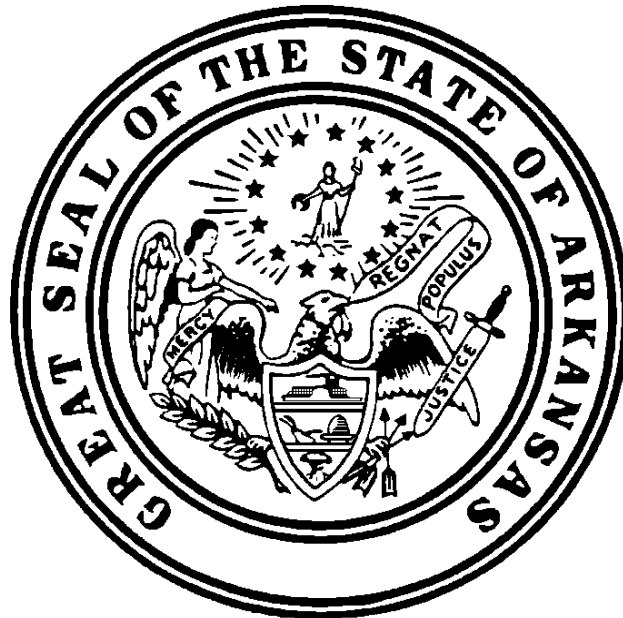
~~Reg.~~Rule 6.801 Effective Date

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

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

RULE NO. 6

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



Approved by the Arkansas Pollution Control & Ecology Commission
October 25, 2024

EXHIBIT C

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CHAPTER 1: GENERAL PROVISIONS

Rule 6.101 Adoption

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

Rule 6.102 Purpose

The purpose of this rule is to adopt rules necessary to qualify the State of Arkansas to receive authorization to implement the State water pollution control permitting program, in lieu of the federal NPDES program, pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* To receive the authorization, it is necessary for the Division of Environmental Quality to have rules as stringent as the federal program administered by the United States Environmental Protection Agency.

Rule 6.103 Definitions

- (A) The definitions set forth in 40 C.F.R. §§ 122.2 and 124.2 are all adopted herein by reference in Rule 6.104.
- (B) In addition, the following definitions also apply to this rule:

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

“Approved Publicly Owned Treatment Works Pretreatment Program” or “Pretreatment Program” means a program administered by a Publicly Owned Treatment Work that meets the criteria established in 40 C.F.R. §§ 403.8 and 403.9 and that has been approved by the Director in accordance with 40 C.F.R. § 403.11.

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

“Biological Pesticides” or “Biopesticides” includes microbial pesticides, biochemical pesticides, and plant-incorporated protectants.

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

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

“Concentrated Animal Feeding Operation” or “CAFO” means an AFO that is defined as a Large CAFO or as a Medium CAFO pursuant to 40 C.F.R. §_122.23, or that is designated as a CAFO in accordance with 40 C.F.R. §_122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

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

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

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

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

“General Permit” means a permit issued by the Division to a category of qualifying sources in lieu of individual permits for every source.

“Indirect Discharge” means the introduction of pollutants into a Publicly Owned Treatment Works from any non-domestic source regulated under section 307(b), (c), or (d) of the Clean Water Act.

“Industrial User” or “User” means a source of Indirect Discharge.

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

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

“Non-domestic Wastewater” means any wastewater that does not meet the definition of domestic wastewater.

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

“National Pollutant Discharge Elimination System” or “NPDES” means the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 318, 402, and 405 of the Clean Water Act.

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

“Pesticide” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 201(w) of the FFDCFA, 21 U.S.C. § 321(w), that has been determined by the Secretary of United States Department of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of the FFDCFA, 21 U.S.C. § 321(x), bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the FFDCFA, 21 U.S.C. § 321. For purposes of the preceding sentence, the term “critical device” includes any device introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body, FIFRA Section 2(u), 7 U.S.C. § 136(u). The term “pesticide” applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA), 7 U.S.C. § 136.

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

pests, parasitic wasps, fish, etc.)-

“Pesticide Residue” includes that portion of a pesticide application that is discharged from a point source to waters of the state and no longer provides pesticidal benefits but that may impact non-target species. It may include the pesticide and degradents of the pesticide.

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

“Publicly Owned Treatment Works” or “POTW” means a treatment works, owned by a State or municipality, as defined by Section 212 of the Clean Water Act.

