

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY Arkansas Department of Environmental Quality
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NAME OF PRESENTER AT COMMITTEE MEETING Teresa Marks, ADEQ Director
PRESENTER E-MAIL marks@adeq.state.ar.us

INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

Regulation No. 6, Regulations for State Administration of
the National Pollutant Discharge Elimination System
(NPDES)

1. What is the short title of this rule? _____
2. What is the subject of the proposed rule? Creating a permit-by-rule for discharges of pesticides to waters of the State
3. Is this rule required to comply with a federal statute, rule, or regulation? Yes ☒ No ☐
If yes, please provide the federal rule, regulation, and/or statute citation.
The regulation must comply with the federal Clean Water Act, 33 U.S.C. 1251 et seq. and regulations promulgated thereunder. _____
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes ☐ No ☒
If yes, what is the effective date of the emergency rule? _____

When does the emergency rule expire? _____

EXHIBIT

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B

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act?

Yes ☐

No ☐

5. Is this a new rule?

Yes ☐

No ☒

If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule?

Yes ☐

No ☒

If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule?

Yes ☒

No ☐

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule?

If codified, please give Arkansas Code citation.

The Arkansas Water and Air Pollution Control Act, Ark. Code. Ann. 8-4-101 et seq., including but not limited to Ark. Code Ann. 8-4-203.

7. What is the purpose of this proposed rule? Why is it necessary?

The proposed changes establish permit-by-rule coverage for discharges of pesticides to Waters of the State. On March 1, 2012, the Arkansas Department of Environmental Quality issued a National Pollutant Discharge Elimination System ("NPDES") general permit for pesticide discharges (Permit No. ARG870000). Issuance of a permit to cover pesticide discharges was required by federal law, based on a decision of the Federal Court of Appeals for the Sixth Circuit in *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir. 2009). ADEQ's general permit incorporated narrative effluent limitation based on the Environmental Protection Agency's ("EPA") draft general permit. ADEQ's general permit does not require any additional conditions beyond those already in place under the authority of the Arkansas State Plant Board.

Currently, operators that are required to seek coverage under the general permit are required to pay a \$200 permit fee and file a Notice of Intent ("NOI") for coverage under the general permit. With the proposed changes, the operator will no longer be required to submit the permit fee and NOI to the Department. The operator would only be required to post a Notice of Coverage at their site and follow the terms of the general permit in order to be deemed to have permit coverage for discharge of pesticides to Waters of the State.

Additionally, ADEQ proposes to remove Reg.6.204(B) from the regulation. This provision required industrial users that discharged into a publicly owned treatment works ("POTW") to obtain a permit from ADEQ before discharging to the POTW. The Department has determined that this requirement is not necessary because the industrial users are discharging into a treatment system that is already permitted, not into waters of the State. In most cases, the POTW will issue a permit to industrial user for their discharge to the treatment system.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

After initiation of the rulemaking process by the Arkansas Pollution Control and Ecology Commission, the proposed rule and all related documents, including this form, will be available here:

http://www.adeq.state.ar.us/regs/drafts/draft_regs.htm

9. Will a public hearing be held on this proposed rule?

Yes ☒

No ☐

If yes, please complete the following:

Date: Oct. 16, 2012

Time: 2:00 pm

Place: ADEQ Headquarters, Commission Room, North Little Rock, AR

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)

October 30, 2012

11. What is the proposed effective date of this proposed rule? (Must provide a date.)

March 2013

12. Do you expect this rule to be controversial?

Yes ☐

No ☒

If yes, please explain. _____

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Municipalities and utilities may express support for the proposed rule because it reduces the processing requirements for permits that cover discharges of pesticides to waters of the State.

Summary of Proposed Changes to Regulation No. 6:

1. ADEQ proposes to add several defined terms to Reg.6.103, Definitions. The new definitions are necessary to understand the requirements found in Reg.6.206 for discharges of pesticides into waters of the State.
2. ADEQ proposes to add Reg.6.206 to provide a permit-by-rule for entities discharging pesticides into waters of the State.
3. ADEQ proposes to delete Reg.6.204(B). This section is not necessary under the regulations governing NPDES permits. NPDES permits are only required for discharges of pollutants to waters of the State. Industrial users discharging to a publicly-owned treatment works are not discharging to waters of the State and are not required to obtain a permit from ADEQ prior to discharge.
4. ADEQ also proposes several minor changes to bring the regulation into compliance with the Commission's Regulation Drafting Guidelines.