

# EXHIBIT I

## ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER DIVISION

**SUBJECT:** Arkansas Pollution Control & Ecology Commission Reg. #6; Regulations for State Administration of the National Pollutant Discharge Elimination Systems (NPDES)

**DESCRIPTION:** This is a third party rulemaking filing by third party petitioner, Central Arkansas Water (CAW), concerning proposed changes to Regulation No. 6. This adds a new Chapter 6 providing for the prohibition of surface discharge of wastewater into the Lake Maumelle Basin, with the exception of discharges permitted under the NPDES stormwater discharge program, and it renumbers original Chapters 6 and 7 as Chapters 7 and 8, respectively. Lake Maumelle serves as the public drinking water supply source for the water distribution system operated by CAW, which serves 17 cities and communities in the central Arkansas area. The Lake Maumelle Basin includes portions of Pulaski, Perry, and Saline Counties.

The proposed change preserves the quality of the water for drinking water. Scientific studies, including the use of calibrated watershed and lake response models, have demonstrated that long-term surface water discharges of wastewater pose the single most serious and dominant threat to Lake Maumelle, greatly increasing the likelihood of harmful algae blooms and significantly degrading the current high level of lake water quality (Tetra Tech, 2006). The watershed and lake analysis showed that allowing surface wastewater discharges, even with the highest levels of treatment, would make it impossible to achieve lake water quality targets.

**PUBLIC COMMENT:** Public hearings were held in North Little Rock on May 27, 2008 and Perryville on June 2, 2008. The public comment period expired June 16, 2008. A total of sixty-eight (68) comments were received on the proposed changes, with sixty-one (61) comments in support thereof; seven (7) comments in opposition thereof; and one (1) comment for which the department could not determine the position of the commenter.

The public comments, and ADEQ's responses thereto, are summarized as follows:

(1) Allowing discharges into Lake Maumelle would violate the Antidegradation Policy in the Clean Water Act. RESPONSE: ADEQ acknowledges the comment, but disagrees with this interpretation of the Clean Water Act. The antidegradation policy is found at 40 CFR § 131.12 and APC&EC Regulation No. 2 (Regs. 2.201-2.203). The current regulatory program under APC&EC Regulation No. 6 would allow discharges into Lake Maumelle in accordance with the State's current water quality standards, found in APC&EC Regulation No. 2. Any discharge into Lake Maumelle would be required to meet effluent limitations that ensured "existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." The discharger would be required to implement whatever treatment methods were necessary to meet the water quality standards and to protect existing uses.

(2) The scope of the Clean Water Act supersedes any local jurisdiction. RESPONSE: ADEQ acknowledges the comment. Federal laws, such as the Clean Water Act, only



preempt local jurisdiction in instances where federal law has occupied the field of law. The commenter does not cite a specific example regarding federal jurisdiction or preemption, thus the department cannot agree or disagree with this comment.

(3) A newly emerging threat to public drinking water supplies is pharmaceuticals that are increasingly being found in public drinking water supplies around the country. Prohibiting the direct discharge of wastewater into Lake Maumelle will help protect us from that potentially serious threat to such a vital resource. RESPONSE: ADEQ acknowledges the comment.

(4) Water supply should always be the main objective of this public resource. RESPONSE: ADEQ acknowledges the comment. Domestic water supply is a designated use for Lake Maumelle, as found in Reg. 2.

(5) All 22 members of the stakeholder group who participated in the development of the Watershed Management Plan agreed to this proposed regulation change. RESPONSE: ADEQ acknowledges the comment.

(6) You have a great opportunity to act in a proactive way and yet not alter the current plans of any property owners. Since no wastewater is currently being directly discharged into Lake Maumelle at present, no entity would have to change its existing wastewater discharge. RESPONSE: ADEQ acknowledges the comment.

(7) You are the body that must take this action because you are the only ones with the authority to protect the entire watershed. Your actions will preserve an ever important aspect of equal treatment for all in the watershed. Since the Lake Maumelle watershed is in three counties (Pulaski, Perry, and Saline) it is more appropriate that prohibition of wastewater in the basin be at the state level. RESPONSE: ADEQ acknowledges the comment.

(8) Several options are available under the Watershed Management Plan that would either allow pumping of wastewater outside the watershed or small systems that would discharge wastewater into the ground after it is treated. RESPONSE: ADEQ acknowledges the comment.

(9) The clean, affordable water that comes out of Lake Maumelle is part of the important economic engine that drives Arkansas' economy. Allowing Lake Maumelle to be degraded by allowing the direct discharge of wastewater into it would threaten our economy, or at a minimum make water more expensive for both residential customers and businesses. If wastewater is directly discharged into Lake Maumelle, it will almost certainly lead to higher costs in the future, as additional water treatment would be needed to remove contaminants that never should be allowed to enter our drinking water supply in the first place. RESPONSE: ADEQ acknowledges the comment.

(10) Due to its unique hydrologic characteristics, Lake Maumelle cannot adapt as easily to increases in the amount of various pollutants, like the contaminants in wastewater, that would drain into the lake from its surrounding watershed. RESPONSE: ADEQ acknowledges the comment.



(11) The cornerstone of the Lake Maumelle Watershed Management Plan was that there would be no direct discharge of wastewater into Lake Maumelle. Everything else in the Plan, from limiting the number of new homes, minimum lot sizes, minimum undisturbed areas, maximum impervious areas, etc., was based on no direct discharge of wastewater into Lake Maumelle. Central Arkansans cannot adequately protect the lake unless such discharges are prohibited. RESPONSE: ADEQ acknowledges the comment.

(12) Potential solutions toward understanding the sailing/fishing paradise requires a management of long term orientation that invokes the mindset more typical of the Japanese style of management. Historically, the ecologist, planners and civil servants use the term quality of life when in fact to think ecology begins to place one at the seat of wonderment for being embedded in life. The fact is more of one trying to understand the complex chemistries that will shift with climate change while altering settlement patterns. The science and systemic basin for advancing research, perhaps through the EAST Program. However truthing the dynamics stored in data storage may not yet reflect the life of a watershed typified by Maumelle. RESPONSE: ADEQ acknowledges the comment.