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

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

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

“Ten States Standards” mean the latest edition of the “Recommended Standards for Wastewater Facilities” or “Recommended Standards for Water Works” published by Health Research, Inc., Health Education Services Division.

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

Rule 6.104 Incorporation of Federal Regulations

(A) The following regulations promulgated by the U.S. Environmental Protection Agency are hereby adopted as provisions of this Rule as though set forth herein line for line and word for word of the most current version of the Code of Federal Regulations with the exception that, and unless the context otherwise dictates, all references therein to “Administrator,” “Regional Administrator,” “Director,” or “State Director” shall be considered references to the “Director of the Division of Environmental Quality,” and all references to the “U.S. Environmental Protection Agency” or “EPA” shall be considered references to the “Division of Environmental Quality”; and all references elsewhere in this rule to any of the following regulations shall constitute a reference to the regulation as herein adopted; and provided that the effective date of provisions adopted herein by reference as provisions of this rule shall be the date when the provisions are specified as being effective by the

Commission in its rulemaking and the effective date of the federal regulations adopted herein shall have no bearing on the effective date of any provisions of this rule:

Portions of Title 40 of the Code of Federal Regulations adopted verbatim:

- (1) Part 116;
- (2) Part 117;
- (3) Subparts A, B, C, and D of Part 122 with the following exceptions: §§ 122.6(a); 122.7(a); 122.21(l); 122.29(c) and (d); and 122.49;
- (4) The following sections, only, of Part 123: §§ 123.25(b), 123.26(d), 123.27(d), 123.41(a), and 123.62(e);
- (5) The following sections, only, of Part 124: §§ 124.2; 124.3(a); 124.5(a), (c), (d), and (f); 124.6(a), (c), (d), and (e); 124.7; 124.8; 124.10(a)(1)(ii), (iii), and (v); 124.10(b), (c), (d), and (e); 124.11; 124.12(a), (b), (c), and (d); 124.13; 124.14; 124.17(a) and (c); 124.19; 124.56; 124.57(a); 124.59; and 124.62;
- (6) Subparts A, B, C, D, H, I, J, K, and L, only, of Part 125;
- (7) Part 127;
- (8) Part 129;
- (9) Part 133;
- (10) Part 136;
- (11) Part 257; and
- (12) Parts 400 through 471.

All as adopted as final rules (including “interim final rules” and “technical amendments”) by the United States Environmental Protection Agency on or before January 1, 2024.

- (B) The Director, within 180 days after the date of promulgation of any new or revised federal NPDES regulations, shall conduct rulemaking procedures with reference to this rule necessary to maintain a state NPDES program as stringent as the federal program. The new or revised federal regulations, upon their publication as final rules by Environmental Protection Agency, shall constitute minimum guidelines to the Director in formulating rulemaking proposals to this rule but shall not be construed to limit or interfere with the adoption of provisions more stringent than federal regulations.

Rule 6.105 Confidentiality

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

- (A) Any information submitted to the Division may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in accordance with the provisions of this section. If no claim is made at the time of submission, the Division may make the information available to the public without further notice. If a claim is asserted, the Director will make a determination of whether the material, if made public, would divulge trade secrets entitled to protection.
- (B) It shall be the responsibility of the person claiming any information as confidential under the provisions of subsection (A) above to clearly mark each page containing such information with the words "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection as a trade secret.
- (C) Any document submitted to the Division that contains information for which the claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document shall be submitted in two separate parts. The first part shall contain all information that is not deemed by the submitter as confidential and shall include appropriate cross references to the second part that contains data, words, phrases, paragraphs or pages, and appropriate affidavits containing or relating to information that is claimed to be confidential.
- (D) No information shall be protected as confidential information by the Director unless it is submitted to the Director in accordance with the provisions of subsections (B) and (C) above. No information shall be afforded protection as confidential information unless the Director finds that such protection is necessary to protect trade secrets and that such protection will not hide from public view the characteristics of waste materials and probable effects of the introduction of such waste or by-products into the environment. The person who submits information claimed as confidential shall receive written notice from the Director as to whether the information has been accepted as confidential or not.
- (E) All information that the Director determines is entitled to protection shall be marked with the term "ACCEPTED" and shall be protected as confidential information. Whenever the Director finds that the submitted information does not meet the criteria of subsection (D) above, the Director shall promptly notify the person submitting the information of his or her finding and shall give that person reasonable opportunity to further justify his or her contention that the information deserves protection as a trade secret or to further limit the scope of information for which the request for protection is made. If the person fails to satisfactorily demonstrate to the Director that the information in the form presented to him/ or her meets the criteria of subsection (D) above, the Director shall mark the information "REJECTED" and promptly return the information to the person submitting the information. The person shall have thirty (30) days to resubmit the information in acceptable form or request review of the decision of the Director in accordance with Chapter 6 of Arkansas Pollution Control and Ecology Commission Rule No. 8.

