



September 23, 2019

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

Jake Harper
Arkansas Division of Environmental Quality
Department of Energy and Environment
5301 Northshore Drive
North Little Rock, AR 72118

Re: Proposed Changes to APCEC Regulation No. 6

Dear Mr. Harper:

The following comments are regarding 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"). Among other things, the proposed changes would rename Reg. 6 as APCEC Rule No. 6 (hereinafter, "Rule 6"). In the following comments, the term "Reg. 6" will be utilized for references to the current regulation and the term "Rule 6" will be utilized for references to the proposed rule. 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 350,000 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 Rule 6 and not necessarily in order of importance.

Comment 1: *The documents filed by the Division of Environmental Quality (DEQ) do not provide sufficient information for the public to understand, analyze, or evaluate all of the proposed changes to Reg. 6. ADEQ's Amended Petition to Initiate Rulemaking (hereinafter, the "Amended 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" sometimes are significant, substantive changes for which no real explanation of the scientific, technical, or legal bases for the changes are given. For example, see Comments 3, 4, 7, 8, 9, 10, 11, and 12 below. This necessitates amendment by ADEQ of its rulemaking documents to comply with Reg. 8.808(A)(1), to be followed by another public comment period.*

Comment 2: *In the future, BWD requests that DEQ convene a meeting or meetings of interested stakeholders prior to petitioning the APCEC to initiate rulemaking to amend Reg. 6 or any final Rule 6. BWD and others have made similar requests in the past, including in our written public comments submitted on October 19, 2016, regarding another rulemaking to amend Reg. 6. 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 DEQ and stakeholders with differing perspectives; (3) convey to DEQ 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 Rule 6.104(A), Incorporation of Federal Regulations: The last sentence in Rule 6.104(A) provides, “All as adopted as final rules (including “interim final rules” and “technical amendments”) 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 Amended Petition does not discuss the reason for the date selected. *Shouldn't the date be the date that any amendments to Rule 6 are adopted by APCEC or at least the date that DEQ filed its rulemaking petition (which appears from the documents posted on ADEQ's website to be July 26, 2019)?*

Comment 4, Proposed Rule 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 Amended Petition does not explain this change, as there is nothing in it specific to Reg. 6.202(C). There is only the list of “clarifications” and “minor corrections . . .” “specifically to . . . [s]implify Reg. 6.202 generally and remove repetitive language.” See Amended Petition at numbered paragraph 4.d.(2). 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). DEQ may contend that the proposed change removes repetitive language because of the provision currently at Reg. 6.202(D), which is proposed to be Rule 6.202(K). DEQ, however, also proposes to substantively change that provision (*see* Comment 10, 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 5, Proposed Rule 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 the second sentence of this provision (at lines 5 and 6) may have been meant to simplify or remove repetitive language. 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, not issued. Additionally, the words “or require” in line 7 of this provision do not make sense. *Presumably, the second sentence in Rule 6.202(D) should be changed to*

read something along the lines of: "Issuance of a state 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, nor does issuance of a NPDES permit assume compliance with any state wastewater-facility-construction-or-modification permit requirements or a satisfactory review of the design or construction of the treatment facility."

Comment 6, Proposed Rule 6.202(E), Application Requirements for Construction and Operation of Wastewater Facilities: The Amended Petition, at numbered paragraph 4.d.(3), 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." 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.

Comment 7, Proposed Rule 6.202(F), Application Requirements for Construction and Operation of Wastewater Facilities: This entirely new provision states that, "A state construction permit is not required for a facility that has a general NPDES permit if the construction of that facility or the modification of that facility has been authorized under the applicable general permit." The Amended Petition, at numbered paragraph 4.d.(4), 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. *Given that DEQ has provided no statutory or technical basis for proposed Rule 6.202(F) and that it conflicts with the statutory provisions cited above, BWD objects to the inclusion of proposed Rule 6.202(F) and requests that it be deleted.*

Comment 8, Proposed Rule 6.202(H), Application Requirements for Construction and Operation of Wastewater Facilities: Proposed Reg. 6.202(H) was moved from current Reg. 6.202(B) and changed significantly, including deletion of the disinfection requirements. Once again, the Amended Petition, at numbered paragraph 4.d.(5), characterizes this change as a "clarification" and provides no explanation or justification for it. BWD would not necessarily object to the proposed changes if an appropriate legal, scientific, or technical basis had been provided by DEQ. *In the absence of any explanation or justification for the proposed changes, however, BWD objects to the proposed changes and, in particular, to the deletion of the provision that, "Disinfection shall be required when necessary to meet the State's water quality standards for the receiving stream or to protect public water supplies and recreational use areas." This or a comparable provision should be reinserted.*

Comment 9, Proposed Rule 6.202(I), Application Requirements for Construction and Operation of Wastewater Facilities: This new provision specifies that, “The 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.” The Amended Petition, at numbered paragraph 4.d.(7) states only that Reg. [sic] 6.202(I) is added “concerning design criteria for nondomestic wastewater treatment plants.” First, “ADEQ” should be “DEQ.” Second, and more importantly, DEQ once again provides no explanation for this new provision. *See* Amended Petition, numbered paragraph 4.d.(7). Consequently, the purpose of this new provision is unclear to BWD. Doesn’t DEQ review and approve the design criteria for all wastewater treatment plants? Why is this provision limited to “nondomestic” wastewater treatment plants? *In the absence of any explanation or justification for proposed Rule 6.202(I), BWD objects to this new provision and requests that DEQ review whether it is appropriate as written.*

Comment 10, Proposed Rule 6.202(K), 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. Instead of requiring that the approval letter from the ADH be submitted with the application for a permit for construction of domestic wastewater treatment facilities as is currently the case, proposed Rule 6.202(D) apparently would only require that an ADH approval letter be obtained before beginning construction. There is no explanation for the proposed revision in the Amended Petition. *See also* Comment 4, above. *BWD objects to this proposed revision.*

Comment 11, Proposed Rule 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 Amended Petition, at numbered paragraph 4.d.(8), 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 to the extent that the changes relax the requirements for small construction sites, BWD objects to the proposed changes.*

Comment 12, Proposed Rule 6.401(A)(1), Determination of Domestic Wastewater Effluent Limitations: *BWD objects to the change at Reg. 6.401(A)(1) that would delete the requirement for “nutrient removal where appropriate.”* Again, the Amended Petition provides no explanation or justification for this proposed revision. *See* Amended Petition, numbered paragraph 4.d.(13). The lack of nutrient removal could negatively impact receiving streams, including tributaries to drinking water supply sources.

Comment 13, Proposed Rule 6.401(C), Determination of Domestic Wastewater Effluent Limitations: *BWD requests that this provision regarding discharges of domestic wastewater to reservoirs and domestic water supplies be expanded to include tributaries of reservoirs and domestic water supplies. BWD additionally requests that the same minimum 1.0 mg/L monthly average Total Phosphorus limitation that applies to discharges to the streams and their tributaries listed in proposed Rule 6.401(D) also apply to reservoirs and domestic water supplies*

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and their tributaries. The negative impacts that nutrients can have on reservoirs and drinking water supplies are well documented and justify these requested revisions.

Thank you for your consideration of these comments.

Sincerely,

Colene Gaston
by K. Mhoon

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