(13) The potential challenge for household regulatory inspection of waste poses a challenge in the view of green design and alternative disposal systems that can be managed by intelligent households. The waste system haulers, the commercial entities that would service the systems and the cultural paradigms that they operate within need to be understood and respected. However, as all systems are prone to problems of operational breakdown, the signaling system of early warning devices or responsive governing systems requires responsive policy that is truthful and not subject to political rhetoric. Nature's life and the performance for ecological stewardship requires greater understanding for the structure of life itself. RESPONSE: ADEQ acknowledges the comment.

(14) Scientific studies, including the use of calibrated watershed and lake response models, have demonstrate that long-term surface water discharges of wastewater pose the single most serious and dominant threat to Lake Maumelle, greatly increasing the likelihood of harmful algae blooms and significantly degrading the current high level of lake water quality. These watershed and lake analyses showed that allowing surface wastewater discharges--even with the highest levels of treatment of 1 ppm total phosphorus--would make it impossible to achieve lake water quality targets established by the Lake Maumelle Watershed Management Plan.

Under the scenario of uncontrolled development in the watershed and associated discharges of wastewater, the models showed that algal concentrations near the water intake could increase by more than five times current levels, and up to thirteen times current levels in the upper portion of Lake Maumelle, leading to conditions in which visible algal blooms would be frequent and the quality of finished water is compromised, greatly exceeding the target values.

Under the scenario of controlled development, the modeling showed that non-point pollutant loads from development alone would use up the allowable increase in loads necessary to meet the water quality targets. The controlled development scenario was based on minimum lot sizes of 5 and 10 acres, minimum amounts of undisturbed land (30 to 50% depending on



slope) and without surface wastewater discharges. RESPONSE: ADEQ acknowledges the comment.

(15) The current regulatory requirements are not adequate to protect Lake Maumelle. Existing designated uses and associated water quality criteria are not adequate to protect Lake Maumelle, based on the Tetra Tech analysis. This analysis showed that even with a permit limit of 1 part per million total phosphorus for surface discharges, the target values established by the Plan would not be achieved. Under the current regulatory requirements, ADEQ must issue a NPDES permit if the existing water quality standards are met (there are currently no numeric water quality standards for Chlorophyll-a or nutrients in water supply lakes or tributaries). Therefore, there should be a prohibition of surface discharges of wastewater in the Lake Maumelle Basin. RESPONSE: ADEQ acknowledges the comment. It should be noted that Arkansas's water quality standards, including designated uses and water quality criteria, are found in APC&EC Regulation No. 2, which is not the subject of this third-party rulemaking. The department is required to review the water quality standards, and update as necessary, every three years. Regulation No. 2 identifies the designated uses for water bodies in Arkansas and establishes standards designed to protect those uses. The department also is charged with ensuring that water quality is maintained and designated uses, such as drinking water supplies, are protected. The effluent limits contained in NPDES permits for surface discharges are calculated to protect in-stream water quality. The department believes NPDES permits issued for surface discharges will protect all designated uses of a water body.

(16) One commenter argues that, based on a critique of another watershed management plan done by Tetra Tech in Washington State, the Lake Maumelle Watershed Management Plan is therefore flawed. RESPONSE: ADEQ acknowledges the comment. The commenter did not provide an analysis or critique of the Lake Maumelle Watershed Plan.

(17) The use of properly permitted wastewater systems using direct discharge is an option currently available under the laws of the State of Arkansas. The proposed rule change would eliminate that option and could force landowners to adopt other wastewater treatment methods which are more costly or even cost-prohibitive. RESPONSE: ADEQ acknowledges the comment.

(18) For the half-century following the construction of Lake Maumelle, Central Arkansas Water ("CAW") did next to nothing to acquire land in the watershed to protect the lake. When faced with the prospect of spending money to acquire land in the watershed, CAW almost always took the more politically palatable route of not spending the money necessary to acquire a meaningful portion of the watershed. CAW is attempting to convey that this rule is the only way to achieve drinking water of a quality that meets Petitioner's self-established standards and that the primary purpose of the plan is to achieve clean water. The true purpose of CAW's plan is to save CAW money by shifting the cost of treating its drinking water from the rate payers who use the water to the property owners in the watershed, none of whom drink the water from Lake Maumelle. CAW is hoping to achieve this goal by having the Commission enforce CAW's own regulations for drinking water quality, which are more strict than those enforced by the Commission. RESPONSE: ADEQ acknowledges the comment.



(19) The logic behind CAW's request (prohibiting direct wastewater discharges in watersheds for drinking water lakes) would apply to a huge portion of the State of Arkansas. At the March 2008 Commission meeting, Arkansas Department of Environmental Quality staff advised the Board that if CAW's proposed rule were extended to other watersheds in the state that met the same requirements proposed by CAW, the rule would impact 40% of the land mass of the State of Arkansas. The sweeping precedent set by CAW's proposal is one of the reasons [ADEQ] staff took no position on the proposed rulemaking. RESPONSE: ADEQ acknowledges the comment. While ADEQ staff did acknowledge the potential precedent of the proposed rulemaking, ADEQ did not characterize this proposal as a "sweeping" precedent. ADEQ remains neutral on this proposed rule change (as it does with most third-party initiated rulemakings) and does not adopt the characterizations of this proposal presented by those parties who support or oppose it.