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

Rule 6.106 Violations

Violation of any of the following prohibitions shall be considered a violation of this rule and shall be subject to the penalties provided in the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, specifically Ark. Code Ann. § 8-4-103:

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

CHAPTER 2: PERMIT PROCEDURES

Rule 6.201 Status and Continuation of Permits

Conditions of a NPDES permit issued by the Division of Environmental Quality will continue in effect past the expiration date pending issuance of a new permit, if:

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

Rule 6.202 Application Requirements for Construction and Operation of Wastewater Facilities

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

The following exceptions to 10 States Standards, as provisions adopted through Arkansas Pollution Control and Ecology Commission Minute Order 80-21, are allowed:

Combined Sewer Interceptors

- Combined sewers will not be approved

(1) Biological Treatment

Waste Sludge Facilities

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

(2) Disinfection

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

(3) Wastewater Treatment Ponds (Lagoons)

Basis of Design

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

Multiple Units

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

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

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

(4) Control Structures and Interconnecting Piping

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

(5) Appendix – Ground Disposal of Wastewaters

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

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

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

Rule 6.203 Permitting Requirements for Stormwater Discharges Associated with a Small Construction Site

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

- (A) A completed Notice of Coverage must be posted at the site for automatic permit coverage prior to commencing construction; and
- (B) A Stormwater Pollution Prevention Plan must be prepared prior to commencing construction in accordance with good engineering practices as follows:
 - (1) Identify potential, site-specific sources of pollution which may reasonably be expected to affect the quality of stormwater discharges from the construction;
 - (2) Identify, describe and ensure the implementation of site-specific Best Management Practices, with emphasis on initial site stabilization, which are to be used to reduce pollutants in stormwater discharges from the construction site;
 - (3) Identify the responsible party for on-site Stormwater Pollution Prevention Plan implementation;
 - (4) Develop a legible site map (or multiple maps, if necessary) complete to scale, showing the entire site, that identifies, at a minimum, the following:
 - (a) Pre-construction topographic view;
 - (b) Direction of stormwater flow (i.e., use arrows to show which direction stormwater will flow) and approximate slopes anticipated after grading activities;
 - (c) Delineate on the site map areas of soil disturbance and areas that will not be disturbed;

- (d) Location of major structural and nonstructural controls identified in the plan;
- (e) Location of main construction entrance and exit;
- (f) Location where stabilization practices are expected to occur;
- (g) Locations of off-site materials, waste, borrow area, or equipment storage area;
- (h) Location of areas used for concrete wash-out;
- (i) Location of all surface water bodies (including wetlands);
- (j) Locations where stormwater is discharged to a surface water and/or municipal separate storm sewer system if applicable,
- (k) Locations where stormwater is discharged off-site (should be continuously updated);
- (l) Location of areas where final stabilization has been accomplished and no further construction phase permit requirements apply.

Rule 6.204 Pretreatment Requirements for Industrial Users of Publicly Owned Treatment Works (POTWs)

- (A) An industrial user may not introduce into a POTW any pollutants that will pass through the treatment system, cause interference with the operation, or inhibit or disrupt the process, use, or disposal of sludge of the POTW as defined by 40 C.F.R. § 403.3. This prohibition applies to each user introducing pollutants into a POTW whether or not the user is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.
- (B) An industrial user discharging or proposing to discharge to a POTW with an approved POTW pretreatment program must comply with the more stringent of either the pretreatment standards in 40 C.F.R. §§ 400–471 or an approved POTW pretreatment program’s local limits and Pretreatment Standards.
- (C) An industrial user discharging or proposing to discharge to a POTW without an approved POTW pretreatment program must comply with the more stringent of either the Federal Pretreatment Standards in applicable Categories (Effluent Guidelines) located in 40 C.F.R. §§ 400–471 or with conditions of pretreatment in the POTW’s NPDES permit or local ordinances.
- (D) An industrial user discharging to a POTW must comply with the federal pretreatment reporting requirements located in 40 C.F.R § 403.12.

