



October 19, 2016

Via email: reg-comment@adeq.state.ar.us

Kelly Robinson
Public Information Officer
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118

Re: Proposed Changes to APCEC Regulation No. 6

Dear Ms. Robinson:

The following comments are in regard to the proposed changes to the Arkansas Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES) contained in Arkansas Pollution Control and Ecology Commission (APCEC) Regulation No. 6 (hereinafter, "Reg. 6"). The comments are submitted on behalf of Beaver Water District (BWD), the largest of the four public drinking water utilities whose source of raw water is Beaver Lake and the second largest drinking water utility in Arkansas. BWD produces the drinking water for over 300,000 people and numerous businesses and industries in Northwest Arkansas.

BWD's comments begin with two general, introductory comments, followed by comments that refer to specific proposed changes. Those comments are listed in the order in which the proposed changes appear in Reg. 6 and not necessarily in order of importance. These written comments are in addition to the verbal comments made by BWD representatives at the public hearing in Springdale on October 4, 2016.

Comment 1: *The documents filed by the Arkansas Department of Environmental Quality (ADEQ) do not provide sufficient information for the public to understand, analyze, or evaluate the proposed changes to Reg. 6. ADEQ's Petition to Initiate Rulemaking (hereinafter, the "Petition") may appear to provide the "detailed explanation" required by APCEC Regulation No. 8, Administrative Procedures, at Reg. 8.808(A)(1). Closer examination of the Petition reveals, however, that proposed changes that are listed as "clarifications" or "minor corrections" often are significant, substantive changes; that no real explanation is given for many of the changes; and that where the basis for proposed changes to Reg. 6 is amendment of the federal regulations, often the *specific* section of the amended federal regulations and the corresponding *specific* section of Reg. 6 is not provided. For example, numbered paragraph 3 of the Petition provides, in part, that the proposed changes will make the regulation consistent with the amended provisions of 40 C.F.R. Parts 122, 123, and 127 and 40 C.F.R. Part 125, Subparts (I) and (J). These provisions of the federal regulations cover hundreds of pages with very small type, making it virtually impossible to ascertain what amended federal regulation has resulted in a change to what specific section of Reg. 6. See the following Comments.*

Comment 2: *In the future, BWD requests that ADEQ convene a meeting or meetings of interested stakeholders prior to petitioning the APCEC to initiate rulemaking to amend Reg. 6.* BWD and others have made similar requests in the past, and ADEQ has on a few occasions held stakeholder meetings in advance of proposing regulatory changes. Informal meetings with stakeholders in advance of the initiation of rulemaking provide opportunities for discussion and dialogue, unlike the one-way communication that takes place at public hearings and during the formal public comment period on proposed rulemakings. Among other things, such meetings: (1) educate and inform the public and the regulated community about the regulation; (2) provide a forum that allows for evolving conversations between ADEQ and stakeholders with differing perspectives; (3) convey to ADEQ timely and invaluable insight regarding the practical application of the regulation in a way that is not possible under the formal notice and comment process; (4) produce more comprehensive and balanced proposed changes to the regulation; and (5) result in a smoother rulemaking process. These benefits are contingent, of course, on the process being transparent and including representatives from the full spectrum of stakeholders interested in wastewater permitting and the quality of the surface waters of the state.

Comment 3, Proposed Reg. 6.103(B), Definitions: It would be helpful if the definitions in this section were numbered. As to the basis for the proposed changes to the definitions, the Petition, at numbered paragraph 2.C.i., provides only that the proposed amendments, “[c]larify certain definitions under Reg. 6.103 and eliminate terms already defined in other regulations.” Only one definition was eliminated, however, and, as discussed below, a number of definitions were added that already are defined in the federal regulations that are incorporated by reference in Reg. 6.

Comment 4, Proposed Reg. 6.103(B), Definitions: A definition has been added for “Approved Publicly Owned Treatment Works Pretreatment Program.” There’s an extra quotation mark in this provision, and the word “program” in the parentheses should be capitalized.

Comment 5, Proposed Reg. 6.103(B), Definitions: Definitions for “Indirect Discharge” and “Industrial User” have been added. These definitions are unnecessary as they are found at 40 C.F.R. §§ 403.3(i) and (j), respectively, and incorporated by reference into Reg. 6 pursuant to proposed Reg. 6.104(A)(12).

