

**ECONOMIC IMPACT STATEMENT  
OF PROPOSED RULES OR REGULATIONS  
EO 05-04 and Act 143 of 2007: Regulatory Flexibility**

Department Arkansas Department of Environmental Quality

Divisions Water Division

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Title or Subject: Arkansas Pollution Control and Ecology Commission Regulation No. 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES)

**Benefits of the Proposed Rule or Regulation**

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, Please explain the nature of such complaints.

In addition to minor formatting changes, there are three substantive changes to the rule. First, Chapter 5 of the regulation has been removed. This Chapter previously addressed permitting requirements for concentrated animal feeding operations (“CAFOs”) that utilized dry litter systems. In 2008, the U.S. Environmental Protection Agency (“EPA”) finalized federal regulations governing NPDES permits for CAFOs. The proposed change will delete this separate chapter for those facilities and incorporate the federal regulations in the list of referenced federal regulations found in Reg. 6.104(A).

Second, the rule will add Reg. 6.203 which creates a permit by rule stormwater discharges from small construction sites. These sites are smaller than five (5) acres but greater than one (1) acre. This provision was previously included in the Construction Stormwater general permit issued by ADEQ. However, ADEQ believes that a permit by rule is more properly located within a regulation. The requirements for small construction sites are unchanged.

Third, the rule will add Regulation 6.205 which governs the financial assurance permitting requirements for non-municipal sewage treatment works. This new provision is copied directly from the financial assurance requirements found in the Arkansas Water and Air Pollution Control Act, § 8-4-203(b)(1)(B). The General Assembly passed these provisions in 2007.

2. What are the top three benefits of the proposed rule or regulation?
- a. The removal of Chapter 5 and the incorporation of federal regulations governing CAFOs clarify the permitting requirements for those facilities.
  - b. The insertion of the provision of a permit by rule for small construction sites is necessary because a permit by rule should be included within a regulation.
  - c. The inclusion of the financial assurance requirements provides consistency between the state statute and this regulation.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

Most importantly, no action at this time would cause confusion for those facilities that are permitted according to the federal CAFO regulations. ADEQ needs to incorporate those regulations into our state regulation and the text that is currently found in Chapter 5 is outdated and confusing to industry.

The incorporation of the permit by rule for small construction sites and financial assurance for non-municipal domestic sewage treatment works will not change any current requirements for those types of facilities. The status quo will be maintained.

4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.

Market-based or voluntary standards are not appropriate alternatives for the proposed changes. The federal CAFO regulations are effective through promulgation by the EPA. Reg. 6.104(B) requires ADEQ to conduct rulemaking process to incorporate new NDPES rules into the regulation, so as to keep our delegated state permitting program as stringent as the federal program. The permit by rule for small construction sites and financial assurance for non-municipal domestic sewage treatment works are current requirements that will not change by their incorporation into Regulation No. 6.

### Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of *collecting information, completing paperwork, filing recordkeeping, auditing and inspecting* associated with this new rule or regulation.

The rulemaking will not increase costs to ADEQ associated with the proposed rules

6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.

Under the current federal CAFO regulations, only large CAFOs are automatically required to apply for a NPDES permit. ADEQ estimates that only about ten (10) facilities will be affected by these new federal rules and that most small animal feeding operations will not need to apply for a NPDES permit.

Small construction sites would be covered by the permit by rule incorporated in the regulation but this provision has been included in the Construction Stormwater general permit for several years. As this is a permit by rule, the entities do not have to notify ADEQ that they are operating under the rule. Therefore, it is difficult to estimate the number of small construction sites that would be covered by the permit by rule.

Non-municipal sewage treatment works may qualify as small businesses; however, this proposed rule currently applies to those facilities and no new requirements are proposed. ADEQ currently permits approximately 200 non-municipal sewage treatment works.

## Exhibit D

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.  
No.
8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.  
No additional requirements for small business owners.
9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.  
Only the incorporated federal CAFO regulations contain different requirements for different sized entities. Larger entities are subject to more stringent requirements.
10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.  
Small business owners can receive assistance through various governmental agencies for compliance with the federal CAFO regulations, if those apply to their facility. Likewise, most of the requirements under the CAFO regulations are similar to current state permitting requirements found in Regulation No. 5, Liquid Animal Waste Management Systems. Small business owners have not met with significant difficulty in meeting those requirements.  
  
Small businesses are already meeting the requirements for a permit by rule for small construction sites and for the financial assurance requirements for non-municipal sewage treatment works. The proposed rule does not change those requirements.
11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?  
The proposed rule incorporated federal CAFO regulations. The permit by rule for stormwater discharges for small construction site has previously been included in a stormwater general permit issued by ADEQ. A similar provision is found other state and federal permitting programs. The requirement for financial assurance for non-municipal sewage treatment works is found the Arkansas Water and Air Pollution Control Act, § 8-4-203(b)(1)(B)
12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.  
When ADEQ began the process of implementing the new federal regulations on CAFOs, we held several stakeholder meetings to discuss proposed rulemakings related to the implementation. The stakeholder group included the Farm Bureau, industry representatives, and representatives from other governmental agencies that assist facilities with compliance.  
  
The other substantive changes to the rule have been shared with the Arkansas Homebuilders' Association. We have not received any negative feedback at this time.