

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 6

REGULATIONS FOR STATE ADMINISTRATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Submitted to the PC&E Commission in March 2010

INITIAL DRAFT

REGULATION NO. 6
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POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

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CHAPTER ONE: GENERAL PROVISIONS

Reg.6.101 Adoption

Pursuant to the provisions of Subchapter 2, Section 8-4-202 of the Arkansas Water and Air Pollution Control Act, hereinafter referred to as the "Act" (Act 472 of 1949, as amended; Ark. Code Ann. 8-4-101 et. seq.), the Arkansas Pollution Control and Ecology Commission (hereinafter referred to as the "Commission") hereby promulgates this Regulation No. 6 to implement state administration of the National Pollutant Discharge Elimination System (NPDES).

Reg.6.102 Purpose

It is the purpose of this regulation to adopt regulations necessary to qualify the State of Arkansas to receive authorization to implement the State water pollution control permitting program in lieu of the federal NPDES program, as provided by the Clean Water Act of 1977, as amended (P.L. 95-217). In order to receive such authorization, it is necessary for the Department of Environmental Quality to have regulations as stringent as the federal program administered by the United States Environmental Protection Agency.

Reg.6.103 Definitions

(A)The definitions set forth in 40 CFR 122.2 and 124.2 are all adopted herein by reference in Reg.6.104.

(B)In addition, the following definitions also apply to this Regulation:

"Act" means the Arkansas Water and Air Pollution Control Act, as amended (Act 472 of 1949, as amended; Ark. Code Ann. 8-4-101 et seq.).

"ADEQ" or "Department" means the Arkansas Department of Environmental Quality, or its successor.

"Commission" means the Arkansas Pollution Control and Ecology Commission.

"Director" means the Director of the Arkansas Department of Environmental Quality, unless the context dictates otherwise. (See 40 CFR 122.2, and 124.2, and Ark. Code Ann. 8-1-202 et seq.).

"Operator" means any person (an individual, association, partnership, corporation, municipality, state or federal agency) who has the primary management and ultimate decision-making responsibility over the operation of a facility or activity. The operator is responsible for ensuring compliance with all applicable environmental regulations and conditions.

Reg.6.104 Incorporation of the latest Federal Regulations

- (A) The following regulations promulgated by the U.S. Environmental Protection Agency are hereby adopted as provisions of this Regulation as though set forth herein line for line and word for word of the most current version of the Code of Federal Regulations with the exception that, and unless the context otherwise dictates, all references therein to "Administrator," "Regional Administrator," "Director" or "State Director" shall be considered references to the "Director of the Arkansas Department of Environmental Quality", and all references to the "U.S. Environmental Protection Agency" or "EPA" shall be considered references to the "Arkansas Department of Environmental Quality"; and all references elsewhere in this Regulation to any of the following regulations shall constitute a reference to the regulation as herein adopted; and provided that the effective date of provisions adopted herein by reference as provisions of this Regulation shall be the date such provisions are specified as being effective by the Commission in its rulemaking and the effective date of the federal regulations adopted herein shall have no bearing on the effective date of any provisions of this Regulation:

Title 40 Code of Federal Regulations adopted verbatim by ADEQ -

- (1) Part 116;
- (2) Part 117;
- (3) Subparts A, B, C and D of Part 122 with the following exceptions: 122.6 (for analogous provision, see Reg. 7); 122.7(a); 122.21(l); 122.23(g)(4); 122.29(c) and (d); and 122.49;
- (4) The following provisions, only, of Part 123: 123.25(b), 123.26(d), 123.27(d), 123.41(a), and 123.62(e);
- (5) The following provisions, only, of Part 124: 124.2; 124.3(a); 124.5(a), (c), (d) and (f); 124.6(a), (c), (d), (e); 124.7; 124.8; 124.10(a)(1)(ii), (iii) and (v); 124.10(b), (c), (d) and (e); 124.11; 124.12(a), (b), (c) and (d); 124.13; 124.14; 124.17(a) and (c); 124.19; 124.56; 124.57(a); 124.59; and 124.62;
- (6) Subparts A, B, C, D, H, I, J, K, and L, only, of Part 125;
- (7) Part 129;
- (8) Part 133;
- (9) Part 136;
- (10) Part 257;
- (11) Parts 400 through 471 with the following exceptions: 401.17 and 412.4(c)(3).

