

**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

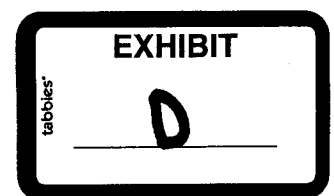
1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, Please explain the nature of such complaints.

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.

2. What are the top three benefits of the proposed rule or regulation?
- a. Operators discharging pesticides to Waters of the State will no longer be required to submit a NOI or pay a permit fee for coverage under the NPDES general permit.
 - b. This proposed rule would allow operators to continue current practices with no additional requirements beyond posting the Notice of Coverage at their sites, as the general permit requirements are the same as the rules under the authority of the Arkansas State Plant Board.



- c. Industrial users that discharge into POTWs will no longer be required to obtain a permit from ADEQ for the discharge.
3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?
 - a. No action regarding pesticide discharges would require operators to continue to submit a permit fee and NOI to ADEQ. The Department has heard from many stakeholders that this would not be practical or acceptable.
 - b. No action regarding industrial users to a POTW would require those discharges to obtain a permit from ADEQ for a discharge that was not entering waters of the State.
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. A permit-by-rule by definition follows the rulemaking process.

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.

Any small business that discharges pesticides to Waters of the State are required to obtain permit coverage for the discharge. Permit coverage may be obtained by individual permit, but most entities will opt to be automatically covered by the proposed permit-by-rule. The estimated number of small businesses affected by the rule is estimated to be small. Primarily, municipalities and utilities will be affected.

The number of small businesses that are industrial users discharging to a POTW is also estimated to be small. Also, this proposed change would have a positive economic impact upon small businesses as they would no longer be required to obtain a permit from ADEQ, including the payment of permitting fees.
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.

The proposed regulation does not contain different requirements for different sized entities. The permit-by-rule does not impose any new requirements on any sized entity; therefore, it was unnecessary to proposed different requirements for different sized entities.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

Small business owners will not need to implement any changes in order to comply with the proposed permit-by-rule.

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 requirements for permitting discharges of pesticides to waters of the State. The permit-by-rule does not impose any additional requirements beyond those already in place under the authority of the Arkansas State Plant Board.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

Small cities and towns submitted their concerns to ADEQ about the processing and reporting requirements in the original general permit issued for coverage of pesticide discharges. ADEQ determined that a permit-by-rule would ease the permitting and reporting process for eligible entities and initiated this rulemaking.