(20) It is an important point that CAW is not stating that it will not be able to meet current drinking water quality standards under applicable state and federal laws. CAW is attempting to maintain their own, higher, water quality standards--not those set by federal regulation or the State of Arkansas--and asking the Commission to enforce them. CAW's water quality standards are higher than the standards required by federal and state law. Under [Ark. Code Ann. § 8-4-201(b)(1)(A)], the Commission has the role of promulgating regulations--not utility companies. If this agency allows CAW to set its own standards, the subsequent problems will be determining whose standards we are going to be following. We are then faced with the danger of utility companies being allowed to set their standards to what is most beneficial to them. RESPONSE: ADEQ acknowledges the comment. Again, it should be noted that Arkansas's water quality standards are found in APC&EC Regulation No. 2, which is not the subject of this third-party rulemaking.

(21) CAW loudly proclaims its self-made Lake Maumelle Watershed Management Plan as the "scientific" basis for its request. However, it would be naïve not to acknowledge that the creation of CAW's plan was completely controlled by CAW to get the result they wanted. It was calculated to try and place the burden of treating their drinking water, not on the rate payers, but on the property owners in the watershed. The plan also tried to skew the burden on the property owners from the smaller, more numerous property owners to the large property owners in the watershed. The obvious intent of this move by CAW was to create a plan that had the most impact on the fewest number of property owners to hopefully minimize the number of opponents to their plan. The only possible result from the study was the recommendation that there be a ban on all direct surface wastewater because CAW controlled the research. The real purpose of CAW's proposed change to Regulation 6 is to set its own standards, and it's hoping to achieve this purpose by creating a study that could only have the outcome that was most beneficial to CAW's view. RESPONSE: ADEQ acknowledges the comment.

(22) The alternative sewage treatment methods are more expensive to property owners in the watershed or simply so expensive as to prohibit development. The Commission has a duty to duly consider the economic impact of any proposed amendment. For such a broad rule change, the Commission should consider evidence other than that presented by CAW, and to not simply accept CAW's evaluation of the economic impact of its plan. The Commission



needs to study the relative costs of the alternatives proposed by CAW and also examine whether or not they are feasible for property owners in the watershed.

CAW incorrectly concludes that landowners have an alternative to direct surface wastewater discharges. They state that landowners could alternatively use sub-surface non-discharging systems; drip-irrigation systems; or pumping the wastewater out, where feasible. However, alternative methods may not be available to property owners depending on their soil type or their location within the watershed. Pumping the wastewater out is not economically feasible for any but the largest landowners, and those properties on the edge of the watershed. The cost of building a pressurized sewer line and related infrastructure is cost prohibitive. Many property owners are thousands of feet from the edge of the watershed. This would require thousands of feet of sewer lines and large pumps, not to mention the acquisition of the necessary right of way for these lines. In addition, if the permeability of the land does not allow for the other methods suggested by CAW, and pumping out of the watershed is too costly, direct surface wastewater discharges may be the only reasonable method available. RESPONSE: ADEQ acknowledges the comment.

(23) There is already an effective system in place under Regulation 6 to protect the quality of water in this area--a permit process for discharging septic systems. ADEQ had previously issued permits for direct discharge of treated wastewater in other watersheds for drinking water lakes. By allowing the amendment is the Commission stating that these prior decisions were in error? If the system currently in place is so bad, then what is the agency going to do with the permits previously granted? Is the agency going to pull those permits? Will the Commission have to compensate the permit holders if it does pull them?

It should be considered that the permits that are currently issued by this agency that are in place for package treatment plans are temporary and require the permit holders to maintain their systems. This maintenance obligation and the temporal nature of the permits allows the ADEQ to review the agency's decision from time to time and determine if there is a problem. Therefore, the current system for protecting water is effective. It is working to protect drinking water in other areas of the state, and there is no reason to assume it would not continue to work in the Lake Maumelle watershed. RESPONSE: ADEQ acknowledges the comment. The department administers the NPDES permit program throughout the state of Arkansas. The department issues NPDES permits in a manner that protects the quality of the state's water resources. These determinations are made on a case by case basis after careful consideration of all the potential water quality effects and based upon all the facts and scientific data available. The department acknowledges that prohibiting all discharges of wastewater in the Lake Maumelle Basin will maintain water quality and reduce treatment costs. However, the Department remains neutral on this proposed rule change.

(24) We maintain that the ratepayers of Central Arkansas Water should bear some of the burden to ensure the high quality of water they desire. We know that surface discharge systems effluents can be addressed through treatment prior to distribution to homes and still be within acceptable levels as designated by the Arkansas Department of Health and Arkansas Department of Environmental Quality. Ratepayers would be asked to pay higher monthly water bills if additional treatment were required, but instead we offer they could be asked to pay a minimal surcharge on their monthly water bill to ensure the water quality of



Lake Maumelle. These funds could be restricted to ensure they are used solely for the purpose intended. RESPONSE: ADEQ acknowledges the comment.

(25) The Quorum Court of Perry County passed Resolution 2006-5 to state that the Quorum Court opposes any effort by CAW to seek to obtain the property of Perry County landowners or to attempt to gain restrictions on the use of land in Perry County. The Quorum Court believes that CAW's current proposed regulatory change is undue and is therefore an unnecessary intrusion upon the rights of Perry County property owners. RESPONSE: ADEQ acknowledges the comment. ADEQ respects the rights of individual property owners. The determination of any violation of those rights is made on a case-by-case basis following the precedents of state and federal constitutional law.

(26) The proposed change is unnecessary, especially as it relates to Perry County. At the public hearing in Perryville, the CAW representative admitted that the residents and businesses in Perry County are not currently discharging wastewater in a way that would be affected by this change. The CAW representative even admitted that CAW is not aware of any future plans in Perry County that would be affected by this change. To impose this vaguely worded regulatory restriction on Perry County is overreaching by CAW and it should be rejected. RESPONSE: ADEQ acknowledges the comment. Please see Response to No. 25 above.

(27) CAW is proposing to control the use of property in Perry County while at the same time motorboats are permitted on Lake Maumelle and the City of Little Rock is allowed to release its treated sewage into the Arkansas River. RESPONSE: ADEQ acknowledges the comment.