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- (12) Part 503.(Effective on date of approval by EPA of state program to manage sewage sludge.

All as adopted as final rules (including "interim final rules" and "technical amendments") by the U.S. Environmental Protection Agency on or before April 14, 2003 .

- (B) The Director, within 180 days after the date of promulgation of any new or revised federal NPDES regulations, shall conduct rulemaking procedures with reference to this Regulation necessary to maintain a state NPDES program as stringent as the federal program. Such new or revised federal regulations, upon their publication as final rules by EPA, shall constitute minimum guidelines to the Director in formulating rulemaking proposals to this Regulation but shall not be construed to limit or interfere with the adoption of provisions more stringent than federal regulations.

Reg.6.105 Confidentiality

In addition to the provisions of 40 CFR 122.7(b) and (c), which are adopted by reference in Reg. 6.104, the following provisions apply:

- (A) Any information submitted to the Department may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in accordance with the provisions of this section. If no claim is made at the time of submission, the Department may make the information available to the public without further notice. If a claim is asserted, the Director will make a determination of whether the material, if made public, would divulge trade secrets entitled to protection.
- (B) It shall be the responsibility of the person claiming any information as confidential under the provisions of subsection (A) above to clearly make each page containing such information with the words "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection as a trade secret.
- (C) Any document submitted to the Department which contains information for which the claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document shall be submitted in two separate parts. The first part shall contain all information which is not deemed by the submitter as confidential and shall include appropriate cross references to the second part which contains data, words, phrases, paragraphs or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.
- (D) No information shall be protected as confidential information by the Director unless it is submitted to him in accordance with the provisions of subsections (B) and (C) above. No information shall be afforded protection as confidential information unless the Director finds that such protection is necessary to protect trade secrets and that such protection will not hide from public view the characteristics of waste materials and probable effects of the introduction of such waste or by-products into the environment. The person who submits information claimed as confidential shall receive written notice from the Director as to whether the information has been accepted as confidential or not.

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- (E) All information which the Director determines is entitled to protection shall be marked with the term "ACCEPTED" and shall be protected as confidential information. Whenever the Director finds that information which has been submitted does not meet the criteria of subsection (D) above, he shall promptly notify the person submitting such information of his finding and shall give that person reasonable opportunity to further justify his contention that the information deserves protection as a trade secret or to further limit the scope of information for which the request for protection is made. If said person fails to satisfactorily demonstrate to the Director that such information in the form presented to him meets the criteria of subsection (D) above, the Director shall mark the information "REJECTED" and promptly return such information to the person submitting such information. Such person shall have 30 days to resubmit the information in acceptable form or request review of the decision of the Director in accordance with Part III of Regulation No. 8.
- (F) All information which is accepted by the Director as confidential shall be stored in locked filing cabinets and only those personnel of the Department specifically designated by the Director shall have access to the information contained therein. The Director shall not designate any persons to have access to confidential information unless the person requires such access in order to carry out his responsibilities and duties. No person shall disclose any confidential information except in accordance with the provisions of this section.
- (G) NPDES permits and permit applications and all information contained in them are required by 40 CFR 122.7 to be publicly available. No claim of confidentiality will be accepted hereunder for such material. Consequently, applications containing confidential information will be returned to the applicant.

Reg.6.106 Violations

Violation of any of the following prohibitions shall be considered a violation of this Regulation and shall be subject to the penalties provided in the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended; Ark. Code Ann. § 8-4-103):

- (A) No person shall construct, install, alter, modify or operate any disposal system or any part thereof or any extension or addition thereto that will discharge into any of the waters of the State without first having obtained a permit from the Department for such activity.
- (B) No person shall increase in volume or strength any sewage, industrial waste or other wastes in excess of the permitted discharges specified under any existing permit.
- (C) No person shall construct, install or operate any building plant, works, establishment or facility or any extension or modification thereto, the operation of which would result in discharge of any wastes into the waters of the State or would otherwise alter the physical, chemical, or biological properties of any waters of the State in any manner not already lawfully authorized.
- (D) No person shall construct or use any new outlet for the discharge of any wastes into the waters of the State without having first obtained a permit for such activity from the

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Department.

- (E) No person shall discharge sewage, industrial wastes or other wastes into any of the waters of the State without having first obtained a permit for such activity from the Department.
- (F) No person shall violate any other provision of this Regulation or the Act.

