

The Department has prepared the State NPDES program description for submission to EPA to receive authorization for the program pursuant to the Memorandum of Understanding with EPA concerning phased delegation. As part of the submission, the Department has prepared a Memorandum of Agreement concerning administration of the program and proposed Regulation No. 6, pursuant to Act 472 of 1949, as amended, (The Arkansas Water and Air Pollution Control Act). This regulation entitled, " Regulations for Adopting By Reference Applicable Federal Regulations Incident to State Administration of the National Pollutant Discharge Elimination System (NPDES)" adopts those provisions of Title 40, Code of Federal Regulations, necessary for the Department to receive program authorization. Those regulations, if adopted by the Commission, shall be effective as of the date of program approval by EPA. Both the program submission and Regulation No. 6 have been to public hearing on November 15, 1982, and the submission reflects the comments received. It is requested, therefore, that the following be made an Order of this Commission:

"The Commission hereby adopts and promulgates Regulation No. 6, pursuant to Act 472 of 1949, as amended, a copy of which is attached hereto.

The Commission hereby approves the submission of the State NPDES program description and the Memorandum of Agreement concerning program administration for submission to the U.S. Environmental Protection Agency to apply for authorization to administer the NPDES program in Arkansas."

COMMISSIONERS

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John P. Sutton
CHAIRMAN

SUBMITTED BY: Phillip Deisch DATE PASSED: 1-28-83
 Chief Counsel
 Legal Section

STATE OF ARKANSAS

DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

REGULATION NO. 6

REGULATIONS FOR ADOPTING BY REFERENCE APPLICABLE FEDERAL
REGULATIONS INCIDENT TO STATE ADMINISTRATION OF THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

SECTION 1. Pursuant to the provisions of Section 3 of Title I of the Arkansas Water and Air Pollution Control Act, hereinafter referred to as the "Act", (Act 472 of 1949, as amended; Ark. Statutes § 82-1904), the Arkansas Commission on Pollution Control and Ecology (hereinafter referred to as the "Commission") hereby promulgates this Regulation No. 6 to adopt by reference applicable Federal Regulations incident to state administration of the National Pollutant Discharge Elimination System (NPDES).

SECTION 2. It is the purpose of this regulation to adopt federal 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 Pollution Control and Ecology to have regulations substantially equivalent to the federal program administered by the United States Environmental Protection Agency.

SECTION 3. The following definitions apply to this regulation:

ADMINISTRATOR

The Administrator of the United States Environmental Protection Agency, or an authorized representative.

APPLICABLE STANDARDS
AND LIMITATIONS

All State, Interstate and Federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including "effluent limitations", water quality standards, standards of performance, toxic effluent standards or prohibition, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of the CWA.

APPLICATION

The EPA standard national forms for applying for a permit, including any additions, revisions, or modifications to the forms, or forms approved by the EPA for use in "approved States," including any approved modifications or revisions. For RCRA, application also includes the information required by the Director under §122.25 (content of Part B of the RCRA application).

APPROPRIATE ACT
AND REGULATIONS

The Clean Water Act (CWA); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes. In the case of an "approved State program," appropriate Act and regulations includes State program requirements.

APPROVED PROGRAM OR
APPROVED STATE

A State or interstate program which has been approved or authorized by the EPA under Part 123.

AVERAGE MONTHLY
DISCHARGE LIMITATION

The highest allowable average of "daily discharges" over a calendar month, calculated as a sum of all daily discharges measured during a calendar month, divided by the number of daily discharges measured during that month.

AVERAGE WEEKLY
DISCHARGE LIMITATION

The highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all daily discharges measured during a calendar week, divided by the number of daily discharge measured during that week.

BEST MANAGEMENT
PRACTICES (BMPs)

Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include methods, measures, practices, or design and performance standards, which facilitate compliance with Section 404(b)(1) environmental guidelines (40 CFR Part 230), effluent limitations or prohibitions under Section 307(a), and applicable water quality standards.

CONTIGUOUS ZONE

The entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

CONTINUOUS DISCHARGE

A "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

CWA

The Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) P.L. 92-500, as amended by P.L. 95-217 and P.L. 95-576: (33 U.S.C. §1251 et seq.).

DAILY DISCHARGE

The "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For all pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

DIRECTOR

The Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no "approved State program," and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. In some circumstances, however, the EPA retains authority to take certain actions even when there is an approved State program. The EPA may retain jurisdiction over that permit after program approval; (see §123.71). In such cases, the term "Director" means the Regional Administrator and not the State Director.

