

Arkansas Environmental Defense Alliance

*A watchdog organization whose goal is to preserve and enhance Arkansas' natural resources
using effective, proactive approaches to address environmental issues through collaborative and other legal means.*

October 19, 2016

Richard H. Mays,
President
Heber Springs

Nancy DeLamar,
Vice-President
Little Rock

Rob Leflar,
Secretary
Fayetteville

Sam Cooke,
Treasurer
Batesville

Mary Anne Salmon,
Executive Director
North Little Rock

Kay Kelley Arnold
Little Rock and
Heber Springs

Fran Deane-Alexander
Fayetteville

Dan Flowers
North Little Rock

Lance Lee
Texarkana

Richard Mason
El Dorado

Don Richardson
Clinton

Robert Thompson
Paragould

Steve Wilson
Norfolk

Joe F. Nix, Ph.D.
Arkadelphia

Richard Davies
North Little Rock

Via Electronic Mail and Regular Mail

Ms. Kelly Robinson
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

reg-comment@adeq.state.ar.us

Re: *Comments of the Arkansas Environmental Defense Alliance, Inc. on the
Proposed Amendments and Modification to Arkansas Pollution Control
and Ecology Commission Regulation 6*

Dear Ladies and Gentlemen:

This is in response to your Notice of Proposed Regulation Change of the Arkansas Pollution Control and Ecology Commission Regulation 6, published September 3 and 4, 2016, in which you proposed to make multiple changes to that Regulation. As you know, Regulation 6 is the backbone of the water pollution control program in Arkansas, and any changes to that Regulation should be given serious consideration.

The following comments are submitted on behalf of the Arkansas Environmental Defense Alliance, Inc. (AEDA), an Arkansas not-for-profit organization whose mission, among others, is to serve as a watchdog organization to preserve and enhance Arkansas's natural resources, and to serve as a spokesman for those who want to participate in the environmental decision-making process. AEDA also adopts and incorporates herein by reference the separate comments of the Buffalo River Watershed Alliance, Inc., and the Friends of the North Fork and White Rivers.

Our comments are as follows:

1. Construction permit for General Permit Projects.

Section 6.202(F) of the proposed amendments provides that "For general National Pollutant Discharge Elimination System Permits, a state construction permit is not required if the construction is authorized under the general permit."

It is AEDA's position that a general permit is not appropriate for Concentrated Animal Feeding Operations (CAFOs) because of the amounts and concentrations of wastes that are generated by those operations, the potential for release of those contaminants, the differences in operations, the variances in geology and topography that exist in the State of Arkansas (some of which are not suitable for the placement of CAFOs, and numerous other reasons. Unfortunately, the requirements that existed in Regulation 6 for issuance of general permits to CAFOS in the State of Arkansas did not address or cover those issues, which has resulted in a highly controversial and potentially catastrophic situation in the Buffalo River watershed.

Further, it is AEDA's position that ADEQ's Notification of Decision dated May 4, 2016, to not renew the NPDES General Permit No. ARG590000 eliminates the need for Regulation 6.207, and it should be deleted from Regulation 6 altogether. This will be elaborated upon herein.

If Regulation 6.207 is to be continued, then for the above reasons and because of the high risks of contamination from CAFOs, the construction permitting process serves a highly important purpose in allowing the ADEQ the opportunity to review and approve an engineer's construction plans, provide notice to the public, and ensure that waste management and disposal systems are constructed in accordance with the plans submitted and approved. Any change that weakens the currently-lax permitting process is against the public interest and is one that the Alliance strongly opposes. A separate construction permit, and public notice of application for such a permit, should be required.

Furthermore, the proposed revised language in Section 6.202(F), stating that "...a state construction permit is not required...", reflects a change in the requirements. Such a change would not be necessary if there were in fact no current requirements for a construction permit. This proposed change suggests that a separate permit for construction was required at the time of the C&H application and that the permit was therefore improperly issued.

2. Use of *E. coli* Instead of Fecal Coliform.

Section 6.301(D)(4) of the proposed amendments states: *The fecal coliform content of discharges shall not exceed a monthly geometric mean ~~average~~ of 200 colonies per 100 milliliters and a weekly geometric mean ~~average~~ of 400 colonies per 100 milliliters. However, at no time shall the fecal coliform content exceed a geometric mean of 200 colonies per 100 milliliters in any water defined as an Extraordinary Resource Water or Natural and Scenic Waterway; "*

E. coli is considered to be a better indicator of bacterial impairment with regard to human health than fecal coliform. In recent years, EPA has suggested that the utilization of *E. coli* was more effective in monitoring surface waters from a human health perspective than was fecal coliform. APC&E Regulation 2.507 provides that assessment for impairment of ambient waters shall be measured for *E. coli*, rather than fecal coliform. In order to be consistent with existing state regulations and federal recommendations, *E. coli* should be the indicator of choice, not fecal coliform and this section should be changed accordingly.