Rule 6.205 Trust Fund Permitting Requirements

The Division shall not issue, modify, renew, or transfer a NPDES permit for a non-municipal domestic sewage treatment works without the permit applicant first complying with Ark. Code Ann. § 8-4-203(b).

Rule 6.206 Permitting Requirements for Discharges of Pesticides

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

- (A) The application of biological pesticides or chemical pesticides that leave a residue (hereinafter collectively “pesticides”) to waters of the state falls under one of the following pesticide use patterns and annual threshold:
 - (1) Mosquito and Other Flying Insect Pest Control – to control public health/nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies.
 - (2) Weed and Algae Control – to control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches or irrigation canals. This use pattern is understood to include right-of-way maintenance for utilities and forest lands, as well as other applicable uses.
 - (3) Aquatic Nuisance Animal Control – to control invasive or other nuisance animals in water and at water’s edge. Aquatic nuisance animals in this use category include, but are not limited to fish, lampreys, and mollusks.
 - (4) Forest Canopy Pest Control – aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.
- (B) A completed Notice of Coverage must be posted at the site or kept at the physical address of the owner or operator for automatic permit coverage prior to commencing the pesticide application;
- (C) Pesticides must be handled, used, or applied in accordance with state laws and rules and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, which include all instructions on the pesticide label; and
- (D) An owner or operator must comply with all requirements of the NPDES General Permit for Pesticide Discharges Located within the State of Arkansas.

Rule 6.207 Public Notice Requirements for Concentrated Animal Feeding Operation (CAFO) Permits

Public notification requirements for any NPDES permit application for a CAFO in Arkansas are as follows:

- (A) The applicant shall provide written notice by letter, certified mail, return receipt requested, to the following people:
 - (1) Property owners adjacent to the CAFO production site and property owners adjacent to manure spreading sites;
 - (2) The County Judge of the county where the CAFO production site and any manure spreading site is located;
 - (3) Mayors of incorporated municipalities within ten (10) miles of the CAFO production site; and
 - (4) The superintendent of the school district that serves the CAFO production site.
- (B) It shall be the applicant's responsibility to retain return receipts for the active life of the permit.
- (C) DEQ shall provide the contents of the written public notice distributed by the applicant in a form letter made available to the applicant.
- (D) The form letter shall include, at a minimum, the following:
 - (1) Notice of the proposed CAFO, including the address of the production site, and the name of the applicant and farm;
 - (2) An explanation of the thirty-day public comment period and the right to comment;
 - (3) The telephone number of a person to contact at DEQ with questions;
 - (4) Directions to DEQ's website, including directions regarding how an interested party may submit his or her name to receive electronic notifications regarding the sought-after CAFO permit; and
 - (5) All letters shall include the certified mail, return receipt number.
- (E) The applicant shall publish notice one (1) time of the proposed CAFO in the paper of the largest circulation in the county of the CAFO production site. ADEQ shall determine the form of that notice, and determine the proper paper for publication.
- (F) The applicant shall post a sign measuring at least two-feet-by-three-feet (2' x 3') on a public road nearest the entrance to the CAFO production site. The sign shall be clearly

legible and conspicuous in such a manner that passersby can clearly see from the public road the applicant's requirements set forth in this section. DEQ will prescribe the sign's minimum requirements which, at a minimum, will contain the same information as that which DEQ requires the applicant to publish in the paper. The sign shall be posted prior to any submittals to DEQ and shall remain in place until thirty (30) days following DEQ approval.

- (G) Applicants for a CAFO NPDES permit must certify compliance with the public notification requirements in subsections (A)——(F) of this section.