(28) If this regulatory burden is placed on the property owners of Perry County that the property values may be reduced. For instance, the wording of the regulatory change is so vague that it may harm the mineral rights of our property owners, including natural gas exploration or development. RESPONSE: ADEQ acknowledges the comment. Please see Response to No. 25 above.

(29) It is very important that it be noted in the record that not all property owners in Perry County received notice of this proposed change and the public hearing that was held in Perryville. This fact alone is enough for the Quorum Court to object strongly to this proposed regulatory change. RESPONSE: ADEQ acknowledges the comment. Ark. Code Ann. § 8-4-202(d)(1)(D) provides that a proposed regulation "shall be published at least twice in newspapers having a general statewide circulation and in the appropriate industry, trade or professional publications the commission may select." The notice regarding this rulemaking was published in the Arkansas Democrat Gazette on April 3-4, 2008. In addition, Michael O'Malley, Administrative Hearing Officer for the Arkansas Pollution Control and Ecology Commission, sent a letter to the County Judge in each of Pulaski, Perry, and Saline Counties asking for comments regarding the proposed rule change. Martin Maner, on behalf of Central Arkansas Water, sent a letter to property owners within the watershed informing them of the proposed regulation and the means of making comments on the proposal. ADEQ believes that the Commission and Central Arkansas Water went well beyond the legal requirements necessary to provide notice to all property owners.



(30) The overwhelming need in the Central Arkansas area is a change in behavior by landowners, ratepayers and industry. It is everyone's responsibility and as such looking at this issue inclusively will have much greater impact for future generations. This could be achieved in a variety of ways, such as:

- Voluntary land acquisitions in the Lake Maumelle Basin as property becomes available, with priority given to those lands adjacent to streams, tributaries, etc.
- Eminent domain should only be used in specific cases where landowners are documented, by the appropriate agency having jurisdiction, as negatively impacting the watershed, have been notified, given time to correct deficiencies and make no viable effort to address the situation.
- Cost share to landowners to implement best management practices throughout the watershed.
- Best management practices are identified by the Arkansas Natural Resources Commission and/or the Natural Resources Conservation Service and working through the conservation districts could assist landowners in the implementation.
- Cost share to homeowners to replace and/or repair defective septic systems. Some of the homeowners in this area may not be able to address septic system failures due to lack of resources and will require assistance.
- If cost share is accepted, then landowners would voluntarily agree to forego surface discharge systems on their land, utilizing other means for disposal of wastewater, if necessary.
- Education and outreach throughout the Central Arkansas area, as everyone needs to be educated on these issues regardless of where they live, remembering that someone lives downstream of them.

RESPONSE: ADEQ acknowledges the comment. ADEQ supports the inclusion of all stakeholders in protecting water quality in the Lake Maumelle watershed; however, as these suggestions do not specifically address the proposed rulemaking, ADEQ will not address each item in this response.

(31) The existing plan has not allowed sewage to be dumped into the lake and I can see no reason to change that. Do you want your water supply polluted? The dumping is not allowed now, so this will not be an imposition on anyone. No one has to stop dumping because no one has been allowed to start. RESPONSE: ADEQ acknowledges the comment.

(32) Several commenters submitted general comments in opposition to development and building in the Lake Maumelle's watershed. RESPONSE: ADEQ acknowledges the comment. The subject of the proposed rulemaking is surface discharge of wastewater into the Lake Maumelle Watershed. Development and building regulations are not under the jurisdiction of the Arkansas Pollution Control and Ecology Commission.

(33) Several commenters submitted general comments of support for preventing the discharge of wastewater into the Lake Maumelle Watershed. RESPONSE: ADEQ acknowledges the comments.



The proposed effective date is January 7, 2010.

**CONTROVERSY:** The amended rule may be perceived by some as providing a barrier to future developments in the Lake Maumelle Basin, although the major developers, Deltic and Rick Ferguson, are expected to support the amended rule. Central Arkansas Water is reported to be for the rule as well as Deltic.

**FINANCIAL IMPACT:**

**Economic Impact Statement.**

1. Explain the need for the proposed change. Did any complaints motivate you to pursue regulatory action? The proposed change is to prohibit surface discharges of wastewater into the Lake Maumelle Basin, with the exception of discharges permitted under the NPDES stormwater permitting program. No complaints were received but scientific studies, including the use of calibrated watershed and lake response models, have demonstrated that long-term surface water discharges of wastewater pose the single most serious and dominant threat to Lake Maumelle, greatly increasing the likelihood of harmful algae blooms and significantly degrading the current high level of lake water quality (Tetra Tech, 2006). The watershed and lake analysis showed that allowing surface wastewater discharges other than stormwater, even with the highest levels of treatment, would make it impossible to achieve lake water quality targets.

If so, please explain the nature such complaints. No complaints have been received.

2. What are the top three benefits of the proposed rule or regulation? 1) Maintain the high water quality in Lake Maumelle, the primary raw water source for Central Arkansas Water, which serves 398,000 people in central Arkansas. 2) Minimize or prevent the potential formation of Trihalomethanes (THM, a carcinogen regulated by the EPA) that may occur when raw water with high amounts of algae or organic matter is chlorinated. 3) Prevent higher water treatment costs.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo? Lower water quality in Lake Maumelle due to increased algae growth in response to the higher amounts of phosphorus (a fertilizer that promotes algae growth) and the associated risk for formation of THM and other disinfection by-products (DBPs) that have health risks and are regulated by EPA. Moreover, large concentrations of algae in the raw water create taste and odor issues in the treated water, which are extremely difficult to mitigate. Finally, higher treatment costs for meeting the EPA regulated values for the THM and DBPs, and to minimize taste and odor problems.

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason for not selecting those alternatives. Alternatives have been considered and can be used for wastewater treatment in the watershed. These include sub-surface discharging systems such as septic tank systems, drip-irrigation systems, or pumping the wastewater out of the watershed, where feasible.