CHAPTER TWO: PERMIT PROCEDURES

Reg.6.201 Status and Continuation of Permits

Conditions of a NPDES permit issued by the Department of Environmental Quality will continue in effect past the expiration date pending issuance of a new permit, if:

- (1) The permittee has submitted a timely and complete application as described in 40 CFR 122.21; and
- (2) The Director, through no fault of the permittee, does not issue a new permit prior to the expiration date of the previous permit.

Reg.6.202 Application Requirements for Construction and Operation of Wastewater Facilities

(A) Any person who desires to construct, operate or modify any disposal system which will discharge to the waters of the State or to discharge any sewage, industrial waste or other wastes into the waters of the State or to do any other act for which Ark. Code Ann. § 8-4-217(b) requires a permit shall submit an application for a permit for such activity. In addition to the permit application procedures set forth in 40 CFR Parts 122, 123, and 124, that are incorporated by reference in Reg.6.104, hereof, the applicant must also submit ADEQ Form 1. For domestic wastewater discharges only, a copy of a written request seeking an approval letter from the Arkansas Department of Health (“ADH”) is also required prior to issuance of the final permit. The application must be submitted, approved, along with the approval letter from ADH for domestic discharges and a permit issued and effective before the activity applied for can begin.

(B) A state permit for construction or modification of a wastewater treatment facility does not constitute an NPDES permit. 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 or the NPDES permit issued, nor does issuance of an NPDES permit assume or require a prior permit for construction or a satisfactory review of the design or construction of the treatment facility. ADEQ Form 1, plans and specifications, and design calculations are required for a state construction permit. The basic design criteria for wastewater treatment plants in the State of Arkansas should be based on the latest addition of the “Recommended Standards for Sewage Works,” published by the Great Lakes-Upper Mississippi Board of State Sanitary Engineers known as 10 States Standards, with the following modifications. Exception to these criteria will only be approved by the Department when fully justified.

The following exceptions to 10 States Standards, as provisions adopted through Minute Order 80-21, are allowed:

Combined Sewer Interceptors

Combined sewers will not be approved

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- Biological Treatment

Waste Sludge Facilities

Activated sludge treatment plant of 10,000 gallons per day or more capacity shall be provided with an aerated waste sludge holding tank or other sludge disposal facility.

- Disinfection

Disinfection shall be required when necessary to meet the State Water Quality Standards for the receiving stream or to protect public water supplies and recreational use areas.

- Wastewater Treatment Ponds (Lagoons)

Basis of Design

The maximum design loading rate for the primary cell(s) will be thirty (30) pounds of BOD5 per acre per day, with a minimum surface area of one (1) acre.

Multiple Units

- a. Two cell systems must be followed by sand or rock filtration, or other solids removal devices.

The second cell of a two-cell system will be designed on the same biological loading rate as a primary cell, with at least thirty (30) days detention time.

- b. For three (or more) cell systems, the cells following the primary will have a combined detention time of at least thirty (30) days. The final cell shall be designed to facilitate solids reduction and minimize algae growth.

Control Structures and Interconnecting Piping

Control structures shall be provided for interconnecting cell piping and for final cell effluent flow. The structures shall have the ability to vary the water depth in each cell a range of, at least, twenty-four (24) inches. Non-corrosive stop-logs, slide gates, or slide tubes are the devices that shall be utilized to regulate the wastes level. A baffle of the same type of material as the control devices shall extend a minimum of six (6) inches below the low-water surface.

Appendix – Ground Disposal of Wastewaters

Land treatment of wastewater shall be in accordance with the Land Application Guidelines as promulgated by this department and the Arkansas Department of Health. Plans and specifications and design calculations must be stamped and signed by a

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Registered Professional Engineer in the State of Arkansas. At the discretion of the Director, the provisions of Reg.6.202(B) may not apply to minor, routine repair, replacement (i.e. aerator) or maintenance.

- (C) For modifications or alterations to an existing permitted facility, not affecting the discharge or effluent limitations of a State NPDES permit, the permittee need submit only ADEQ Form 1.
- (D) Prior to obtaining a construction permit for domestic wastewater discharges from ADEQ, an approval letter from ADH is required.

All information supplied to this Department shall be available for public inspection unless the information constitutes a trade secret and a claim of confidentiality is submitted in accordance with the procedures specified in Reg.6.105 above.