DISCHARGE

The "discharge of a pollutant" when used without qualification.

DIRECT DISCHARGE

The "discharge of a pollutant."

DISCHARGE OF
A POLLUTANT

(a) (1) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point sources" or

(2) Any addition of any pollutants to the waters of the "Contiguous Zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

(b) This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

DISCHARGE MONITORING
REPORT (DMR)

The EPA uniform national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by the EPA. The EPA will supply DMR forms to any approved State upon request. The EPA national forms may be modified to substitute the State agency name, address, logo, and other similar information, as appropriate, in place of the EPA's.

DISCHARGE TO WATERS
OF THE STATE

A discharge of any wastes in any manner which, directly or indirectly, permits such waste to reach any waters of the State.

DISPOSAL SYSTEM

A system for disposing of sewage, industrial waste and other wastes, and includes sewer systems and treatment works.

DRAFT PERMIT

A document prepared under §124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in §124.5, are types of "draft permit." A denial of a request for modification, revocation and reissuance, or termination, as discussed in §124.5 is not a "draft permit." A "proposed permit" is not a "draft permit."

EFFLUENT LIMITATION

Any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

EFFLUENT LIMITATIONS
GUIDELINES

A regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

ENVIRONMENTAL
PROTECTION AGENCY

The United State Environmental Protection Agency (EPA).

FACILITY OR
ACTIVITY

NPDES "point source" or any other facility or activity (including land or appurtenance thereto) that is subject to regulation under the NPDES program.

HAZARDOUS SUBSTANCE

Any substance designated under 40 CFR Part 116 pursuant to Section 311 of CWA.

INDIRECT DISCHARGER

A nondomestic discharger introducing "pollutants" to a "publicly owned treatment works."

INDUSTRIAL WASTE

Any liquid, gaseous or solid waste substance resulting from any process of industry, mining, manufacturing, trade or business or from the development of any natural resources.

INTERSTATE AGENCY

An agency of two or more states established by or under an agreement or compact approved by the Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administration under the "appropriate Act and regulation."

MAJOR FACILITY

Any NPDES facility or activity classified as such by the Regional Administrator, or, in the case of "approved state programs," the Regional Administrator in conjunction with the state Director.

MAXIMUM DAILY DISCHARGE LIMITATION

The highest allowable "daily discharge."

MUNICIPALITY

A city, town, or borough, county, parish, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or any authorized Indian tribal organization, or designated and approved management agency under Section 208 of the CWA.

NATIONAL POLLUTANT
DISCHARGE ELIMINATION
SYSTEM

NPDES, the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pre-treatment requirements, under sections 307, 402, 318, and 405 of the CWA. The term includes an "approved program."

NEW DISCHARGER

Any building, structure, facility or installation:

(a) (1) From which there is or may be a new or additional "discharge of pollutants" at a "site" at which on November 18, 1972, had never discharged pollutants.

(2) Which has never received a finally effective NPDES "permit" for discharges at that site.

(3) Which is not a "new source."

(b) An "indirect discharger" which commences discharging into "waters of the United States." Any existing mobile point source, such as an offshore oil drilling rig, seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a location for which it does not have an existing permit.

NEW SOURCE

Any building, structure, facility or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source.

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

OTHER WASTES

Garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, oil tar chemicals, and all other substances organic or inorganic, not sewage or industrial waste which may be discharged into the waters of the state. Any "wastes" and "pollutants" includes sewage, industrial wastes, or other wastes.

PERMIT

An authorization, license, or equivalent control document issued by EPA or an "approved state" to implement the requirements of Parts 123 and 124. "Permit" includes "general permit" (§§122.59 and 123.95), "draft permit", or a "proposed permit."

PERSON

The state agency, any municipality, governmental subdivision of the state or the United States, public or private corporation, individual, partnership, association, or other entity.

POLLUTANT

Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. §2011 et seq.), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water.

POLLUTION

Such contamination, or other alteration of the physical, chemical or biological properties, or (of) any waters of the state, or such discharge of any liquid, gaseous or solid substance in any waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

PUBLICLY OWNED
TREATMENT WORKS (POTW)

Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

PRIMARY INDUSTRY
CATEGORY (NPDES)

Means any industry category listed in the NRDC settlement agreement (Natural Resources Defence Council et al v. TRAIN, 8 E.R.C. 2120 (D.D.C. 1976); modified 12 E.R.C. 1833 *D.D.C.); also listed in appendix A of Part 122.