3. Calculation of Sampling Time

The final sentence of Section 6.301(D)(4) regarding the fecal coliform content of discharges into Extraordinary Resource Water and Natural and Scenic Waterways does not specify a period during which the geometric mean is to be calculated. The phrase, "at no time" implies that no single sample should exceed 200 colonies per 100 ml. Therefore the proposed new language referring to "geometric mean" is incorrect because a mean cannot be calculated based on a single sample. This sentence should either specify a minimum number of samples to be taken in order to calculate a geometric mean, or the reference to geometric mean should be removed.

Whether by averages or geometric means, the application of any mathematical formula should not be used to hide dangerous peak readings when public health is of concern. Parents allow their children to swim in ERWs on the assumption that this designation means the water is safe for human contact. The most restrictive limit should be used.

4. Section 6.207 (Public Notice Requirements of Notice of Intent for Concentrated Animal Feeding Operation (CAFO) General Permit) References CAFO General Permit ARG590000.

Proposed Reg. 6.207 continues to include the process for public notification requirements for a general permit for a proposed CAFO under general permit ARG590000. On May 4, 2016, in response to public comments submitted on the proposed renewal of General Permit ARG590000, a Public Notice was issued by the Director of ADEQ stating that the general permit would not be renewed. (See attached

Notification of Decision dated May 4, 2016). Consequently, that permit is no longer in effect. Draft Section 6.207 should be deleted from Regulation 6 altogether. Any further continuation of the General Permit for CAFOs in Regulation 6 would be a contradiction of the Notification of Decision referred to above.

5. Section 6.201(H)94 - Other Biological Systems.

The following comments relative to the regulations proposed under Section 6.202(H) are without prejudice to AEDA's position stated above that General Permit ARG590000 is no longer in effect, and Draft Section 6.207 should be deleted from Regulation 6 altogether. The comment is included herein on the contingency that ADEQ maintains that Section 6.207 should be maintained in Regulation 6.

Assuming that under Reg. 6, a medium or large size CAFO may still be granted a general permit, notwithstanding ADEQ's Notification of Decision dated May 4, 2016, the standards that such CAFO must meet are not clear. Land treatment of wastewater by a medium or large CAFO permitted under Reg. 5 must meet various technical requirements required by that Regulation. For example, under Reg. 5, the waste management plan must be in accordance with United States Department of Agriculture Natural Resource Conservation Service technical publications Field Office Technical Guide and the Agricultural Waste Management Field Handbook.

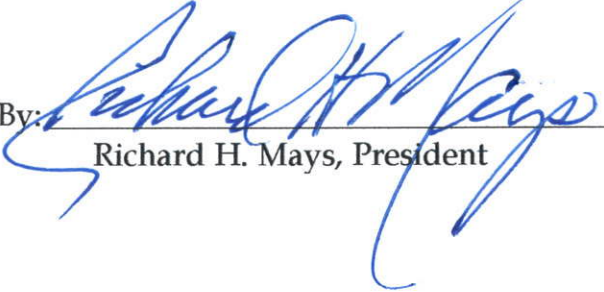
On the other hand, there appear to be few, if any, standards in Regulation 6 that apply to medium or large CAFOs. This results in two separate standards being applied to the same type and size of facility when one is permitted under Reg. 5 and the other under Reg. 6, allowing unfair competitive advantage to one business over another, and the environment near the facility with the lower regulatory standard suffering degradation to a much larger extent. If the general permit under Reg. 6 is to be continued, Reg. 6 technical requirements need to be made consistent with Reg. 5 requirements for CAFO waste management and land application.

As noted in the introductory paragraphs to these comments, we also adopt herein by reference the comments of the Buffalo River Watershed Alliance, Inc., and the Friends of the Norfolk and White Rivers. We also adopt comments of similar nature to those contained herein by other persons.

We look forward to further dialogue with the Department on this important subject.

Sincerely,

Arkansas Environmental Defense Alliance, Inc.

By: 
Richard H. Mays, President

cc: Mr. Caleb Osborne