Reg.6.203 Permitting Requirements for Construction of Individual Treatment Facilities of Domestic Waste

Individual Treatment Facilities Generating less than 1000 gallons per day of domestic waste shall be deemed to have a permit by rule for construction for the purposes of the Arkansas Water and Air Pollution Control Act, if all the following conditions are met:

- (1) The treatment system design is approved by the Department;
- (2) The treatment system is approved by the Arkansas Department of Health; and
- (3) At least 10 days written notice is provided to the Department prior to commencing construction which shall include a copy of the approval of the treatment system from the Arkansas Department of Health.

Each individual treatment unit shall be designed or equipped so that effluent discharged by the system will be in compliance with effluent limitations 10 mg/l of BOD5 and 15 mg/l TSS regardless of unusual patterns or frequencies of wastewater flow into the system.

The Department will maintain a list of evaluated and approved treatment system designs. Permit coverage for construction of individual treatment units under this section does not guarantee coverage for discharge and operation under an NPDES Permit.

Reg.6.2034 Permitting Requirements for Industrial Users of Publicly Owned Treatment Works

- (A) Industrial users discharging to publicly owned treatment works shall be deemed to have a permit by rule for construction and discharge for the purposes of the Arkansas Water and Air Pollution Control Act, if either of the following conditions are met:

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- (1) The industrial user is discharging into a receiving publicly owned treatment works with an approved local pretreatment program; or
- (2) The industrial user is not subject to categorical pretreatment standards set forth in 40 CFR Parts 400-471 (Subchapter N) and not likely to introduce pollutants to the publicly owned treatment works which would pass through or interfere with the treatment works or which would contaminate the sewage sludge of the treatment works.

An "approved pretreatment program" means a program approved by either the U.S. Environmental Protection Agency pursuant to 40 CFR Part 403.11 or the Department pursuant to 40 CFR Part 403.11 as incorporated in Reg. 6.102. The determination of which industrial users are likely to introduce pollutants which would pass through or interfere with a publicly owned treatment works or which are likely to contaminate sewage sludge from the treatment works shall be made by the Director subject to the provisions of Regulation No. 8 and Ark. Code Ann. § 8-4-216.

- (B) With the exception of industrial users qualifying for a permit-by-rule pursuant to subsection (A) above, all industrial users discharging or proposing to discharge to publicly owned treatment works shall obtain a permit hereunder in accordance with Reg.6.202 prior to construction or modification of the disposal system, and a permit prior to discharge in accordance with the requirements incorporated in Reg.6.102 and the other applicable provisions of this Regulation.

CHAPTER THREE: LOSING STREAM SEGMENTS

Reg.6.301 Effluent Discharges to Losing Stream Segments

- (A) In addition to all applicable effluent standards and conditions required by State and federal laws and regulations, wastewater discharged to losing stream segments shall comply with subsections (B) through (E) below.
- (B) For purposes of this regulation, a "losing stream segment" is defined as a stream segment which, beginning at the point of existing or proposed discharge and extending two (2) miles downstream, distributes 30% or more of its flow at a 7Q10 flow or 1 cfs, whichever is greater, through natural processes such as permeable subsoil or cavernous bedrock into an aquifer.
- (C) Effluent Limitations for Discharges into Losing Stream Segments:
 - (1) Discharges to losing stream segments shall be permitted only after other alternatives including (a) land application of wastewater, (b) discharge to non-losing stream segment, and (c) connection to a regional wastewater treatment facility, have been evaluated and determined to be unacceptable for environmental and/or economic reasons.
 - (2) If the Department agrees to allow a discharge to a losing stream segment, the permit will be written using the limitations described below, as a minimum. Discharges from wastewater treatment facilities, which receive primarily domestic waste, or from publicly owned treatment works (POTWs) shall undergo treatment sufficient to conform to the following limitations:
 - (a) CBOD₅ equal to or less than a monthly average of ten (10) mg/1 and a seven (7) day average of fifteen (15) mg/1.
 - (b) Total Suspended Solids (TSS) equal to or less than a monthly average of fifteen (15) mg/1 and a seven (7) day average of twenty-three (23) mg/1;
 - (c) provisions of 40 CFR 133.102(c);
 - (d) the fecal coliform content of discharges shall not exceed a monthly average of 200 colonies per 100 milliliters and a weekly average of 400 colonies per 100 milliliters. However, at no time shall the fecal coliform content exceed 200 colonies per 100 milliliters in any water defined as an Extraordinary Resource Water or Natural and Scenic Waterway;
 - (e) nitrate plus nitrite nitrogen levels shall not exceed 10 mg/1;
 - (f) ammonia (as N) limitations shall be included as necessary to prevent ammonia toxicity in-stream and/or to maintain instream dissolved oxygen.

