

Comments on Draft NPDES General Permit No. ARG590000

Overall Comment No. 1: When there are very few facilities operating under a general NPDES permit, ADEQ has traditionally allowed the general permit to expire and required the covered facilities to obtain an individual permit if there is a discharge potential. This occurred for ARG040000 (coal mines), ARG190000 (laundromats), and ARG340000 (bulk petroleum storage and transfer facilities). Considering that there is only one facility operating under NPDES General Permit No. ARG590000 at the present time, please discuss the reasons this general permit should be reissued by ADEQ.

If ADEQ decides to move forward with the proposed renewal of NPDES General Permit No. ARG590000, the following comments apply.

Part 1.1: APC&EC Reg. 22.425 requires additional engineering controls for proposed Class I landfills in the outcrop areas of the Boone and St. Joe formations due to karst terrain. Because ARG590000 is meant to be a “statewide” permit, similar language requiring additional engineering controls should be added to protect groundwater in potentially karst terrain.

Part 1.3: Part 1.3 says CAFO is defined in Part 10.9. It’s in 10.10. This error is repeated in the Fact Sheet.

Part 1.4.7: “Subject to” should be “pursuant to.” To clarify the intent of this part, it should be noted that all CAFOs are currently allowed in the Buffalo River Watershed except for swine CAFOs above a certain size (as specified in Reg. 6.602(B)).

Parts 1.5.1.2 & 3.1: The NMP should also have to comply with all existing APC&EC Regulations (i.e., Regulations No. 5 and 6).

Part 1.8: Part 1.8 refers to a non-existent 1.5.6. This should be 1.5.2.

Part 1.9.1.4: Section 51.2 of the “Recommended Standards for Wastewater Facilities” (10 States Standards) should also be followed when siting a proposed CAFO and its waste collection/treatment system.

Part 1.9.2: It should be made explicitly clear that a Notice of Coverage (ARG59####C?) is required to begin construction and a separate authorization (ARG59####?) is required to begin operation. The draft permit’s signature page authorizes both construction and operation via a single tracking number.

Part 1.10 in the draft permit proposes that a closure plan be submitted within sixty (60) days of the final day of operation. Other ADEQ permits requiring closure plans (e.g., mining, hazardous waste, regulated storage tanks, and non-municipal wastewater treatment plants) require some type of financial assurance or trust fund when there is a potential for environmental damage due to abandonment or neglect. There is at least one currently permitted facility (by the state permits branch as a no-discharge permit) that wants to close but is unable to do so because of a lack of funds (i.e., Permit No. 2728-WR-3, which authorizes an empty [for six years according to the application] swine farm, a concrete waste pit, and a lagoon that the owner indicates that he wants to close but cannot due to lack of funds, according to the application dated 05-15-2012 on ADEQ’s website

https://www.adeq.state.ar.us/downloads/WebDatabases/PermitsOnline/NPDES/PermitInformation/2728-WR-3_Application_20120515.pdf.) Please add financial assurance requirements to the permit or explain

specifically how the environment will be protected if a permittee walks away from a pond full of animal waste or maintains the permit indefinitely without properly disposing of the waste and closing the permit.

Part 2.3: If there is a discharge, it should be stated that a continuous discharge event lasting multiple days should be treated as a separate discharge event for each 24-hour period. Thus, a discharge lasting three days would require three separate grab samples.

Part 3.2.3: The permit should only allow the transfer of manure or process wastewater to an entity having a state-issued non-discharge or NPDES permit to ensure that the permitted materials are not land applied inappropriately (e.g., too close to a Water of the State, during wet weather, etc.).

Part 4.2.1.5: The proposed setback requirements do not comply with APC&EC Regulation No. 5.406(D). The term “down-gradient” is not used in the Regulation. The exemptions proposed in 4.2.1.5.a and d are not found in Regulation No. 5.

Part 4.2.1.6: “Imminent” is not defined in Regulation No. 5 or in the proposed permit. The time period should be defined to be within the next 24-hours as required in Regulation No. 5.406(B).

Part 4.2.1.7: The proposed higher slope allowance is not found in Regulation No. 5. Thus, it should not be used.

Part 4.4.1.4: This part should also include 40 CFR § 412.43(a)(1) (for swine, poultry, and veal calves) which refers back to 40 CFR § 412.31(a)(2) (for cows except veal calves).

Part 6.2: While Regulation No. 7 limits civil penalties to \$10,000 per violation per day, it should be noted here or elsewhere in the permit that federal Clean Water Act penalties can be up to \$250,000 (for an individual) or \$1,000,000 (for a corporation) per violation per day (for knowingly putting another person in imminent danger of death or serious bodily injury, with subsequent convictions doubled [33 U.S.C. 1319(3)]).

Part 7.4.1.2: This part refers to Part 9.4. It should refer to Part 9.3.

Part 7.4.2.2: This part refers to 7.4.2.1.1. It should refer to 7.4.2.1.

Part 9.4: Says “not reported under Part and 9.3.” Are the missing parts 7.4 and 7.5?

Part 9.10: This part refers to Part 3.2. It should refer to Part 6.2.

Part 10.10: Please explain why the federal animal numbers were used instead of being more restrictive as allowed by law. It is worth noting that the single currently covered facility would not need this permit if it proposed to house four fewer adult hogs (i.e., it would be a medium-sized AFO and not subject to the medium-sized CAFO definition in Part 10.10).

Part 10.31: Given the age and limited data available in 1961, a more recent rainfall data source should be used. More recent publications show higher rainfall potentials than those predicted in the 1961 U.S. Department of Commerce publication. For instance, the latest (April 2013) U.S. Department of Commerce/National Oceanic and Atmospheric Administration/National Weather Service maps show a range of over 7 inches (10 year) to over 9 inches (25 year) to over 12 inches (100 year) in Arkansas (i.e., <ftp://hdsc.nws.noaa.gov/pub/hdsc/data/se/ar10y24h.pdf>).

<ftp://hdsc.nws.noaa.gov/pub/hdsc/data/se/ar25y24h.pdf>, and
<ftp://hdsc.nws.noaa.gov/pub/hdsc/data/se/ar100y24h.pdf>, respectively).

Overall Comment No. 2: Given that the Arkansas Natural Resources Commission is prohibited from disclosing the size and location of poultry operations in Arkansas by Title 19 of its regulations, please describe the current method(s) for identifying and determining the size of the various AFOs in the State and note the website/list where those might be viewed so that the public will be able to determine if it is a complete list and can question whether a more detailed investigation is warranted to determine if an AFO is a potential CAFO. For instance, an ADEQ PDS search on 4/12/2016 of active state permit branch “ag” permits in White County turns up only two: Permit No. 2498-W (which authorizes only one chicken house (with wet litter disposal)) and Permit No. 2728-WR-3 (which authorizes an empty swine farm, a concrete waste pit, and a lagoon which the owner wants to close but cannot due to lack of funds [according to the application on ADEQ’s website dated 05-15-2012]). There is more than one poultry house (dozens?) in White County alone. Ideally, the AFO list should be graphical (i.e., a Google Earth layer), but at least a tabular list should be made available to the public. Please discuss the status, if any, of such a tool so that the public may assist ADEQ in locating unpermitted facilities.

Respectfully submitted,

Anne Roberts
14800 Ridgewood Dr.
Little Rock AR 72211
edithabobo@hotmail.com

From: [Anne Roberts](#)
To: [Water Draft Permit Comments](#)
Subject: Comments on Draft Permit ARG590000
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Comments are in the attached document.