



# Arkansas Department of Health

4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000  
Governor Mike Beebe  
Nathaniel Smith, MD, MPH, Director and State Health Officer

Engineering Section, Slot 37  
www.HealthyArkansas.com/eng/

Ph 501-661-2623  
After Hours Emergency 501-661-2136

Fax 501-661-2032  
After Hours Emergency 501-661-2136

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Doug Szenher  
Public Outreach and Assistance Division  
Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, AR 72118  
[Reg-comment@adeq.state.ar.us](mailto:Reg-comment@adeq.state.ar.us)

Dear Mr. Szenher:

The Arkansas Department of Health Engineering Section (ADH) has reviewed the proposed changes to APC&EC Regulation Number 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES) (Reg. 6), and has the following comments.

**Comment 1: Proposed Reg. 6.103 Definitions.**

- (A) In the proposed definition of "average flow," "gaging" should be "gauging."
- (B) The ADH requests that a definition of "existing domestic water supply" be included. ADH has primacy under the Safe Drinking Water Act (SDWA), and administers the public water supervision program. One critical responsibility under SDWA is selection and protection of drinking water sources. A.C.A. § 15-22-202(5) defines "domestic use" as "the use of water for ordinary household purposes, including human consumption, washing, watering of domestic livestock, poultry, and animals, and watering of home gardens for consumption by the household." This definition is included in the AR Water Plan (Appendix A, Arkansas Water Plan, Rules for the Utilization of Surface Water as adopted December 20, 1989), §301.3(q) Definitions, Domestic Use) At a minimum, these activities should be included in determining whether a water supply is or has been domestic.
- (C) The proposed replacement of "treatment works" with "device or system" under "non-municipal domestic sewage treatment works" appears to be an error. "Treatment works" is defined in A.C.A. § 8-4-102(9), and "device" is already included as a possible component of a "sewer system" which is defined in A.C.A. § 8-4-102(8). Thus, the proposed change appears to make the Reg. 6.103 definition only apply to the collection system and not to the treatment works. To solve this, "treatment works" or "device or system" could be replaced with "disposal system" which includes both sewer systems and treatment works pursuant to A.C.A. § 8-4-102(2).

(D) Reg. 6.103 should include or at least cite the regulatory definition of “Waters of the State” that is found in A.C.A. § 8-4-102(10) (i.e., “all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state”). “Waters of the State” is already used at least two places in Reg. 6.103 (i.e., in “pesticide residue” and in “treatment area”). This is needed for clarity because “Waters of the State” is defined differently than “Waters of this State” in A.C.A. §§ 15-43-301(2) and 27-101-103(13) (and possibly elsewhere in A.C.A.). Note that “water” is also defined in A.C.A. §§ 15-22-602(8) and 15-20-1302(20) (where it refers to “waters of the state” and not “waters of this state”).

**Comment 2: Proposed Reg. 6.207(A) Individual Permit Application Review for Minerals.**

- (A) The proposed revisions based on Act 954 require ADEQ to certify whether “the stream segment or reservoir that will receive the proposed discharge is: (1) an existing domestic water supply; or (2) listed in the Arkansas Water Plan as a planned or potential domestic water supply. ” ADH notes that definitions of existing ... or planned or potential domestic water supply are missing from Reg. 6 and Act 954. Further, neither of the lists required under (1) or (2) for certification exists at this time. Reg. 6 should explicitly state that the ADH will provide the list of current public water sources. ADH further notes that no such list of future or potential water use exists in the State Water Plan, and no provision for its inclusion in future water plans currently exists.
- (B) While “stream,” “stream segment,” and “reservoir” were not defined by Act 954, “stream” is defined in A.C.A. §§ 15-22-202(10) and 15-23-303(4), and “reservoir” is defined in A.C.A. § 15-22-602(7). Given Act 954’s assumption that 4 cfs is an appropriate minimum stream flow rate, an A.C.A. § 15 interpretation of a stream/stream segment may be more appropriate than an A.C.A. § 8 interpretation of a stream/stream segment. This may exclude roadside ditches, gullies, swales, small channels, and other unnamed waterbodies that would normally be considered to be “waters of the State” per A.C.A. § 8 but would not be physically capable of flowing 4 cfs.

**Comment 3: Proposed Reg. 6.207(B) Individual Permit Application Review for Minerals.** ADH notes that no Draft APC&EC Regulation Number 2, Water Quality Standards (Reg. 2), is available for review and comment. ADH considers it premature for ADEQ/APC&EC to develop Reg. 6 changes without having the required water quality standards upon which the NPDES permits will be based in place. Otherwise, all of the proposed changes incorporating Act 954 place Reg. 6 in direct conflict with the current Reg. 2 water quality standards and assessment methodology.

**Comment 4: Proposed Reg. 6.403, Development and Implementation of Water Quality Standards and Criteria for Minerals.**

- (A) While “stream” and “stream segment” were not defined by Act 954, “stream” is defined in A.C.A. §§ 15-22-202(10) and 15-23-303(4). Given Act 954’s assumption that 4 cfs is an appropriate minimum stream flow rate, an A.C.A. § 15 interpretation of a stream/stream segment may be more appropriate than an A.C.A. § 8 interpretation. This may exclude roadside ditches, gullies, swales, small channels, and other unnamed waterbodies that would normally be considered to be “waters of the State” per A.C.A. § 8 but would not be physically capable of flowing 4 cfs.
- (B) No mention of reservoirs is included in the proposed Reg. 6.403. Is it still ADEQ policy that all reservoirs will have an assumed 7Q10 flow rate of 0 cfs for determining water quality standards and proposed effluent limits?

If you have any questions or comments, they may be directed to Darcia Routh by phone at 501-661-2623 or via email: [Darcia.routh@arkansas.gov](mailto:Darcia.routh@arkansas.gov)

Sincerely,



Jeff Stone, P.E.  
Director

JS:LG:DR:dr

Cc: APC&EC Chair, Lynn Sickle [commissioners@adeq.state.ar.us](mailto:commissioners@adeq.state.ar.us)