

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

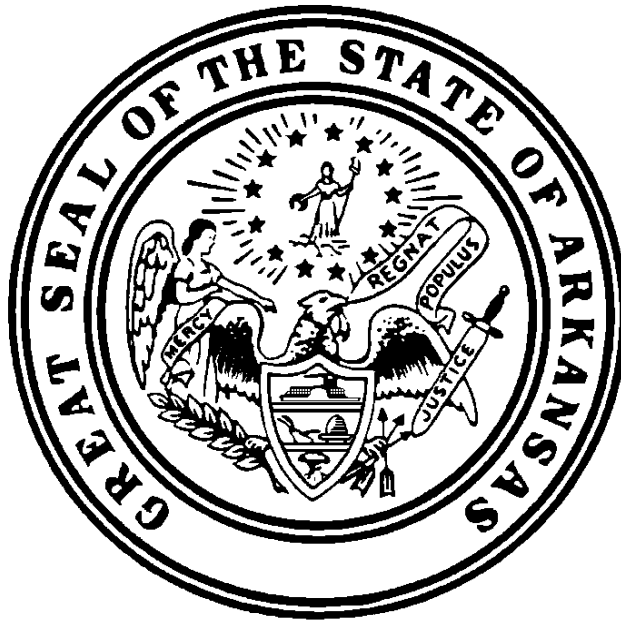
IN THE MATTER OF AMENDMENTS TO)	
REGULATION NO. 6: REGULATIONS FOR)	DOCKET NO. 19-003-R
STATE ADMINISTRATION OF THE)	
NATIONAL POLLUTANT DISCHARGE)	
ELIMINATION SYSTEM (NPDES))	

Exhibit C – Final Proposed Rule

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

RULE NO. 6

RULES FOR STATE ADMINISTRATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)



DRAFT

**Submitted to the Pollution Control and Ecology Commission
IN JULY 2019**

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Chapter 1 : GENERAL PROVISIONS

Rule 6.101 Adoption

Pursuant to the provisions of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, the Arkansas Pollution Control and Ecology Commission hereby promulgates this rule to implement State administration of the National Pollutant Discharge Elimination System (NPDES).

Rule 6.102 Purpose

The purpose of this rule is to adopt rules necessary to qualify the State of Arkansas to receive authorization to implement the State water pollution control permitting program, in lieu of the federal NPDES program, pursuant to the federal Clean Water Act, 44 U.S.C. § 1251 *et seq.* To receive the authorization, it is necessary for the Division of Environmental Quality to have rules as stringent as the federal program administered by the United States Environmental Protection Agency.

Rule 6.103 Definitions

- (A) The definitions set forth in 40 C.F.R. §§ 122.2 and 124.2 are all adopted herein by reference in Rule 6.104.
- (B) The definitions set forth in Arkansas Pollution Control and Ecology Commission Rule No. 2.106 are all adopted herein by reference.
- (C) In addition, the following definitions also apply to this Rule:

“Animal Feeding Operation” or (“AFO”) means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

“Approved Publicly Owned Treatment Works Pretreatment Program” or “Pretreatment Program” means a program administered by a Publicly Owned Treatment Work that meets the criteria established in 40 C.F.R. §§ 403.8 and 403.9 and that has been approved by the Director in accordance with 40 C.F.R. § 403.11.

“Biochemical Pesticide” means a pesticide that: (1) is a naturally-occurring substance or structurally-similar and functionally identical to a naturally-occurring substance; (2) has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically-derived biochemical pesticide, is equivalent to a naturally-occurring substance that has such a history; and (3) has a non-toxic mode of action to the target pest(s).

“Biological Pesticides” or “Biopesticide” includes microbial pesticides, biochemical pesticides, and plant-incorporated protectants.

“Chemical Pesticides” means all pesticides not otherwise classified as biological pesticides.

“Commission” means the Arkansas Pollution Control and Ecology Commission.

“Concentrated Animal Feeding Operation” or “CAFO” means an AFO that is defined as a Large CAFO or as a Medium CAFO pursuant to 40 C.F.R. § 122.23, or that is designated as a CAFO in accordance with 40 C.F.R. § 122.23(c). Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

“Director” means the Director of the Arkansas Division of Environmental Quality, unless the context dictates otherwise. (See 40 C.F.R. §§ 122.2 and 124.2, and Ark. Code Ann. § 8-1-202 *et seq.*)

“Division” means the Division of Environmental Quality, or its successor.