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(g) other parameters as deemed appropriate by ADEQ.

(D) Implementation of Losing Stream Regulation

- (1) Existing discharges. At the time of permit renewal, or when deemed necessary by the Department, NPDES permittees discharging to stream segments which may be losing stream segments, as defined above, shall submit documentation as part of the renewal permit application, showing that the segment is or is not a losing stream segment. If the discharge is into a losing stream segment, then the facility must be capable of meeting the effluent limitations described above, as a minimum.
- (2) New discharges. New facilities proposing to discharge to a stream which may be a losing stream segment shall submit documentation as part of the initial NPDES permit application demonstrating that the segment is or is not a losing stream segment. This documentation includes, but is not limited to, stream studies or other data, showing the stream segment does or does not meet the criteria in Reg.6.301(B) above. If the proposed discharge is into a losing stream segment, then the facility must be designed and operated to meet the effluent limitations described above, as a minimum.
- (3) For facilities in both Reg.6.301(D)(1) and (2) above, stream studies for determining classification as a losing stream segment must be conducted during the critical low flow season, when stream flow is at least 1 cfs and representative of seasonal flow. Effluent flow, when existing, can be included in the minimum 1 cfs stream flow.
- (4) The Department shall determine the requirement for, and the content and level of detail of, stream studies, based on local topography, geological data, file data, other dischargers in area, stream flow, etc.

(E) Review of Applications by Arkansas Department of Health for Discharges of Domestic Effluents.

- (1) Nothing in this regulation limits the authority of the Arkansas Department of Health to include additional requirements as a prerequisite to its approval of the treatment/disposal system.

CHAPTER FOUR: WASTEWATER DISCHARGES

Reg.6.401 Determination of Domestic Wastewater Effluent Limitations

(A) Small discharges (less than or equal to 0.05 MGD)

- (1) The most stringent effluent limitations for oxygen demanding flows from small dischargers will be 10/15 (CBOD₅/TSS), with nutrient removal where appropriate, which is considered as Best Conventional Treatment (BCT) for dischargers in this flow range.
- (2) On a case-by-case basis, less stringent effluent limitations may be permitted if stream modeling shows that water quality standards will be maintained.

(B) Outstanding State Resource Waters

Outstanding State Resource Waters include all water bodies designated in the Arkansas Water Quality Standards (Regulation No. 2) as extraordinary resource waters, natural and scenic waterways, or ecologically sensitive waterbodies.

- (1) Extraordinary/natural and scenic waterways named in WQS: In no event shall the effluent limitations be greater than 10/15 (CBOD₅/TSS).
- (2) Ecologically sensitive streams: Limitations shall be determined on a case-by-case basis to protect the specific specie residing in the stream.

(C) Reservoirs/Domestic Water Supply

- (1) In all cases, applicable water quality standards shall be met.
- (2) All oxygen demanding effluent flows which are discharged into any lake shall have effluent limitations of 10/15 (CBOD₅/TSS) with nutrient removal as appropriate.

(D) Discharge of Domestic Wastewater to the Illinois River Basin

- (1) No permit for discharge of domestic wastewater into the Illinois River or its tributaries by the cities of Fayetteville, Springdale, Rogers, and Siloam Springs, shall authorize more than 1.0 mg/l Total Phosphorus based on a monthly average.
- (2) Compliance with (D)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.

(E) Discharge of Domestic Wastewater to the Osage Creek Basin, a tributary of the Kings River

- (1) No permit for discharge of domestic wastewater into Osage Creek or its tributaries, by the City of Berryville, shall authorize more than 1.0 mg/l Total Phosphorus based

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on a monthly average.

- (2) Compliance with (E)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.

(F) Discharge of Domestic Wastewater to Little Sugar Creek Basin

- (1) No permit for discharge of domestic wastewater into Little Sugar Creek or its tributaries by the City of Bentonville shall authorize more than 1.0 mg/l Total Phosphorus based on a monthly average.
- (2) Compliance with (F)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.