CHAPTER 3: LOSING STREAM SEGMENTS

Rule 6.301 Effluent Discharges to Losing Stream Segments

- (A) In addition to all applicable effluent standards and conditions required by State and federal laws, rules, and regulations, wastewater discharged to losing stream segments shall comply with subsections (B) through (E) below.
- (B) For purposes of this rule, a “losing stream segment” is defined as a stream segment that beginning at the point of existing or proposed discharge and extending two (2) miles downstream, loses thirty percent (30%) or more of its flow at a 7Q10 flow or one (1) cubic feet per second (cfs), whichever is greater, through natural processes such as permeable subsoil or cavernous bedrock into an aquifer.
- (C) Effluent Limitations for Discharges into Losing Stream Segments:
 - (1) Discharges to losing stream segments shall be permitted only after other alternatives including (a) land application of wastewater, (b) discharge to non-losing stream segment, and (c) connection to a regional wastewater treatment facility, have been evaluated and determined to be unacceptable for environmental and/or economic reasons.
 - (2) If the Division agrees to allow a discharge to a losing stream segment, the permit will be written using the limitations described below, as a minimum. Discharges from wastewater treatment facilities, which receive primarily domestic waste, or from publicly owned treatment works shall undergo treatment sufficient to meet the following limitations:
 - (a) Carbonaceous Biochemical Oxygen Demand (CBOD₅) or Biochemical Oxygen Demand (BOD₅) equal to or less than a monthly average of 10 mg/L and a seven (7) day average of 15 mg/L;
 - (b) Total Suspended Solids (TSS) equal to or less than a monthly average of 15 mg/L and a seven (7) day average of 23 mg/L;
 - (c) Provisions of 40 C.F.R. § 133.102(c);
 - (d) The fecal coliform content of discharges shall not exceed a monthly geometric mean of 200 colonies per 100 milliliters and a weekly geometric mean of 400 colonies per 100 milliliters. However, at no time shall the fecal coliform content exceed a geometric mean of 200 colonies per 100 milliliters in any water defined as an Extraordinary Resource Water or Natural and Scenic Waterway;

- (e) Nitrate plus nitrite nitrogen levels shall not exceed 10 mg/L;
- (f) Ammonia, NH₃-N, limitations shall be included as necessary to prevent ammonia toxicity in-stream and to maintain instream dissolved oxygen; and
- (g) Other parameters as deemed appropriate by the Division.

(D) Implementation of Losing Stream Rule

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

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

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

CHAPTER 4: WASTEWATER DISCHARGES

Rule 6.401 Determination of Domestic Wastewater Effluent Limitations

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

- (1) The most stringent effluent limitations for oxygen demanding flows from small dischargers will be 10/15 mg/L CBOD₅/TSS, with nutrient removal where appropriate, which is considered as Best Conventional Treatment for dischargers in this flow range.
- (2) On a case-by-case basis, less stringent effluent limitations may be permitted if stream modeling shows that water quality standards will be maintained.
- (3) In all cases, applicable water quality standards shall be met.

(B) Outstanding State Resource Waters

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

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

(C) Reservoirs/Domestic Water Supply

- (1) In all cases, applicable water quality standards shall be met.
- (2) All oxygen demanding effluent flows that are discharged into any lake shall have effluent limitations of 10/15 mg/L CBOD₅/TSS with nutrient removal as appropriate.

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

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

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

Rule 6.402 Discharge of Treated Wastewater to the Ouachita River

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

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

- (D) At the Director's discretion, the permit may include concentration limits in addition to the mass limit(s).

CHAPTER 5: RESERVED

CHAPTER 6: SPECIFIC WATERSHED REQUIREMENTS

Rule 6.601 Lake Maumelle Watershed

All surface discharges of wastewater in the Lake Maumelle Watershed are prohibited, with the exception of discharges permitted under the NPDES stormwater discharge program.

Rule 6.602 Buffalo National River Watershed

- (A) “Buffalo National River Watershed” means the area within United States Geologic Service Hydrologic Unit Code 11010005.
- (B) The Director shall not issue a permit pursuant to this rule for a new swine CAFO in the Buffalo National River Watershed.
- (C) This rule does not prohibit the Director from issuing a new Rule 6 permit for a facility that holds an active Liquid Animal Waste Management Systems permit as of the effective date of this rule.
- (D) A new permit or subsequent permit renewals issued pursuant to Rule 6.602(C) shall not increase the number of swine permitted at a facility.

CHAPTER 7: ADMINISTRATIVE PROCEDURES

Rule 6.701 Penalty Policy and Administrative Procedures

Arkansas Pollution Control and Ecology Commission Rule 7, Civil Penalties, and Rule 8, Administrative Procedures, apply to this rule.

Rule 6.702 Severability

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

CHAPTER 8: EFFECTIVE DATE

Rule 6.801 Effective Date

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