“Domestic wastewater” means the spent wastewater originating from all aspects of human sanitary water usage.

“Effluent” means water that is not reused after flowing out of any wastewater treatment facility or other works used for the purpose of treating, stabilizing, or holding wastes.

“General Permit” means a permit issued by the Division to a category of qualifying sources in lieu of individual permits for every source.

“Indirect Discharge” means the introduction of pollutants into a Publicly Owned Treatment Works from any non-domestic source regulated under section 307(b), (c), or (d) of the Clean Water Act.

“Industrial User” or “User” means a source of Indirect Discharge.

“Larger Common Plan of Development” means a contiguous (sharing a boundary or edge, adjacent, or touching) area where multiple and distinct construction activities may be taking place at different times on different schedules under one plan. This plan might consist of many small projects (e.g., a common plan of development for a residential subdivision might lay out streets, house lots, and areas for parks, schools, and commercial development that the developer plans to build or sell to others for development). All these areas would remain part of the common plan of development or sale. The term “plan” is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot.

“Microbial Pesticide” means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant that: (1) is a eukaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (2) is a prokaryotic microorganism, including, but not limited to, Eubacteria and Archaeobacteria; or (3)

is a parasitically replicating microscopic element including, but not limited to, viruses.

“Non-domestic Wastewater” means any wastewater that does not meet the definition of domestic wastewater.

“Non-municipal domestic sewage treatment works” means a device or system operated by an entity other than a city, town, county, or sewer improvement district that treats, in whole or in part, waste or wastewater from humans or household operations and must continuously operate to protect human health and the environment despite a permittee’s failure to maintain or operate the device or system.

“National Pollutant Discharge Elimination System” or “NPDES” means the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 318, 402, and 405 of the Clean Water Act.

“Owner or Operator” means the owner or operator of any “facility or activity” subject to regulation under the NPDES program. For the purposes of a permit, owner or operator means any person (an individual, association, partnership, corporation, municipality, state or federal agency) who has the primary management and ultimate decision-making responsibility over the operation of a facility or activity. The operator is responsible for ensuring compliance with all applicable environmental rules, regulations, and conditions.

“Pesticide” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (3) any nitrogen stabilizer, except that the term “pesticide” shall not include any article that is a “new animal drug” within the meaning of section 201(w) of the FFDCA, 21 U.S.C. § 321(w), that has been determined by the Secretary of United States Department of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of the FFDCA, 21 U.S.C. § 321(x), bearing or containing a new animal drug. The term “pesticide” does not include liquid chemical sterilant products (including any sterilant or subordinate disinfectant claims on such products) for use on a critical or semi-critical device, as defined in section 201 of the FFDCA, 21 U.S.C. § 321. For purposes of the preceding sentence, the term “critical device” includes any device introduced directly into the human body, either into or in contact with the bloodstream or normally sterile areas of the body and the term “semi-critical device” includes any device that contacts intact mucous membranes but that does not ordinarily penetrate the blood barrier or otherwise enter normally sterile areas of the body, FIFRA Section 2(u), 7 U.S.C. § 136(u). The term “pesticide” applies to insecticides, herbicides, fungicides, rodenticides, and various other substances used to control pests. The definition encompasses all uses of pesticides authorized under FIFRA including uses authorized under sections 3 (registration), 5 (experimental use permits), 18 (emergency exemptions), 24(c) (special local needs registrations), and 25(b) (exemptions from FIFRA), 7 U.S.C. § 136.

Note: Drugs used to control diseases of humans or animals (such as livestock, fishstock, and pets) are not considered pesticides; such drugs are regulated by the United States Food and Drug Administration. Fertilizers, nutrients, and other substances used to promote plant survival and

health are not considered plant growth regulators and thus are not pesticides. Biological control agents, except for certain microorganisms, are exempted from regulation under FIFRA. (Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc.)

“Pesticide Residue” includes that portion of a pesticide application that is discharged from a point source to waters of the state and no longer provides pesticidal benefits but that may impact non-target species. It may include the pesticide and degradants of the pesticide.

“Plant-incorporated Protectant” means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. It also includes any inert ingredient contained in the plant or produce.

“Publicly Owned Treatment Works” or “POTW” means a treatment works, owned by a State or municipality, as defined by Section 212 of the Clean Water Act.

“Small Construction Site” means construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance.

“Stormwater” means runoff from rainfall, snow melt runoff, and surface runoff and drainage.

