

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)	
REGULATION NO. 6: REGULATIONS FOR)	DOCKET NO. 19-003-R
STATE ADMINISTRATION OF THE)	
NATIONAL POLLUTANT DISCHARGE)	
ELIMINATION SYSTEM (NPDES))	

Exhibit A – Statement of Basis and Purpose

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ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY'S
STATEMENT OF BASIS AND PURPOSE

The Arkansas Pollution Control and Ecology Commission ("Commission") is given the power and responsibility to promulgate rules and regulations. Under Ark. Code Ann. § 8-1-203(b)(1), the Commission is granted the power and responsibility to promulgate rules and regulations implementing the substantive statutes that are administered by the Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ).

DEQ filed a Petition to Initiate Rulemaking on Regulation No. 6 on July 17, 2019, with an Amended Petition to Initiate Rulemaking on Regulation No. 6 on July 25, 2019, to incorporate the state regulatory amendments set forth in Acts 94 and 575 of 2015 and Acts 315 and 910 of 2019; incorporate the federal regulatory amendments set forth in 40 C.F.R. §§ 122.21(e)(3), 122.44(i)(1)(iv), 136.1(c), 125(I) and (J), 423, 122, 123, 127, and 401.17; clarify sections of the regulation that were otherwise unclear and make minor corrections to make the regulation more illustrative of the regulatory intent; make permanent the moratorium on confined animal operations of a certain size in the Buffalo River Watershed; and make minor, non-substantive stylistic and formatting corrections throughout the regulation. The Commission approved the Petition to Initiate Rulemaking at its July 26, 2019 meeting.

The proposed regulatory amendments include the following:

- a. Amendments to incorporate changes to federal regulations, specifically:
 - (1) Reg. 6.104(A)(3) to reflect changes to 40 C.F.R. §§ 122.21(e)(3), 122.44(i)(1)(iv) regarding sufficiently sensitive test methods;
 - (2) Reg. 6.104(A)(7) to include 40 C.F.R. Part 127 regarding NetDMR electronic reporting;
 - (3) Reg. 6.104(A)(12) to remove the exception for 40 C.F.R. § 401.17 regarding NetDMR electronic reporting;
 - (4) Reg. 6.104 to update the effective date of all referenced United States Environmental Protection Agency regulations to January 1, 2020.
- b. Amendments to incorporate Acts 94 and 575 of 2015 of the Arkansas General Assembly that require revisions to Reg. 6.205 to add Trust Fund permitting requirements and strike financial assurance permitting requirements;
- c. Amendments to incorporate Acts 910 and 315 of 2019 of the Arkansas General Assembly that amend the name of ADEQ and references to rules;
- d. Amendments to provide clarification to sections of the regulation that were otherwise unclear and minor corrections to make the regulation more illustrative of the regulatory intent:
 - (1) Clarify certain definitions under Reg. 6.103 and eliminate terms already defined in other regulations;
 - (2) Simplify Reg. 6.202 generally and remove repetitive language;
 - (3) Clarify and make minor corrections to Reg. 6.202(E) by using appropriate language to describe the engineer responsible for approval of state construction permit;

- (4) Clarify Reg. 6.202 by adding subsection (F) to provide that a separate state construction permit is not required if the construction is authorized under a general NPDES permit;
- (5) Clarify Reg. 6.202(G) concerning the requirement that design criteria for domestic wastewater treatment plants shall be based on the latest edition of Ten States Standards and remove exceptions to Ten State Standards;
- (6) Add Reg. 6.202(H) to clarify the additional standards that apply, with references to the chapters of Ten States Standards that are affected;
- (7) Add Reg. 6.202(I) concerning design criteria for nondomestic wastewater treatment plants;
- (8) Simplify and clarify Reg. 6.203 concerning the permitting requirements for stormwater discharges associated with small construction sites, including automatic permit coverage;
- (9) Clarify Reg. 6.204 by changing terminology to "Pretreatment Requirements" instead of "Permitting Requirements;"
- (10) Amend Reg. 6.301(B) to create a presumption of a losing stream where there is intermittent flow or a flow insufficient to measure absent a specific evaluation to the contrary;
- (11) Move and renumber Reg. 6.301(D) to Reg. 6.301(C) concerning the implementation of losing stream rules;
- (12) Clarify and make minor corrections to Reg. 6.301(D), previously Reg. 6.301(C), concerning effluent limitations for discharges into losing stream segments, to include biochemical oxygen demand as an acceptable

- measurement for limitation, and the use of the term “geometric mean” rather than “average” when assessing fecal coliform content of discharges;
- (13) Amend Reg. 6.401 concerning the determination of domestic wastewater effluent limitations;
 - (14) Amend Reg. 6.401(D) to add (E) through (G) for clarification and simplicity;
 - (15) Amend Chapter 4 to add 6.403 and 6.404 to insert permitting language from Regulation No. 2; and
 - (16) Rename Chapter 6 “Specific Basin and Watershed Requirements.”
- e. Amendments throughout the regulation for consistency with the statutory changes made by the General Assembly and regulatory changes made by EPA, primarily concerning terminology and program name changes;
 - f. Amendment to make permanent the moratorium on confined animal operations of a certain size in the Buffalo River Watershed; and
 - g. Minor, non-substantive stylistic and formatting corrections throughout the regulation.

Public notice of the proposed rulemaking for Regulation No. 6 was published statewide on August 3 and 4, 2019, in the Arkansas Democrat-Gazette. Publication of that notice began the public comment period, and a public hearing was held on August 23, 2019, to receive comments on the proposed rule changes to Regulation No. 6. The public comment period closed on September 22, 2019.

At its regularly scheduled meeting on October 24, 2019, the Commission unanimously passed a motion to reopen the public comment period for both rulemaking dockets and provided

an additional 90 days, from October 24, 2019, until January 22, 2020, for submission of additional comments by the public.

The public comment record for the proposed Rule contains comments from approximately 1719 commenters. The majority of those comments (approximately 70%) were in favor of the proposed changes.

The proposed changes to Regulation No. 6 contain no technical standards that must be addressed pursuant to Regulation 8.815(A)(1)(ii). These rules are in the public interest and are necessary to ensure compliance with both state and federal law.

Respectfully Submitted,

By: 

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