## **Impact of Proposed Rule**

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing, and inspecting associated with this new rule. There should not be any additional cost than what is associated with existing permitting programs administered by ADEQ and ADH.
6. What types of small businesses will be required to comply with the proposed rule? Please estimate the number of small businesses affected. There are currently **no** businesses in the watershed that have a surface discharging system.
7. Does the proposed rule create barriers to entry? If so, please describe those barriers and why those barriers are necessary. No barriers are associated with this proposed change.
8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance. There should be no additional requirements or increased cost for these types of sub-surface discharging wastewater systems. In fact, they are usually less expensive than surface discharging wastewater treatment plants.
9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary. The proposed change to the rule(no surface discharge of wastewater with the exception of permitted stormwater discharges) will be the same for all entities.
10. Describe your understanding of the ability of small business owners to implement changes required by the proposed rule. There should be no difference, because the small business owners can use sub-surface discharging systems or pump from the watershed.
11. How does this rule compare to similar rules in other states or the federal government? It is more stringent, in that the federal NPDES permitting system, which is administered by the ADEQ, allows surface discharge of wastewater.

**LEGAL AUTHORIZATION:** Arkansas Code Annotated § 8-4-201 authorizes the Arkansas Department of Environmental Quality to "administer and enforce all laws and regulations relating to the pollution of any waters of this state." The Arkansas Pollution Control and Ecology Commission is authorized to adopt, modify, or repeal, after notice and public hearings, rules and regulations implementing and effectuating the powers and duties of the Arkansas Department of Environmental Quality and the commission under Ark. Code Ann. § 8-4-202.

This rule was initiated by a third party, Central Arkansas Water (CAW). Third party rulemaking is authorized under Ark. Code Ann. § 8-4-202(c), which provides that "[a]ny person shall have the right to petition the commission for the issuance, amendment, or repeal of any rule or regulation." CAW proposed to change Regulation No. 6 by adding language which would prohibit all surface discharges of wastewater, except storm water discharges permitted under the NPDES program, into the Lake Maumelle Basin. The ADEQ administers the NPDES program in Arkansas, under delegation from the U.S. Environmental



Protection Agency (EPA), by issuing permits for wastewater discharges to the waters of the State, and monitoring and enforcing permit conditions and operations.



# ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



## REGULATION NO. 6

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

Approved by the PC&E Commission on December 7, 2007

By

STATE OF ARKANSAS  
SECRETARY OF STATE  
CHARLES B. BELL

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

**TABLE OF CONTENTS**

CHAPTER ONE: GENERAL PROVISIONS.....	1-1
Reg. 6.101    Adoption.....	1-1
Reg. 6.102    Purpose.....	1-1
Reg. 6.103    Definitions.....	1-1
Reg. 6.104    Incorporation of Federal Regulations.....	1-2
Reg. 6.105    Confidentiality.....	1-3
Reg. 6.106    Violations.....	1-4
CHAPTER TWO: PERMIT PROCEDURES.....	2-1
Reg. 6.201    Status and Continuation of Permits.....	2-1
Reg. 6.202    Application Requirements for Construction and Operation of Wastewater Facilities.....	2-1
Reg. 6.203    Permitting Requirements for Industrial Users of Publicly Owned Treatment Works.....	2-3
CHAPTER THREE: LOSING STREAM SEGMENTS.....	3-1
Reg. 6.301    Effluent Discharges to Losing Stream Segments.....	3-1
CHAPTER FOUR: WASTEWATER DISCHARGES.....	4-1
Reg. 6.401    Determination of Domestic Wastewater Effluent Limitations.....	4-1
Reg. 6.402    Discharge of Treated Wastewater to the Ouachita River.....	4-2
CHAPTER FIVE: CONCENTRATED ANIMAL FEEDING OPERATION (CAFO) DRY LITTER PROGRAM.....	5-1
Reg.6.501    Federal Regulations Not Incorporated by Reference.....	5-1
CHAPTER SIX: ADMINISTRATIVE PROCEDURES.....	6-1
Reg. 6.601    Penalty Policy and Administrative Procedures.....	6-1
Reg. 6.602    Severability.....	6-1
CHAPTER SEVEN: EFFECTIVE DATE.....	7-1
Reg. 6.701    Effective Date.....	7-1

## CHAPTER ONE: GENERAL PROVISIONS

### **Reg.6.101 Adoption**

Pursuant to the provisions of Subchapter 2, Section 8-4-202 of the Arkansas Water and Air Pollution Control Act, hereinafter referred to as the "Act" (Act 472 of 1949, as amended; Ark. Code Ann. 8-4-101 et. seq.), the Arkansas Pollution Control and Ecology Commission (hereinafter referred to as the "Commission") hereby promulgates this Regulation No. 6 to implement state administration of the National Pollutant Discharge Elimination System (NPDES).

### **Reg.6.102 Purpose**

It is the purpose of this regulation to adopt regulations necessary to qualify the State of Arkansas to receive authorization to implement the State water pollution control permitting program in lieu of the federal NPDES program, as provided by the Clean Water Act of 1977, as amended (P.L. 95-217). In order to receive such authorization, it is necessary for the Department of Environmental Quality to have regulations as stringent as the federal program administered by the United States Environmental Protection Agency.

### **Reg.6.103 Definitions**

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

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

**"Act"** means the Arkansas Water and Air Pollution Control Act, as amended (Act 472 of 1949, as amended; Ark. Code Ann. 8-4-101 et seq.).

**"ADEQ"** or **"Department"** means the Arkansas Department of Environmental Quality, or its successor.

**"Commission"** means the Arkansas Pollution Control and Ecology Commission.

**"Director"** means the Director of the Arkansas Department of Environmental Quality, unless the context dictates otherwise. (See 40 CFR 122.2, and 124.2, and Ark. Code Ann. 8-1-202 et seq.).