“Stormwater Pollution Prevention Plan” means a plan that describes the measures and practices used to control the discharge of pollutants through stormwater discharges.

“Ten States Standards” means the latest edition of the “Recommended Standards for Wastewater Facilities” or “Recommended Standards for Water Works” published by Health Research, Inc., Health Education Services Division.

“Treatment Area” means an area of land, including any waters of the state, within a pest management area where pesticides are being applied at a concentration that is adequate to control the targeted pests within that area. Multiple treatment areas may be located within a single “pest management area.”

Rule 6.104 Incorporation of Federal Regulations

- (A) The following regulations promulgated by the U.S. Environmental Protection Agency are hereby adopted as provisions of this Rule as though set forth herein line for line and word for word of the most current version of the Code of Federal Regulations with the exception that, and unless the context otherwise dictates, all references therein to “Administrator,” “Regional Administrator,” “Director,” or “State Director” shall be considered references to the “Director of the Division of Environmental Quality,” and all references to the “U.S. Environmental Protection Agency” or “EPA” shall be considered references to the “Division of Environmental Quality”; and all references elsewhere in

this Rule to any of the following regulations shall constitute a reference to the regulation as herein adopted; and provided that the effective date of provisions adopted herein by reference as provisions of this Rule shall be the date when the provisions are specified as being effective by the Commission in its rulemaking and the effective date of the federal regulations adopted herein shall have no bearing on the effective date of any provision of this rule:

Portions of Title 40 of the Code of Federal Regulations adopted verbatim:

- (1) Part 116;
- (2) Part 117;
- (3) Subparts A, B, C, and D of Part 122 with the following exceptions: §§ 122.6(a); 122.7(a); 122.21(l); 122.29(c) and (d); and 122.49;
- (4) The following sections, only, of Part 123: §§ 123.25(b), 123.26(d), 123.27(d), 123.41(a), and 123.62(e);
- (5) The following sections, only, of Part 124: §§ 124.2; 124.3(a); 124.5(a), (c), (d), and (f); 124.6(a), (c), (d), and (e); 124.7; 124.8; 124.10(a)(1)(ii), (iii), and (v); 124.10(b), (c), (d), and (e); 124.11; 124.12(a), (b), (c), and (d); 124.13; 124.14; 124.17(a) and (c); 124.19; 124.56; 124.57(a); 124.59; and 124.62;
- (6) Subparts A, B, C, D, H, I, J, K, and L, only, of Part 125;
- (7) Part 127;
- (8) Part 129;
- (9) Part 133;
- (10) Part 136;
- (11) Part 257; and
- (12) Parts 400 through 471.

All as adopted as final rules (including “interim final rules” and “technical amendments”) by the United States Environmental Protection Agency on or before January 1, 2020.

- (B) The Director, within 180 days after the date of promulgation of any new or revised federal NPDES regulations, shall conduct rulemaking procedures with reference to this Rule necessary to maintain a state NPDES program as stringent as the federal program. The new or revised federal regulations, upon their publication as final rules by Environmental Protection Agency, shall constitute minimum guidelines to the Director in formulating rulemaking proposals to this rule but shall not be construed to limit or interfere with the adoption of provisions more stringent than federal regulations.

Rule 6.105 Confidentiality

In addition to the provisions of 40 C.F.R. § 122.7(b) and (c), which are adopted by reference in Rule 6.104, the following provisions apply:

- (A) Any information submitted to the Division may be claimed as confidential by the submitter. Any claim must be asserted at the time of submission in accordance with the provisions of this section. If no claim is made at the time of submission, the Division may make the information available to the public without further notice. If a claim is asserted, the Director will make a determination of whether the material, if made public, would divulge trade secrets entitled to protection.
- (B) It shall be the responsibility of the person claiming any information as confidential under the provisions of subsection (A) above to clearly mark each page containing such information with words "CONFIDENTIAL" and to submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection as a trade secret.
- (C) Any document submitted to the Division that contains information for which the claim of confidential information is made shall be submitted in a sealed envelope marked "CONFIDENTIAL" and addressed to the Director. The document shall be submitted in two separate parts. The first part shall contain all information that is not deemed by the submitter as confidential and shall include appropriate cross references to the second part that contains data, words, phrases, paragraphs or pages, and appropriate affidavits containing or relating to information that is claimed to be confidential.
- (D) No information shall be protected as confidential information by the Director unless it is submitted to the Director in accordance with the provisions of subsections (B) and (C) above. No information shall be afforded protection as confidential information unless the Director finds that such protection is necessary to protect trade secrets and that such protection will not hide from public view the characteristics of waste materials and probable effects of the introduction of such waste or by-products into the environment. The person who submits information claimed as confidential shall receive written notice from the Director as to whether the information has been accepted as confidential or not.
- (E) All information that the Director determines is entitled to protection shall be marked with the term "ACCEPTED" and shall be protected as confidential information. Whenever the Director finds that the submitted information does not meet the criteria of subsection (D) above, the Director shall promptly notify the person submitting the information of his or her finding and shall give that person reasonable opportunity to further justify his or her contention that the information deserves protection as a trade secret or to further limit the scope of information for which the request for protection is made. If the person fails to satisfactorily demonstrate to the Director that the information in the form presented to him or her meets the criteria of subsection (D) above, the Director shall mark the information "REJECTED" and promptly return the information to the person submitting the information. The person shall have thirty (30) days to resubmit the information in acceptable form or request review of the decision of the Director in accordance with Chapter 6 of Arkansas Pollution Control and Ecology Commission Rule No. 8.