PRIVATELY OWNED
TREATMENT WORKS

Any device or system which is:

- (a) Used to treat wastes from any facility whose operator is not the operator of the treatment works.
- (b) Not a publicly owned treatment works (POTW).

PROCESS WASTEWATER

Any water which, during manufacturing or processing, comes into direct contact with or results from the production of any raw material, intermediate product, finished product, byproduct or waste product.

PROPOSED PERMIT

means a State NPDES "permit" prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance by the State. A "proposed permit" is not a "draft permit."

RECOMMENCING DISCHARGER

A source which recommences discharge after terminating operations.

REGIONAL ADMINISTRATOR

The Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

SCHEDULE OF COMPLIANCE

A schedule of remedial measures included in a "permit," including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the "appropriate Act and regulations."

SDWA

The Safe Drinking Water Act (P.L. 95-523, as amended by P.L. 95-1900; 43 U.S.C. §300(f) et seq.).

SECONDARY INDUSTRY
CATEGORY

Any industry which is not a "primary industry category."

SECRETARY

The Secretary of the Army, acting through the Chief of Engineers.

SEWAGE

The water carried waste products from residences, public buildings, institutions or other buildings, including the excrementitious or other discharge from the bodies of human beings or animals, together with such ground water infiltration and surface water as may be present.

SEWAGE FROM VESSELS

Human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

SEWAGE SLUDGE

The solids, residues, and precipitate separated from or created in sewage by the unit processes of a "publicly owned treatment works." "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

SEWER SYSTEM

Pipe lines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage or industrial waste or other wastes to a point of disposal.

SITE

The land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

STATE

Any of the 50 states, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth Northern Mariana Islands (except in the case of CWA).

STATE DIRECTOR

Administrative Officer of any state or interstate agency operating an "approved program" or the delegated representative of the state Director. If responsibility is divided among two or more state or interstate agencies, "state Director" means the chief administrative officer of the state or interstate agency authorized to perform the particular procedure or function to which reference is made.

STATE/EPA AGREEMENT

An agreement between the Regional Administrator and the state which coordinates EPA and state activities, responsibilities and programs including those under the RCRA, SDWA, and CWA programs.

TOXIC POLLUTANT

Any pollutant listed as toxic under section 307(a)(1) of CWA.

TREATMENT WORKS

Any plant, disposal field, lagoon, dam, pumping station, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills, or other works not specifically mentioned herein, installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes.

VARIANCE

Any mechanism or provision under sections 301 or 316 of CWA or under 40 CFR Part 125, or in the applicable "effluent limitations guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), (g), (h), (i), or 316(a) of the CWA.

WATERS OF THE STATE

All streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof.

WATERS OF THE
UNITED STATES

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

(b) All interstate waters, including interstate "wetlands."

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters.

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes.

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(3) Which are used or could be used for industrial purposes by industries in interstate commerce.

(d) All impoundments of waters otherwise defined as waters of the United States under this definition.

(e) Tributaries of waters identified in paragraphs 1-4 of this definition.

(f) The territorial sea.

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)-(f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR §423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as a disposal area in wetlands) nor resulted from the impoundment of waters of the United States.

SECTION 4. Adoption of Federal Regulations

- (a) Except where manifestly inconsistent with the provisions of the Clean Water Act, as amended, or with federal regulations adopted pursuant thereto, or with the provisions of this regulation, the Department shall have the responsibilities and that authority, with reference to the State of Arkansas, granted to the Administrator of the United States Environmental Protection Agency under the provisions of the following regulations, which regulations are hereby adopted insofar as they are applicable to state programs and made part of this regulation as though set forth herein word for word, and which shall also apply to persons subject to regulation under the provisions of the Clean Water Act and/or the Arkansas Water and Air Pollution Control Act relating to discharges of waters of the State, within the State of Arkansas.

40 CFR Part 122, Subparts A and D, 45 FR 33418 et seq; May 18, 1980, as amended to the date hereof.

40 CFR Part 124, Subparts A and D. 45 FR 33484 et seq; May 18, 1980, as amended to the date hereof.

40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and L, 38 FR 13527 et seq; May 22, 1973, as amended to the date hereof.