Comment 6, Proposed Reg. 6.103(B), Definitions: The definition for “Indirect Discharge” refers to “Publicly Owned Treatment Works” and to “section 307(b), (c), or (d) of the Act.” The terms “Publicly Owned Treatment Works” and “the Act” are not defined in proposed Reg. 6, but they are defined in C.F.R. § 403.3. This an additional reason that “Indirect Discharge” should not be included in proposed Reg. 6, and that the definitions in 40 C.F.R. §§ 403.3 should be relied upon instead.

Comment 7, Proposed Reg. 6.103(B), Definitions: A definition for “National Pollutant Discharge Elimination System” has been added. This definition is unnecessary as it is found at 40 C.F.R. § 122.2 and incorporated by reference into Reg. 6 pursuant to proposed Reg. 6.104(A)(3). The definition also refers to “the Clean Water Act,” which also is not defined in Reg. 6.

Comment 8, Proposed Reg. 6.103(B), Definitions: A definition has been added for “Ten States Standards.” It provides that Ten States Standards “mean [sic] the latest edition of the “Recommended Standards for Sewage Works or Water Works” published by the Great Lakes Upper Mississippi Board of State Sanitary Engineers.” No such document or entity exists. The Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers, however, has published reports titled “Recommended Standards for Wastewater Facilities” and “Recommended Standards for Water Works.”

Comment 9, Proposed Reg. 6.104(A), Incorporation of Federal Regulations: The last sentence in Reg. 6.104(A) provides, “All as adopted as final rules . . . by the United States Environmental Protection Agency on or before January 1, 2016.” What is the reason that the date was changed to January 1, 2016? The Petition, at numbered paragraph 2.A.iv., notes the proposed change, but does not discuss the reason for the date selected. Shouldn’t the date be the date that any amendments to Reg. 6 are adopted by APCEC or at least the date that ADEQ filed its rulemaking petition (which appears from the documents posted on ADEQ’s website to be either August 12 or 15, 2016)?

Comment 10, Proposed Reg. 6.202(C), Application Requirements for Construction and Operation of Wastewater Facilities: This provision would delete the requirement that an approval letter from the Arkansas Department of Health (ADH) be submitted before obtaining a permit for construction of domestic wastewater treatment facilities. The Petition does not give an explanation for this change, as there is nothing in the Petition specific to Reg. 6.202(C). There is only the list of “clarifications” and “minor corrections” that includes “specifically to . . . [s]implify Reg. 6.202 generally and remove repetitive language.” See Petition at numbered paragraph 2.C.ii. Doing away with the requirement for the submission of an approval letter from ADH, however, is not a clarification, a minor correction, or a simplification (except in terms of easing the requirements). ADEQ may contend that the proposed change removes repetitive language because of the provision currently at Reg. 6.202(D). ADEQ, however, also proposes to substantively change that provision (see Comment 19, below). BWD, therefore, objects to the deletion of the requirement in Reg. 6.202(C) that an approval letter from ADH must be submitted before obtaining a permit for construction of domestic wastewater treatment facilities.

Comment 11, Proposed Reg. 6.202(D), Application Requirements for Construction and Operation of Wastewater Facilities: The deletion of the phrase “the National Pollutant Discharge Elimination System permit” in this provision may have been meant to simplify or remove repetitive language, but instead it incorrectly changes the meaning. Now, instead of the application being approved and the NPDES permit being issued, the subject of the verb “issued” is the “application.” This is incorrect. Applications are approved or denied; they are not issued. Permits are issued.

Comment 12, Proposed Reg. 6.202(E), Application Requirements for Construction and Operation of Wastewater Facilities: The Petition, at numbered paragraph 2.C.iii., states that this proposed change is to “[c]larify and make minor corrections to Reg. 6.202(E) by using appropriate language to describe the engineer responsible for approval of [sic] state construction permit.” First, the change from “Registered Professional Engineer” to “licensed professional

engineer” is in regard to who must stamp and sign the plans and specifications and design calculations that are to be submitted when *applying* for a state construction permit and not in regard to who *approves* the permit. Second, the new additions to the first sentence in Reg. 6.202(E) make no sense. There is no such thing as “[a] state construction permit for an individual National Pollutant Discharge Elimination System Permit” It’s a state permit for construction or modification of a wastewater treatment plant/facility/system, *etcetera*.