- (F) All information which is accepted by the Director as confidential shall be stored in locked filing cabinets and only those personnel of the Division specifically designated by the Director shall have access to the information contained therein. The Director shall not designate any persons to have access to confidential information unless the person requires the access to perform his or her responsibilities and duties. No person shall disclose any confidential information except in accordance with the provisions of this section.
- (G) National Pollutant Discharge Elimination System permits and permit applications and all information contained in them are required by 40 C.F.R. § 122.7 to be publicly available. No claim of confidentiality will be accepted hereunder for this material. Consequently, applications containing confidential information will be returned to the applicant.

Rule 6.106 Violations

Violation of any of the following prohibitions shall be considered a violation of this rule and shall be subject to the penalties provided in the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*, specifically Ark. Code Ann. § 8-4-103:

- (A) No person shall construct, install, alter, modify, or operate any disposal system or any part thereof or any extension or addition thereto that will discharge into any waters of the state without first having obtained a permit from the Division for the activity.
- (B) No person shall increase in volume or strength any sewage, industrial waste, or other wastes in excess of the permitted discharges specified under any existing permit.
- (C) No person shall construct, install, or operate any building, plant, works, establishment, or facility, or any extension or modification thereof, or addition thereto, the operation of which would result in discharge of any wastes into the waters of the state or would otherwise alter the physical, chemical, or biological properties of any waters of the state in any manner not already lawfully authorized.
- (D) No person shall construct or use any new outlet for the discharge of any wastes into the waters of the state without first obtaining a permit for the activity from the Division.
- (E) No person shall discharge sewage, industrial wastes, or other wastes into any of the waters of the state without first obtaining a permit for the activity from the Division.
- (F) No person shall violate any other provision of this rule or the Arkansas Water and Air Pollution Control Act.

Rule 6.107 Administrative Procedures

Arkansas Pollution Control and Ecology Commission Rule No. 8, Administrative Procedures, applies to this rule.

Rule 6.108 Penalty Policy

Ark. Code Ann. § 8-4-103 and Arkansas Pollution Control and Ecology Commission Rule No. 7, Civil Penalties, apply to this rule.

Chapter 2 : Permit Procedures

Rule 6.201 Status and Continuation of Permits

Conditions of a NPDES permit issued by the Division of Environmental Quality will continue in effect past the expiration date pending issuance of a new permit, if:

- (A) The permittee has submitted a timely and complete application as described in 40 C.F.R. § 122.21; and
- (B) The Director, through no fault of the permittee, does not issue a new permit prior to the expiration date of the previous permit.

Rule 6.202 Application Requirements for Construction and Operation of Wastewater Facilities

