

MINUTE ORDER NO. 90-31

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Pursuant to public notice and hearing and after consideration of all comments received, the Commission on Pollution Control and Ecology hereby adopts the following revision to Regulation No. 6, which adopts by reference, all applicable federal regulations promulgated between July 1, 1989 and July 31, 1990.

BY ORDER OF THE COMMISSION ON POLLUTION CONTROL AND ECOLOGY

BY: Shirley Waddell
CHAIRMAN

ATTEST:

Randall Mathis
RANDALL MATHIS, DIRECTOR

APPROVED: Bill Clinton
GOVERNOR

COMMISSIONERS

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Shirley Waddell
CHAIRMAN

SUBMITTED BY: Chuck C. Bennett DATE PASSED: 11-16-90

STATE OF ARKANSAS

DEPARTMENT OF POLLUTION CONTROL AND ECOLOGY

REGULATION NO. 6

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

SECTION 1. 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 Commission on Pollution Control and Ecology (hereinafter referred to as the "Commission") hereby promulgates this Regulation No. 6 to implement state administration of the National Pollutant Discharge Elimination System (NPDES).

SECTION 2. 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 Pollution Control and Ecology to have regulations as stringent as the federal program administered by the United States Environmental Protection Agency.

SECTION 3. DEFINITIONS

a. The definitions set forth in 40 CFR 122.2 and 124.2 are all adopted herein by reference in Section 3.

b. In addition, the following definitions also apply to this Regulation:

1. "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.).

2. "ADPC&E" or "Department" means the Arkansas Department of Pollution Control and Ecology.
3. "Commission" means the Arkansas Commission on Pollution Control and Ecology.
4. "Director" means the Director of the Arkansas Department of Pollution Control and Ecology, unless the context dictates otherwise. (See 40 CFR 122.2 and 124.2).

SECTION 4. INCORPORATION OF 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 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 Pollution Control and Ecology," and all references to the "U.S. Environmental Protection Agency" or "EPA" shall be considered references to the "Arkansas Department of Pollution Control and Ecology"; 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 -

1. Part 116;
2. Part 117;
3. Subparts A, B, C and D of Part 122 with the following exceptions: 122.6 (for analagous provision, see Section 7); 122.7(a); 122.21(1); 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), and 123.41(a);
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);
124.56; 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. Parts 400 through 471 inclusive (Subchapter N).

All as adopted as final rules (including "interim final rules" and "technical amendments") by the U.S. Environmental Protection Agency on or before July 31, 1990.

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.

SECTION 5. CONFIDENTIALITY

In addition to the provisions of 40 CFR 122.7(b) and (c), which are adopted by reference in Section 4, 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 mark each page containing such information with the words "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection as a trade secret.

c. Any document submitted to the Department 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 in Part II will be returned to the applicant.

SECTION 6. 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.

SECTION 7. STATUS AND CONTINUATION OF PERMITS UPON PROGRAM APPROVAL

On the date of approval by EPA of the Arkansas NPDES Program, the status of water discharge permits issued by ADPC&E prior to program approval and the status of NPDES

permit issued by EPA prior to program approval shall be as follows:

a. Except as provided in subparagraph (b) below, all existing state water discharge permits for discharges also required to have an NPDES permit, are hereby expired as of the date of program approval; provided, however, such expiration is hereby simultaneously suspended and the terms and conditions of the permits shall continue in full force and effect until modified or revoked and reissued by ADPC&E as an NPDES permit, or the permit is terminated.

b. All effective NPDES permits issued by the U.S. Environmental Protection Agency are hereby deemed the state water discharge permits for the purposes of the Arkansas Water and Air Pollution Control Act. As of the date of program approval, they are also deemed to be the effective state NPDES permits. Any previously issued state permits for such discharges are expired and no longer in effect unless the permittee is otherwise notified by the Director that such state permit shall not expire, in which case the previously issued permit shall remain in effect. Effective NPDES permits includes those permits which are expired but which have been continued in effect by EPA pursuant to 40 CFR 122.6(a) and 5 U.S.C. 588(c).

c. Conditions of a NPDES permit issued by the Department of Pollution Control and Ecology 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.

SECTION 8.
APPLICATION PROCEDURES - FOR CONSTRUCTION OR MODIFICATION
OF WASTEWATER FACILITIES

a. In addition to the permit application procedures set forth in 40 CFR Parts 122, 123, and 124 that are incorporated by reference in Section 4 hereof, 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. The application must be submitted,

approved, and a permit issued and effective before the activity applied for can begin.

b. A permit for construction or modification of a wastewater treatment facility does not constitute an NPDES permit. Issuance of a 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.

c. A two-part permit application form will be provided to applicants. The information in Part I of the application, along with any supporting documentation, will be used exclusively by ADPC&E to prepare a state permit for construction/modification of the treatment system. The state construction permit will normally be issued at the time the draft NPDES permit is ready for public notice. The information in Part II of the application including any supporting documentation will constitute the application for an NPDES permit to operate the treatment system. 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 the applicable information in Part I, along with any revision to the attachments thereto.

d. Information submitted under a claim of confidentiality shall only be accepted in Part I of the permit application. Part II of the application will contain only information required by NPDES Regulations to draft the wastewater discharge permit. Confidential information shall not be submitted in this portion of the application. Only the information in Part II of the application will be forwarded to EPA for review and filing.

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 Section 5 herein above.

SECTION 9. 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 Section 403.11 or the Department pursuant to 40 CFR Section 403.11 as incorporated in Section 4. 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 subparagraph a. above, all industrial users discharging or proposing to discharge to publicly owned treatment works shall obtain a permit hereunder in accordance with Section 8 prior to construction or modification of the disposal system, and a permit prior to discharge in accordance with the requirements incorporated in Section 4 and the other applicable provisions of this Regulation.

SECTION 10. PENALTY POLICY AND ADMINISTRATIVE PROCEDURE

Regulation No. 7: Civil Penalties and Regulation No. 8: Administrative Procedures apply to this Regulation.

SECTION 11. 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 12. EFFECTIVE DATE

This Regulation, and all revisions thereto, is effective twenty (20) days after filing with the Secretary of State.