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

**Reg.6.104      Incorporation of the latest Federal Regulations**

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

Title 40 Code of Federal Regulations adopted verbatim by ADEQ -

- (1) Part 116;
- (2) Part 117;
- (3) Subparts A, B, C and D of Part 122 with the following exceptions: 122.6 (for analogous provision, see Reg. 7); 122.7(a); 122.21(l); 122.23(g)(4); 122.29(c) and (d); and 122.49;
- (4) The following provisions, only, of Part 123: 123.25(b), 123.26(d), 123.27(d), 123.41(a), and 123.62(e);
- (5) The following provisions, only, of Part 124: 124.2; 124.3(a); 124.5(a), (c), (d) and (f); 124.6(a), (c), (d), (e); 124.7; 124.8; 124.10(a)(1)(ii), (iii) and (v); 124.10(b), (c), (d) and (e); 124.11; 124.12(a), (b), (c) and (d); 124.13; 124.14; 124.17(a) and (c); 124.19; 124.56; 124.57(a); 124.59; and 124.62;
- (6) Subparts A, B, C, D, H, I, J, K, and L, only, of Part 125;
- (7) Part 129;
- (8) Part 133;
- (9) Part 136;
- (10) Part 257;
- (11) Parts 400 through 471 with the following exceptions: 401.17 and 412.4(c)(3).

- (12) Part 503.(Effective on date of approval by EPA of state program to manage sewage sludge.

All as adopted as final rules (including "interim final rules" and "technical amendments") by the U.S. Environmental Protection Agency on or before April 14, 2003 .

- (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 Regulation necessary to maintain a state NPDES program as stringent as the federal program. Such new or revised federal regulations, upon their publication as final rules by EPA, shall constitute minimum guidelines to the Director in formulating rulemaking proposals to this Regulation but shall not be construed to limit or interfere with the adoption of provisions more stringent than federal regulations.

#### **Reg.6.105 Confidentiality**

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

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

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

**Reg.6.106      Violations**

Violation of any of the following prohibitions shall be considered a violation of this Regulation and shall be subject to the penalties provided in the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended; Ark. Code Ann. § 8-4-103):

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

Department.

- (E) No person shall discharge sewage, industrial wastes or other wastes into any of the waters of the State without having first obtained a permit for such activity from the Department.
- (F) No person shall violate any other provision of this Regulation or the Act.

## CHAPTER TWO: PERMIT PROCEDURES

### **Reg.6.201 Status and Continuation of Permits**

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

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

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

(A) Any person who desires to construct, operate or modify any disposal system which will discharge to the waters of the State or to discharge any sewage, industrial waste or other wastes into the waters of the State or to do any other act for which Ark. Code Ann. § 8-4-217(b) requires a permit shall submit an application for a permit for such activity. In addition to the permit application procedures set forth in 40 CFR Parts 122, 123, and 124, that are incorporated by reference in Reg.6.104, hereof, the applicant must also submit ADEQ Form 1. For domestic wastewater discharges only, a copy of a written request seeking an approval letter from the Arkansas Department of Health (“ADH”) is also required prior to issuance of the final permit. The application must be submitted, approved, along with the approval letter from ADH for domestic discharges and a permit issued and effective before the activity applied for can begin.

(B) A state permit for construction or modification of a wastewater treatment facility does not constitute an 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 NPDES permit to operate the system will be approved or the NPDES permit issued, nor does issuance of an NPDES permit assume or require a prior permit for construction or a satisfactory review of the design or construction of the treatment facility. ADEQ Form 1, plans and specifications, and design calculations are required for a state construction permit. The basic design criteria for wastewater treatment plants in the State of Arkansas should be based on the latest addition of the “Recommended Standards for Sewage Works,” published by the Great Lakes-Upper Mississippi Board of State Sanitary Engineers known as 10 States Standards, with the following modifications. Exception to these criteria will only be approved by the Department when fully justified.

The following exceptions to 10 States Standards, as provisions adopted through Minute Order 80-21, are allowed:

Combined Sewer Interceptors

Combined sewers will not be approved

- 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.

- Disinfection

Disinfection shall be required when necessary to meet the State Water Quality Standards for the receiving stream or to protect public water supplies and recreational use areas.

- 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.

#### 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.

#### Appendix – Ground Disposal of Wastewaters

Land treatment of wastewater shall be in accordance with the Land Application Guidelines as promulgated by this department and the Arkansas Department of Health. Plans and specifications and design calculations must be stamped and signed by a

Registered Professional Engineer in the State of Arkansas. At the discretion of the Director, the provisions of Reg.6.202(B) may not apply to minor, routine repair, replacement (i.e. aerator) or maintenance.

- (C) For modifications or alterations to an existing permitted facility, not affecting the discharge or effluent limitations of a State NPDES permit, the permittee need submit only ADEQ Form 1.
- (D) Prior to obtaining a construction permit for domestic wastewater discharges from ADEQ, an approval letter from ADH is required.

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

**Reg.6.203      Permitting Requirements for Industrial Users of Publicly Owned Treatment Works**

- (A) Industrial users discharging to publicly owned treatment works shall be deemed to have a permit by rule for construction and discharge for the purposes of the Arkansas Water and Air Pollution Control Act, if either of the following conditions are met:
  - (1) The industrial user is discharging into a receiving publicly owned treatment works with an approved local pretreatment program; or
  - (2) The industrial user is not subject to categorical pretreatment standards set forth in 40 CFR Parts 400-471 (Subchapter N) and not likely to introduce pollutants to the publicly owned treatment works which would pass through or interfere with the treatment works or which would contaminate the sewage sludge of the treatment works.

An "approved pretreatment program" means a program approved by either the U.S. Environmental Protection Agency pursuant to 40 CFR Part 403.11 or the Department pursuant to 40 CFR Part 403.11 as incorporated in Reg. 6.102. The determination of which industrial users are likely to introduce pollutants which would pass through or interfere with a publicly owned treatment works or which are likely to contaminate sewage sludge from the treatment works shall be made by the Director subject to the provisions of Regulation No. 8 and Ark. Code Ann. § 8-4-216.