(G) Discharge of Domestic Wastewater to Spavinaw Creek Basin

- (1) No permit for discharge of domestic wastewater into Spavinaw Creek or its tributaries by the City of Decatur shall authorize more than 1.0 mg/l Total Phosphorus based on a monthly average.
- (2) Compliance with (G)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.

Reg.6.402 Discharge of Treated Wastewater to the Ouachita River

No permit for the discharge of treated wastewater into the Ouachita River commencing at or downstream of the H.K. Thatcher Lock and Dam in segment 2D of the Ouachita River Basin shall authorize a total phosphorous limit in excess of the following:

- (A) A proposed permit with a design flow of less than or equal to 13.5 MGD shall have a total phosphorous mass limit calculated using a total phosphorous concentration of 1.0 mg/l year-round.
- (B) A proposed permit with a design flow greater than 13.5 MGD but less than 20.0 MGD shall have a total phosphorous mass limit calculated using a total phosphorous concentration of 1.0 mg/l for the months of November through June and 0.7 mg/l total phosphorus for the months of July through October.
- (C) The above mass calculations are considered to be on a monthly average basis. A daily maximum mass limit, if applicable, will be 1.5 to 2.0 times the monthly average mass limit.
- (D) At the director's discretion, the permit may include concentration limits in addition to the mass limit(s).

**CHAPTER FIVE: CONCENTRATED ANIMAL FEEDING OPERATION
(CAFO) DRY LITTER PROGRAM**

Reg.6.501 Federal Regulations Not Incorporated by Reference

The Department will seek an exception to specific provisions of 40 CFR Parts 122 and 412, effective April 14, 2003, which have not been adopted by reference into this regulation by the Commission.

In December 2004, the Department of Environmental Quality proposed a general NPDES permit ARG590000 to cover CAFOs. However, the CAFO permit was put on hold due to a federal court case. In February 2005, the Second Circuit Court of Appeals ruled on a lawsuit regarding the federal CAFO rule that only CAFOs that have a discharge or a potential to discharge must apply for a permit. EPA will be issuing a proposed rule to revise the 2003 CAFO regulations more broadly in order to address the Second Circuit Court of Appeals decision in a subsequent Federal Register notice. Until such time, concentrated animal feeding operations (CAFOs) that have an actual discharge are considered a point source of pollution and are regulated under the National Pollution Discharge Elimination System (NPDES) permitting process, 40 CFR 122.21(a). ADEQ's NPDES permit must be consistent with the federal rule and the court decision. EPA will soon provide guidance to states and the regulated community as to the appropriate manner in which to proceed with implementation of the CAFO rule.

Pending final program approval from EPA, the following provisions are anticipated to be included in the Department's CAFO-dry manure program:

(A) New Sources

New sources that have an actual discharge will be required to obtain coverage under the CAFO Dry Manure Handling System General Permit, ARG590000, by submitting a Notice of Intent (NOI) to the Department at least thirty (30) days prior to the time the CAFO commences operation, as allowed by 40 CFR Part 122.21(c), in lieu of the one hundred eighty (180) day requirement for new sources contained in 40 CFR 122.23(g)(4).

(B) Annual Manure and Soil Sampling

Sampling of dry manure and soils will be performed in accordance with Acts 1059, 1060, and 1061 of 2003, and the regulations promulgated thereunder by the Arkansas Natural Resources Commission, in lieu of the annual manure and soil sampling requirements pursuant to 40 CFR 412.4(c)(3).

(C) Duty to Apply

During this interim period while EPA is revising its 2003 CAFO regulations in response to the Second Circuit Court Decision in *Waterkeeper Alliance et al. v EPA.*, 399 F.3d 486

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(2005), the operator of a CAFO does not have a duty to apply for a NPDES permit for a potential discharge. Only CAFO operations with actual discharges have an obligation to apply for a NPDES permit from this Department.

CHAPTER SIX: ADMINISTRATIVE PROCEDURES

Reg.6.601 Penalty Policy and Administrative Procedures

The provisions of Regulation No. 7: **CIVIL PENALTIES** and Regulation No. 8: **ADMINISTRATIVE PROCEDURES** apply to this Regulation.

Reg.6.602 Severability

If any provision of this Regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Regulation which can be given effect with the invalid provision or application, and, to this end, provisions of this Regulation are declared to be severable.

CHAPTER SEVEN: EFFECTIVE DATE

Reg.6.701 Effective Date

This regulation is effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.