40 CFR Part 129, 42 FR 2588 et seq; January 12, 1977, as amended to the date hereof.

40 CFR Part 133, 38 FR 22298 et seq; August 17, 1973, as amended to the date hereof.

40 CFR Subchapter N, 39 FR 4532 et seq; February 1, 1974, as amended to the date hereof (pretreatment adoption after acquisition of Phase V).

Whenever the effect of any of the aforecited regulations is modified by a formal action of the United States Environmental Protection Agency, as evidenced by a publication in the Federal Register, the effect of such action, upon its effective date, shall be extended in full force and effect as Interim Provisions of this Regulation and shall be enforceable as such, provided that the effect of said action does not conflict with the provisions of the Arkansas Water and Air Pollution Control Act. No interim provision of this regulation shall remain in effect for more than six months, unless the Commission grants an extension after opportunity for public comment as provided in subsection (e) below.

(b) (Reserved for future federal regulation references).

(c) (Reserved for future federal regulation references).

(d) In all instances wherein the federal regulations of 40 CFR 122, 124, 125, 129, 133, and Subchapter N refer to the Administrator of the United States Environmental Protection Agency, the reference, for purposes of this regulation, shall be deemed to mean the Director, ADPC&E unless the context plainly dictates otherwise.

(e) The Director, within a reasonable time after the effective date of the Interim Provisions of this regulation, shall cause a public notice to be published in a newspaper of statewide circulation stating the existence of such Interim Provisions and giving notice of the public's opportunity to comment on the Interim Provisions. Whenever the Director finds that a public hearing should be held to consider the continued application of Interim Provisions, or proposed modifications to such provisions, a notice of public hearing and formal action of the Commission shall follow in the manner described in subsection (f) below:

(f) Whenever the federal regulations referenced in subsection (a) of this section are amended, modified, revoked, expanded, supplemented, or otherwise changed, such revocation, expansion, supplement, or other change shall become part of this regulation when:

(1) a 30 day notice of public hearing upon the proposed change is published by the Department, and

(2) such amendment, modification, revocation, expansion, supplement of other change is adopted by the Commission after public hearing; where a time exceeding 35 days exists between the promulgation of the federal regulations and the next regularly scheduled Commission meeting, the Director, finding sufficient cause for earlier consideration may request the chairman of the Commission to call a special meeting of the Commission to consider the matter.

- (3) Such amendment, modification, revocation, expansion, supplement, or other change shall become effective upon adoption by the Commission unless otherwise set out in the resolution adopting such changes.
- (g) Insofar as, and to the extent that there is any conflict between this section and Regulation No. 2 (Water Quality Standards) the more stringent standard of the two shall apply.

SECTION 5. Violations

- (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.
- (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 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 from the Department.
- (f) No person shall violate any other provision of this regulation or the Act.
- (g) Any person who violates any provision of this regulation or the Act shall be subject to the penalties as provided in Section 9(a), (b), (c), Part I of the Act (Sec. 82-1909 (a), (b), and (c), Ark. Stats. Ann.).

SECTION 6. Permit Extensions

Provided the applicant has submitted a timely and complete renewal application, Federally issued NPDES permit, including those permits extended under the provisions of 40 CFR 122.5(a) and (d), and 5 U.S.C. 588(c), shall become State Water Discharge Permits on the date of approval of that phase, and, if expired, shall be automatically extended as effective permits until reissued, modified, or revoked by the State. Provided the applicant has submitted a complete and timely renewal application, state water discharge permits which expire, shall continue in full force and affect until reissued, modified, or revoked by the State.

SECTION 7. 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.

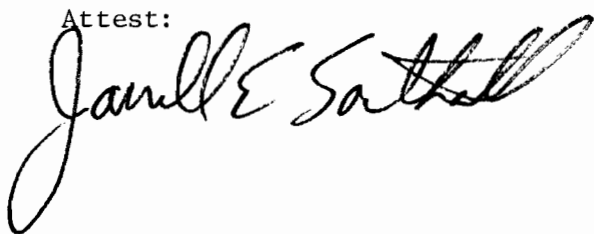
SECTION 8. Effective Date

This regulation shall be in full force and effect as of the date of program approval by the U. S. Environmental Protection Agency for administration of The NPDES program by The State of Arkansas.

Promulgated this 28 day of January, 1983.

By Order of the COMMISSION ON POLLUTION CONTROL AND ECOLOGY


Chairman

Attest:



Governor