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

## CHAPTER THREE: LOSING STREAM SEGMENTS

### Reg.6.301 Effluent Discharges to Losing Stream Segments

- (A) In addition to all applicable effluent standards and conditions required by State and federal laws and regulations, wastewater discharged to losing stream segments shall comply with subsections (B) through (E) below.
- (B) For purposes of this regulation, a "losing stream segment" is defined as a stream segment which, beginning at the point of existing or proposed discharge and extending two (2) miles downstream, distributes 30% or more of its flow at a 7Q10 flow or 1 cfs, whichever is greater, through natural processes such as permeable subsoil or cavernous bedrock into an aquifer.
- (C) Effluent Limitations for Discharges into Losing Stream Segments:
- (1) Discharges to losing stream segments shall be permitted only after other alternatives including (a) land application of wastewater, (b) discharge to non-losing stream segment, and (c) connection to a regional wastewater treatment facility, have been evaluated and determined to be unacceptable for environmental and/or economic reasons.
  - (2) If the Department agrees to allow a discharge to a losing stream segment, the permit will be written using the limitations described below, as a minimum. Discharges from wastewater treatment facilities, which receive primarily domestic waste, or from publicly owned treatment works (POTWs) shall undergo treatment sufficient to conform to the following limitations:
    - (a) CBOD<sub>5</sub> equal to or less than a monthly average of ten (10) mg/l and a seven (7) day average of fifteen (15) mg/l.
    - (b) Total Suspended Solids (TSS) equal to or less than a monthly average of fifteen (15) mg/l and a seven (7) day average of twenty-three (23) mg/l;
    - (c) provisions of 40 CFR 133.102(c);
    - (d) the fecal coliform content of discharges shall not exceed a monthly average of 200 colonies per 100 milliliters and a weekly average of 400 colonies per 100 milliliters. However, at no time shall the fecal coliform content exceed 200 colonies per 100 milliliters in any water defined as an Extraordinary Resource Water or Natural and Scenic Waterway;
    - (e) nitrate plus nitrite nitrogen levels shall not exceed 10 mg/l;
    - (f) ammonia (as N) limitations shall be included as necessary to prevent ammonia toxicity in-stream and/or to maintain instream dissolved oxygen.

(g) other parameters as deemed appropriate by ADEQ.

(D) Implementation of Losing Stream Regulation

- (1) Existing discharges. At the time of permit renewal, or when deemed necessary by the Department, 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 Reg.6.301(B) above. If the proposed discharge is into a losing stream segment, then the facility must be designed and operated to meet the effluent limitations described above, as a minimum.
- (3) For facilities in both Reg.6.301(D)(1) and (2) above, stream studies for determining classification as a losing stream segment must be conducted during the critical low flow season, when stream flow is at least 1 cfs and representative of seasonal flow. Effluent flow, when existing, can be included in the minimum 1 cfs stream flow.
- (4) The Department shall determine the requirement for, and the content and level of detail of, stream studies, based on local topography, geological data, file data, other dischargers in area, stream flow, etc.

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

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

## CHAPTER FOUR: WASTEWATER DISCHARGES

### Reg.6.401 Determination of Domestic Wastewater Effluent Limitations

- (A) Small discharges (less than or equal to 0.05 MGD)
- (1) The most stringent effluent limitations for oxygen demanding flows from small dischargers will be 10/15 (CBOD<sub>5</sub>/TSS), with nutrient removal where appropriate, which is considered as Best Conventional Treatment (BCT) for dischargers in this flow range.
  - (2) On a case-by-case basis, less stringent effluent limitations may be permitted if stream modeling shows that water quality standards will be maintained.
- (B) Outstanding State Resource Waters
- Outstanding State Resource Waters include all water bodies designated in the Arkansas Water Quality Standards (Regulation No. 2) as extraordinary resource waters, natural and scenic waterways, or ecologically sensitive waterbodies.
- (1) Extraordinary/natural and scenic waterways named in WQS: In no event shall the effluent limitations be greater than 10/15 (CBOD<sub>5</sub>/TSS).
  - (2) Ecologically sensitive streams: Limitations shall be determined on a case-by-case basis to protect the specific specie residing in the stream.
- (C) Reservoirs/Domestic Water Supply
- (1) In all cases, applicable water quality standards shall be met.
  - (2) All oxygen demanding effluent flows which are discharged into any lake shall have effluent limitations of 10/15 (CBOD<sub>5</sub>/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.

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

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

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

## **CHAPTER FIVE: CONCENTRATED ANIMAL FEEDING OPERATION (CAFO) DRY LITTER PROGRAM**

### **Reg.6.501 Federal Regulations Not Incorporated by Reference**

The Department will seek an exception to specific provisions of 40 CFR Parts 122 and 412, effective April 14, 2003, which have not been adopted by reference into this regulation by the Commission.

In December 2004, the Department of Environmental Quality proposed a general NPDES permit ARG590000 to cover CAFOs. However, the CAFO permit was put on hold due to a federal court case. In February 2005, the Second Circuit Court of Appeals ruled on a lawsuit regarding the federal CAFO rule that only CAFOs that have a discharge or a potential to discharge must apply for a permit. EPA will be issuing a proposed rule to revise the 2003 CAFO regulations more broadly in order to address the Second Circuit Court of Appeals decision in a subsequent Federal Register notice. Until such time, concentrated animal feeding operations (CAFOs) that have an actual discharge are considered a point source of pollution and are regulated under the National Pollution Discharge Elimination System (NPDES) permitting process, 40 CFR 122.21(a). ADEQ's NPDES permit must be consistent with the federal rule and the court decision. EPA will soon provide guidance to states and the regulated community as to the appropriate manner in which to proceed with implementation of the CAFO rule.

