

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO )  
REGULATION NO. 6, REGULATIONS FOR STATE )  
ADMINISTRATION OF THE NATIONAL POLLUTANT) DOCKET NO. 03-\_\_\_-R  
DISCHARGE ELIMINATION SYSTEM (NPDES) )

PETITION TO INITIATE RULEMAKING AND TO ADOPT EMERGENCY RULEMAKING  
FOR REGULATION NO. 6, REGULATIONS FOR STATE ADMINISTRATION OF THE  
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

The Arkansas Department of Environmental Quality (hereinafter “ADEQ”), for its Petition to Initiate Rulemaking and to Adopt Emergency Rulemaking for Regulation No. 6, states:

1. On February 12, 2003, EPA promulgated the National Pollutant Discharge Elimination System (NPDES) Permit Regulation and Effluent Limitations Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 40 CFR Parts 122 and 412, also known as the CAFO Rule (68 Fed. Reg. 7176).
2. These new regulations became effective April 14, 2003, and expanded the regulated universe of CAFOs which are required to obtain NPDES permits. These new regulations apply to new and existing large or medium CAFOs as defined in the regulations, or which are designated by the permitting authority. For example, Large CAFOs are defined in the EPA rule to include operations raising at least 125,000 chickens (other than laying hens) in confinement, if the AFO uses other than a liquid animal manure handling system.
3. The EPA Rule establishes a mandatory duty for all CAFOs (as defined by the regulation) to apply for an NPDES permit, and to develop and implement a nutrient management plan, by certain deadlines specified in the EPA rule,

depending upon whether the operation is: (1) defined as a CAFO as of April 14, 2003, but which was not defined as a CAFO prior to that date; (2) Defined as a CAFO prior to April 14, 2003; (3) Operations which became defined as a CAFO after April 14, 2003, due to change in operations, but which are not new sources; and (4) New sources.

4. Under the new EPA provisions in 40 CFR 122.23, various compliance deadlines apply to operations defined as CAFOs, and the Department is currently developing a CAFO Dry Manure Handling System General Permit to provide NPDES coverage under the new program.
5. ADEQ began working diligently before and after the promulgation of the EPA CAFO Rule to determine the most expeditious way to obtain program authorization and implement the program. Several informal meetings were held in the spring and summer of 2003 with various stakeholders, to discuss a draft general CAFO permit for dry litter operations, and to discuss possible changes to Commission regulations.
6. In October 2003, ADEQ filed a Petition to Initiate Rulemaking on Regulation 6, not knowing at that time whether ADEQ or another agency would be seeking program authorization for the CAFO program. Since that time, it has been determined that ADEQ should move forward immediately to seek program authorization.
7. Currently, ADEQ is working with appropriate agencies and stakeholders in order to revise its NPDES program to include the new CAFO regulations, and to accept authority for the new program.

8. In the interim, the regulated community affected by the new CAFO Rule, which includes the poultry industry, is without necessary permit coverage required by EPA. Until compliance with the new program is obtained by all affected parties, this situation will have an adverse affect on the health, safety and welfare of the citizens of Arkansas.
9. Therefore, ADEQ asserts that this situation constitutes an emergency situation that creates imminent peril to the public, health, safety, or welfare of the citizens of Arkansas, pursuant to Ark. Code Ann. § 8-4-202(e)(1), which requires immediate change to the Commission's regulations.
10. Pursuant to Ark. Code Ann. § 8-4-202(e)(2), no emergency regulation adopted under an emergency declaration shall be effective for longer than one hundred eighty (180) days.
11. ADEQ also requests the Commission to initiate the rulemaking process to make this a permanent rule. The permanent rulemaking process will be proceeding simultaneously with the previous rulemaking process initiated for Regulation 6 on October 24, 2003.
12. Jennifer Tucker, attorney for ADEQ, Martin Maner, Chief of the Department's Water Division, and/or Mary Leath, Chief Deputy Director, will be available to answer questions concerning this emergency rulemaking. A version of the regulation showing the proposed changes is attached as Exhibit "A" and is hereby incorporated by reference. The legislative questionnaires for the proposed revisions and a financial impact statement are attached as Exhibits "B1", "B2" and "C", respectively, and are hereby incorporated by reference. A proposed

minute order adopting the emergency rulemaking is attached as Exhibit “D” and is hereby incorporated by reference. A proposed Minute Order initiating the rulemaking process for Regulation 6 on a permanent basis is attached as Exhibit “E” and incorporated by reference.

WHEREFORE, ADEQ respectfully requests the Commission to declare an emergency, and initiate emergency rulemaking on Regulation 6, in order to facilitate the initial goal of moving toward full CAFO—dry litter program authorization. ADEQ envisions a multi-step approach over the next several months in order to obtain program approval, including, but not limited to: (1) Adoption of this emergency rulemaking in December 2003 to incorporate the CAFO rule changes into the NPDES program; (2) Initiation of permanent rulemaking for Regulation 6 and adoption in 2004; (3) Initiation of rulemaking in December 2003 to adopt a general CAFO dry litter permit fee into Regulation 9; and (4) The possibility of amending Regulation 5, or the promulgation of a new regulation for CAFO dry litter operations in 2004.

Respectfully submitted,

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