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Sent: Tuesday, October 18, 2016 6:54 PM
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Subject: Comments on Proposed Changes to Regulation 6
Attachments: Reg 6 Attachment80-21_Recommended_Standards_for_Sewage_Works 80.21.pdf

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Subject: Comments on Proposed Changes to Regulation 6

Comments on Proposed Changes to Regulation 6, Regulations for State Administration of the National Pollutant Elimination System (NPDES)

Thank you for the opportunity to submit comments on the proposed changes to Regulation 6. According to the Petition to Initiate Rulemaking, filed by the Arkansas Department of Environmental Quality (ADEQ), the proposed amendments are to incorporate changes to federal regulations and state law and to clarify sections “that were otherwise unclear” and to provide “minor corrections to make the regulation more illustrative of the regulatory intent.”

Regulation 6 sets forth the regulations for administering the NPDES permit program in the State of Arkansas. The NPDES permit program is intended to regulate pollution from point sources “discharging into waters of the state.” Arkansas law defines “discharging into waters of the state” as:

A discharge of any wastes in any manner that directly or indirectly permits such wastes to reach any of the waters of the state.” Ark. Code Ann. § 8-4-102(1).

Point sources regulated under the NPDES program include discharges from both domestic and industrial wastewater treatment facilities. The Ten State Standards is a document containing design criteria for wastewater treatment plants, and these standards were adopted by the Commission in 1980 (see attached Minute Order 80-21). The Commission, in adopting the Ten State Standards, did not make any distinction between domestic and industrial facilities. When the Ten State Standards were incorporated in Regulation 6, the application of the document was not limited to domestic wastewater treatment plants only. However, the proposed change to Reg. 6.202(G) would now provide:

The basic recommended design criteria for domestic wastewater treatment plants...should be based on the latest edition of...Ten State Standards.

Adding the word “domestic” before “wastewater treatment plants” would eliminate the application of the Ten State Standards’ design criteria to industrial discharge facilities. This proposed amendment would appear to constitute a significant change. The Petition to Initiate Rulemaking describes the purpose of this proposed amendment as:

Clarify Reg. 6.202(G) concerning the requirement that design criteria for domestic wastewater treatment plants should be based on the latest edition of Ten State Standards and remove exceptions to Ten State Standards;

This description does not appear to capture the significance of this proposed amendment. Currently, Regulation 6 does not limit the application of the Ten State Standards to domestic wastewater facilities; it can apply to both domestic and industrial wastewater dischargers. Clearly, the design criteria contained in the Ten State Standards are geared primarily toward sewage treatment facilities (domestic wastewater treatment), but some important criteria contained in the document can provide guidance on minimum design criteria that should apply to any wastewater treatment system, whether domestic or industrial. For example, under wastewater treatment ponds (capable of achieving secondary treatment), the Ten State Standards provides that “a minimum separation of 4 feet between the bottom of the pond and the maximum ground water elevation should be maintained.” This minimum separation distance between groundwater and the bottom of a wastewater treatment pond is intended to provide some protection against contaminating groundwater. Why should this separation requirement be limited to only domestic wastewater treatment plants? This minimum separation distance and other design criteria for pond construction contained in the Ten State Standards offer valuable guidance for protecting the environment that should apply to both domestic and industrial dischargers.

Further, Reg. 6.202(I) clearly proposes that Ten State Standards “shall not apply to nondomestic wastewater treatment plants.” It appears that the term “nondomestic wastewater treatment plants” refers to industrial wastewater treatment facilities without really having to use the term industrial discharger. (“Domestic wastewater” is defined in Regulation 6 and “industrial waste” is defined in state law, but I believe “nondomestic wastewater treatment plant” is not explicitly defined in state law or regulation.) This proposed change in Reg. 6.202(I) further ensures that the Ten State Standards design criteria never apply to industrial dischargers.

The proposed change to Reg. 6.202(I) also states that the design criteria for nondomestic treatment plants (read: industrial dischargers) “shall be reviewed and approved” by the Office of Water Quality “as part of the application process.” Since the design criteria shall be reviewed *and* approved, this proposed language leaves it unclear whether ADEQ will have authority to *disapprove* any design criteria submitted in an industrial discharger’s permit application.

Finally, Reg. 6.202(G) and (I) allow design criteria for industrial wastewater treatment dischargers to be submitted only on an ad hoc basis without any grounding in regulation. These two amendments, taken together, would require domestic wastewater treatment dischargers (such as municipal POTWs) to follow minimum design criteria for wastewater treatment ponds as set out in the Ten State Standards while leaving industrial wastewater treatment dischargers entirely free of any similar regulatory guidance for their wastewater treatment lagoons. In short, *no guidance on design criteria would exist for the construction of industrial wastewater treatment ponds.* For industrial wastewater ponds, there would no longer be any regulatory guidance on pond size, slope, freeboard, liner requirements to minimize leakage, or groundwater separation requirements; although design criteria for these parameters would continue to exist for domestic wastewater treatment ponds as set out in the Ten State Standards. The Ten State Standards simply would not apply to industrial wastewater ponds. “Domestic wastewater” is defined in Reg. 6.103 to mean “the spent wastewater originating from all aspects of human sanitary water usage.” So a small municipality would be required to meet Ten State Standards in constructing its sewage treatment system, but a large confined animal feeding operation or poultry processor seeking an individual Regulation 6 NPDES permit for their wastewater treatment system would not

have to meet any specific design criteria for their lagoons because they treat industrial wastewater, not domestic wastewater.