Pending final program approval from EPA, the following provisions are anticipated to be included in the Department's CAFO-dry manure program:

#### **(A) New Sources**

New sources that have an actual discharge will be required to obtain coverage under the CAFO Dry Manure Handling System General Permit, ARG590000, by submitting a Notice of Intent (NOI) to the Department at least thirty (30) days prior to the time the CAFO commences operation, as allowed by 40 CFR Part 122.21(c), in lieu of the one hundred eighty (180) day requirement for new sources contained in 40 CFR 122.23(g)(4).

#### **(B) Annual Manure and Soil Sampling**

Sampling of dry manure and soils will be performed in accordance with Acts 1059, 1060, and 1061 of 2003, and the regulations promulgated thereunder by the Arkansas Natural Resources Commission, in lieu of the annual manure and soil sampling requirements pursuant to 40 CFR 412.4(c)(3).

**(C) Duty to Apply**

During this interim period while EPA is revising its 2003 CAFO regulations in response to the Second Circuit Court Decision in *Waterkeeper Alliance et al. v EPA.*, 399 F.3d 486 (2005), the operator of a CAFO does not have a duty to apply for a NPDES permit for a potential discharge. Only CAFO operations with actual discharges have an obligation to apply for a NPDES permit from this Department.

## **CHAPTER SIX: ADMINISTRATIVE PROCEDURES**

### **Reg.6.601 Penalty Policy and Administrative Procedures**

The provisions of Regulation No. 7: **CIVIL PENALTIES** and Regulation No. 8: **ADMINISTRATIVE PROCEDURES** apply to this Regulation.

### **Reg.6.602 Severability**

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

## **CHAPTER SEVEN: EFFECTIVE DATE**

### **Reg.6.701      Effective Date**

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



ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

101 EAST CAPITOL  
SUITE 205  
LITTLE ROCK, ARKANSAS 72201  
PHONE: (501) 682-7890  
FAX: (501) 682-7891

January 7, 2008

Ms. Donna Davis  
Administrative Rules and Regulations Committee  
Room 433, State Capitol Building  
Little Rock, Arkansas 72201

RE: Regulation No. 6, Regulation for State Administration of  
the National Pollutant Discharge Elimination System  
(NPDES); Docket No. 07-002-R - **FINAL FILING**.

Dear Ms. Davis:

I am enclosing the following for filing with your office:

1. Two (2) hard copies of the amendment to Regulation No. 6, Regulation for State Administration of the National Pollutant Discharge Elimination System (NPDES).
2. Two (2) copies of Commission Minute Order No. 07-47.
3. Two (2) copies of the Financial Impact Statement.

Please provide written confirmation of your receipt of these materials by file-marking the enclosed copy of this letter and returning it to me.

Thank you for your assistance in this matter.

Respectfully,

A handwritten signature in cursive script that reads "Michael O'Malley".

Michael O'Malley  
Administrative Hearing Officer

**RECEIVED**

Enclosures

JAN 07 2008

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LEGISLATIVE RESEARCH



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For Office Use Only		
<b>Effective Date:</b>		<b>Classification Number:</b>
<b>Name of Agency:</b> Arkansas Department of Environmental Quality		
<b>Contact Person:</b> Steven Drown		<b>Telephone:</b> (501) 682-0655
<b>Statutory Authority for Promulgating Rules:</b> A. C. A. § 8-1-203(b)(1).		
<b>Title of Rule:</b> Regulation No. 6, Regulation for State Administration of the National Pollutant Discharge Elimination System (NPDES); Docket No 07-002-R; Minute Order No. 07-47.		
<b>Rule Status</b>	<b>Effective Date Status</b>	<b>Effective Date</b>
<input type="checkbox"/> New Rule/Regulation	<input type="checkbox"/> Emergency	
<input checked="" type="checkbox"/> Amended Rule/Regulation	<input checked="" type="checkbox"/> 10 Days after filing	January 17, 2008
<input type="checkbox"/> Repealed Rule/Regulation	<input type="checkbox"/> Other	
<input type="checkbox"/> Order	<input type="checkbox"/> Repealed	
<input type="checkbox"/> Emergency Rule/Regulation	Adopted by State Agency	
<input type="checkbox"/> Rule above is proposed and will be replaced by final version  <input checked="" type="checkbox"/> Financial and/or Fiscal Impact Statement Attached		
<h3>Certification of Authorized Officer</h3> <p>I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.</p> <p>Signature: <u>Michael O'Malley</u> Date: <u>January 7, 2008</u></p> <p>Title: <u>Administrative Hearing Officer</u></p>		

ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION

LOCATION-SUBJECT  
Adoption of Revisions to  
Regulation No. 6, Regulations for  
State Administration of the National  
Pollutant Discharge  
Elimination System (NPDES)

DOCKET NO. 07-002-R

MINUTE ORDER NO. 07 - 47

PAGE 1 OF 2

On March 23, 2007, the Commission granted the Department's petition to initiate rulemaking to amend Regulation No. 6. A public hearing was held on May 14, 2007 in Little Rock.

Based on the comments received, ADEQ has revised the proposed changes. All revisions are a logical outgrowth of the proposed rulemaking and do not require an additional public notice and comment period.

**IT IS THEREFORE, ORDERED:**

1. That the proposed rule, as revised based on the public comments is adopted.
2. That the ADEQ staff is directed to make these changes to Regulation No. 6.

PROMULGATED THIS 7<sup>th</sup> DAY OF December, 2007 BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION.

BY: William S. Schupor Chairman  
Thomas Schuetz, Chairman  
William G. Thompson

ATTEST: Marks  
Teresa Marks, Director

APPROVED: Mike Beebe  
Mike Beebe, Governor

COMMISSIONERS

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<u>RY</u>	R. Young
<u>Accuse T. Schuetz</u>	

WBT  
Co-Chairman  
Chairman

SUBMITTED BY: Jamie L. Ewing PASSED: December 7, 2007