Comment 13, Proposed Reg. 6.202(E), Application Requirements for Construction and Operation of Wastewater Facilities: In addition to the changes to this provision that render it unclear (*see* Comment 12, above), there is a significant change that is not identified in the Petition. The inclusion of the word “individual” in the first sentence appears to limit the construction permit application requirements to those applicants that plan to discharge pursuant to an *individual, as opposed to a general*, NPDES permit. The current requirements in Reg. 6.202 apply to applicants that plan to discharge pursuant to either an individual or a general NPDES permit. BWD objects to this proposed change.

Comment 14, Proposed Reg. 6.202(F), Application Requirements for Construction and Operation of Wastewater Facilities: This new provision states 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.” The Petition, at numbered paragraph 2.C.iv., states only that this proposed change is to “[c]larify Reg. 6.202 by adding subsection (F) to provide that a state construction permit is not required if the construction is authorized under a general NPDES permit.” First, this is a significant change to and not simply a clarification of the current Reg. 6.202(A) that requires a state construction permit for “*any* person who desires to construct . . . or modify *any* disposal system” [Emphasis added]. Second, no justification for such a significant change is given. Third, the proposed change contradicts the statutory prohibitions at A.C.A. §§ 8-4-217(b)(1)(A), (C), and (D) against constructing wastewater treatment plants/facilities/systems, *etcetera*, without first obtaining a construction permit. BWD objects to the inclusion of Reg. 6.202(F) and requests that it be deleted.

Comment 15, Proposed Reg. 6.202(G), Application Requirements for Construction and Operation of Wastewater Facilities: Proposed Reg. 6.202(G) was moved from current Reg. 6.202(B) and changed significantly. Once again, the Petition, at numbered paragraph 2.C.v., characterizes this change as a “clarification” and provides no explanation or justification for it. Under current Reg. 6.202(B), the Ten States Standards, with certain listed exceptions, apply to *all* wastewater treatment plants in the State. Proposed Reg. 6.202(G) specifically applies the Ten States Standards only to “*domestic*” wastewater treatment plants. This is a major change that is compounded by the addition of another new provision at proposed Reg. 6.202(I) that states, “Design criteria for *nondomestic* wastewater treatment plants shall be reviewed and approved by the Office of Water Quality of ADEQ as part of the application process. Ten States Standards *shall not apply to nondomestic* wastewater treatment plants.” [Emphasis added]. In other words, the design criteria that have been applicable under Reg. 6.202 to *industrial* wastewater treatment plants for years and years would no longer apply. In the absence of any explanation or justification for this significant change, BWD objects to the restriction of the applicability of the

Ten States Standards in Reg. 6.202(G) to “*domestic*” wastewater treatment plants and requests that Reg. 6.202 be revised accordingly.

Comment 16, Proposed Reg. 6.202(H), Application Requirements for Construction and Operation of Wastewater Facilities: The Petition, at numbered paragraph 2.C.vi., states that Reg. 6.202(H) is added to “clarify the additional standards that apply, with references to the chapters of Ten State [sic] Standards that are affected.” No explanation or justification for the multiple revisions and deletions is given. It also is unclear to whom the additional standards apply, although read in conjunction with proposed Regs. 6.202(G) and (I), one might presume that the additional standards apply only to *domestic* wastewater treatment plants. In the absence of any explanation or justification for the multiple deletions and revisions in proposed Reg. 6.202(H) and because proposed Reg. 6.202(H) is unclear, BWD objects to the proposed changes.

Comment 17, Proposed Reg. 6.202(I), Application Requirements for Construction and Operation of Wastewater Facilities: As discussed in Comment 15, above, this provision specifies that the Ten States Standards shall not apply to nondomestic (*i.e.*, industrial) wastewater treatment plants and that the design criteria for those facilities is essentially left to the discretion of the applicant, subject to review and approval by the Office of Water Quality of ADEQ. This is a significant change to the regulation and past practice, for which no explanation or justification is given. The Petition, at numbered paragraph 2.C.vii., states only that Reg. 6.202(I) is added “concerning design criteria for nondomestic wastewater treatment plants.” BWD questions why, for example, the Ten State Standards regarding wastewater treatment pond/lagoon size, slope, freeboard, liner, and minimum distance from groundwater should not apply to industrial facilities? In the absence of any explanation or justification for proposed Reg. 6.202(I) and because of its potential negative environmental impact, BWD objects to the proposed changes and requests that proposed Reg. 6.202(I) be deleted and replaced with the current requirements for nondomestic wastewater treatment plants .