The Ten State Standards were adopted by the Commission in 1980 in Minute Order 80-21 (attached). These standards were adopted by the Commission “as basic design criteria for wastewater treatment plants in the State of Arkansas.” No distinction was made by the Commission in 1980 between “domestic” wastewater treatment plants and “nondomestic” wastewater treatment plants (read: industrial dischargers). The Ten State Standards design criteria for pond construction are intended to protect the environment. To repeal this guidance as it applies to industrial wastewater ponds is not protective of the environment. I do not believe the significance of the changes to Reg. 6.202(G) and (I) and their potential impact on the environment have been adequately stated in the Petition to Initiate Rulemaking. Additionally, these changes are not reflected in the Economic Impact/Environmental Benefit Analysis. Please do not adopt the changes proposed for Reg. 6.202(G) and (I).

Another clarification is found in Reg. 6.301(D)(4). This amendment proposes to use geometric mean (GM) rather than monthly average in permit limits for fecal coliform in discharges to losing streams. “Average monthly discharge limitation” is a term defined in 40 CFR § 122.2, which is incorporated by reference at Reg. 6.104(A)(3). “Geometric mean” is not defined. How is GM defined as the term is proposed in Reg. 6.301(D)(4)? I understand that Regulation 2 uses the GM in the water quality criteria for fecal coliform for primary and secondary recreation contact. Regulation 2 also specifies “calculation and assessment of Geometric Mean-calculated on a minimum of five (5) samples spaced evenly and within a thirty (30)-day period.” Although the term geometric mean is used in the water quality standards, what other permits use the GM to limit fecal coliform? If GM is not used elsewhere, how can this proposed change be justified for losing streams? Is this amendment a clarification or a departure from traditional permit writing?

To employ the GM as a permit limit for dischargers to losing streams seems counter-intuitive. Losing streams, by their nature, require more protection. By using the GM, couldn't a higher peak discharge of bacteria be allowed than would occur with the traditional permit limit using a monthly average? The use of GM has not been adequately justified, is not defined, and monthly average should be retained in the proposed change to Reg. 6.301(D)(4).

The Ten State Standards is not identified correctly in the definitions at Reg. 6.103. Rather than the “Recommended Standards for Sewage Works or Water Works” the title of the document is “Recommended Standards for Wastewater Facilities.” Also, the document is published by the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers.

Reg. 6.202(H) identifies “additions” to the Ten State Standards, but the proposed changes seem to repeal a number of requirements without explanation or justification. The Petition to Initiate Rulemaking says only that Reg. 6.202(H) was added “to clarify the additional standards that apply with reference to the chapters of Ten State Standards that are affected.” However, Reg. 6.202(H) proposes to delete, without explanation or justification, the requirement to have an aerated waste sludge holding tank or other sludge disposal facility for activated sludge treatment plants with a capacity of greater than 10,000 gallons per day. Reg. 6.202(H) proposes to eliminate the requirement for disinfection to protect public water supplies and recreational water use without explanation or justification. Reg. 6.202(H) proposes to limit the maximum design loading rate for flow through facultative treatment pond systems only without explanation or justification. Reg. 6.202(H) proposes to eliminate the requirements for multiple units without explanation or justification. The long-standing provisions now proposed to be deleted were adopted by the Commission in 1980 in Minute Order 80-21. Also, Reg. 6.202(H) proposes to eliminate the requirements pertaining to control structures and interconnecting piping without explanation or justification. These proposed changes to Reg. 6.202(H) should not be adopted without an explanation or justification and an opportunity for the public to review and comment on the proposed changes once an explanation of the proposed amendments has been provided.

Reg. 6.401(A) proposes to eliminate the language requiring nutrient removal where appropriate for small dischargers and dischargers to reservoirs with domestic water supply use. Although this change is identified as a clarification or minor correction in the Petition to Initiate Rulemaking, the repeal of this language may potentially have a significant adverse effect on reservoirs that serve as drinking water supplies. This change is proposed without explanation or justification. This proposed change should not be made without an explanation or justification and an opportunity for the public to review and comment on the proposed change once an explanation of the amendment has been provided.

Again, thank you for the opportunity to comment on the proposed changes to Regulation 6. I believe a stakeholder process prior to filing a petition to initiate rulemaking would have benefitted the public, the regulated community, ADEQ, and the Commission. A stakeholder process would have given everyone interested in this regulation an opportunity to learn why the proposed changes, especially those beyond the amendments required by federal regulation or state law, are being made. Hopefully, opportunities will be offered by the Department in the future to engage the public prior to initiating rulemaking.

Respectfully submitted,

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