Comment 18, Proposed Reg. 6.202(J), Application Requirements for Construction and Operation of Wastewater Facilities: This entirely new provision states that, “The recommended design criteria for Wastewater Treatment Residuals (WTR) for a water treatment system should be based on the latest edition of Ten State [sic] Standards for water works. Exception to these criteria must be approved by the Director.” About this new provision, the Petition, at numbered paragraph 2.C.viii., states only that Reg. 6.202(J) is added “to clarify the recommended design criteria for Wastewater Treatment Residuals for a water treatment system should be based on the latest edition of Ten State [sic] Standards for water works.” First, this provision refers to “Wastewater Treatment Residuals” when it probably meant “Water Treatment Residuals,” the term ADEQ used in the State General Permit No. 0000-WG-WR for Land Application of Water Treatment Residuals. Second, WTR are defined in State General Permit No. 0000-WG-WR at Part I.A.2 as the “[s]olid waste products derived from the process of treating raw water sources into potable water.” There aren’t really design criteria for the WTR as stated in proposed Reg. 6.202(J). Since Reg. 6 deals with NPDES wastewater discharges to surface waters, shouldn’t the relevant design criteria be for the kinds of facilities permitted, for example, under NPDES General Permit No. ARG640000 for wastewater discharges from water treatment plants? Third, as noted in Comment 8, above, what the Great Lakes-Upper Mississippi River Board of State and Provincial Public

Health and Environmental Managers has published related to water treatment plants is called the "Recommended Standards for Water Works." The current version is the 2012 edition. Fourth, why must exceptions to the criteria in the Ten States Standards that apply to water treatment plants be approved by the *Director*? Under proposed Reg. 6.202(I), the Ten States standards not only don't apply to nondomestic (*i.e.*, industrial) wastewater treatment plants, but the design criteria for nondomestic wastewater treatment plants only require approval by the *Office of Water Quality of ADEQ*. BWD requests that proposed Reg. 6.202(J) be revised to make the corrections outlined in this Comment. BWD also requests that if ADEQ does not accept Comment 17, above, regarding Reg. 6.202(I), that the required approval in both Regs. 6.202(I) and (J) come from the Office of Water Quality.

Comment 19, Proposed Reg. 6.202(L), Application Requirements for Construction and Operation of Wastewater Facilities: This proposed revision to current Reg. 6.202(D) alters the timing of when an approval letter from ADH is required and also makes it unclear to whom the requirement applies. There is no explanation for the proposed revision in the Petition. *See also* Comment 10, above. BWD objects to this proposed revision.

Comment 20, Proposed Reg. 6.203, Permitting Requirements for Stormwater Discharges Associated with a Small Construction Site: This proposed revision eliminates most of the prescriptive requirements of Reg. 6.203. The Petition, at numbered paragraph 2.C.ix., states only that Reg. 6.202(I) is to "[s]implify and clarify Reg. 6.203 concerning the permitting requirements for stormwater discharges associated with a small construction site, including automatic permit coverage." In the absence of any explanation or justification for the major revisions in proposed Reg. 6.203 and because of its potential negative environmental impact, BWD objects to the proposed changes.

Comment 21, Proposed Reg. 6.301, Effluent Discharges to Losing Stream Segments: BWD objects to the revisions to Reg. 6.301, including the change at Reg. 6.301(D)(4) from a monthly average to a geometric mean for fecal coliform (which is likely to allow a significant increase in the discharge of fecal coliform) and to the deletion of the statement at Reg. 6.301(E) regarding the review of applications by the ADH.

Comment 22, Proposed Reg. 6.401, Determination of Domestic Wastewater Effluent Limitations: BWD objects to the revisions to Reg. 6.401, including the change at Reg. 6.401(A)(1) that deletes the requirement for "nutrient removal where appropriate" and the deletion of the requirements at Reg. 6.401(A)(1) for discharges into "Reservoirs/Domestic Water Supply."

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Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in blue ink that reads "Colene Gaston". The signature is written in a cursive, flowing style.

Colene Gaston
Staff Attorney

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