- (A) Any person who desires to construct, operate, or modify any disposal system that will discharge to the waters of the state or to discharge any sewage, industrial waste, or other wastes into the waters of the state or to do any other act that requires a permit under Ark. Code Ann. § 8-4-217(b) shall submit an application for a permit for the activity.
- (B) In addition to the permit application procedures set forth in 40 C.F.R. Parts 122, 123, and 124, that are incorporated by reference in Rule 6.104, hereof, the applicant must also submit Division of Environmental Quality Form 1.
- (C) The application for a construction permit must be submitted, approved, and a permit issued and effective before construction can begin.
- (D) A state permit for construction or modification of a wastewater treatment facility does not constitute a NPDES permit. Issuance of a state permit for construction or modification of a treatment system in no way guarantees or assumes that an application for a NPDES permit to operate the system will be approved or the NPDES issued, nor does issuance of a NPDES permit assume or require a prior permit for construction or a satisfactory review of the design or construction of the treatment facility.
- (E) Division of Environmental Quality Form 1, plans and specifications, and design calculations are required for a state permit for construction or modification of a wastewater treatment facility. Plans and specifications and design calculations must be stamped and signed by a professional engineer licensed in the State of Arkansas.
- (F) A state construction permit is not required for a facility that has a general NPDES permit if the construction of that facility or the modification of that facility has been authorized under the applicable general permit.
- (G) The design criteria for wastewater treatment plants shall be based on the applicable provision in the latest edition of Ten States Standards. Exception to these criteria must be approved by the Division.
- (H) In addition to Rule 6.202(G), the following standards shall apply to all wastewater

treatment plants, with references to the chapters of Ten States Standards, where applicable, included:

Chapter 30—Design of Sewers

Chapter 31—Approval of Sewers

Combined sewers will not be approved.

Chapter 93—Wastewater Treatment Ponds

93.32 Area and Loading for Flow-Through Facultative Treatment Pond Systems

The maximum design loading rate for the primary cell(s) will be thirty (30) pounds of BOD5 per acre per day, with a minimum surface area of one (1) acre.

Chapter 94—Other Biological Systems

Land treatment of wastewater shall be in accordance with the Arkansas Land Application Guidelines as published jointly by the Division and the Arkansas Department of Health.

- (I) The design criteria for nondomestic wastewater treatment plants shall be reviewed and approved by the Office of Water Quality of DEQ as part of the application process.
- (J) At the discretion of the Director, the provisions of Rule 6.202(D) may not apply to minor revision to the existing treatment system, routine repair, replacement, or maintenance.
- (K) Prior to initiating construction for domestic wastewater treatment plants, an approval letter from Arkansas Department of Health is required.
- (L) All information supplied to this Division shall be available for public inspection unless the information constitutes a trade secret and a claim of confidentiality is submitted in accordance with the procedures specified in Rule 6.105.

Rule 6.203 Permitting Requirements for Stormwater Discharges Associated with a Small Construction Site

An owner or operator of a small construction site shall apply for a general permit, apply for an individual permit, or be authorized under automatic permit coverage for the purposes of the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*; the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*; and Ark. Code Ann. § 8-4-203(l).

If an owner or operator of a small construction site uses automatic permit coverage, the owner or operator shall:

- (A) Post a completed Notice of Coverage at the site before commencing construction;
- (B) Prepare a Stormwater Pollution Prevention Plan in accordance with good engineering

practices and maintain it at the construction site; and

- (C) Comply with all requirements of the NPDES General Permit for Stormwater Construction Discharge Permit, except the notification and fee payment requirements.

Rule 6.204 Pretreatment Requirements for Industrial Users of Publicly Owned Treatment Works (POTWs)

- (A) An industrial user may not introduce into a POTW any pollutants that will pass through the treatment system, cause interference with the operation, or inhibit or disrupt the process, use, or disposal of sludge of the POTW as defined by 40 C.F.R. § 403.3. This prohibition applies to each user introducing pollutants into a POTW whether or not the user is subject to other National Pretreatment Standards or any national, State, or local Pretreatment Requirements.
- (B) An industrial user discharging or proposing to discharge to a POTW with an approved POTW pretreatment program must comply with the more stringent of either the pretreatment standards in 40 C.F.R. §§ 400–471 or an approved POTW pretreatment program’s local limits and Pretreatment Standards.
- (C) An industrial user discharging or proposing to discharge to a POTW without an approved POTW pretreatment program must comply with the more stringent of either the Federal Pretreatment Standards in applicable Categories (Effluent Guidelines) located in 40 C.F.R. §§ 400–471 or with conditions of pretreatment in the POTW’s NPDES permit or local ordinances.
- (D) An industrial user discharging to a POTW must comply with the federal pretreatment reporting requirements located in 40 C.F.R. § 403.12.

Rule 6.205 Trust Fund Permitting Requirements

The Division shall not issue, modify, renew, or transfer a NPDES permit for a non-municipal domestic sewage treatment works without the permit applicant first complying with Ark. Code Ann. § 8-4-203(b).

Rule 6.206 Permitting Requirements for Discharges of Pesticides

An owner or operator of a pesticide application site shall have automatic permit coverage under the general permit for pesticide discharges located within the State of Arkansas for the purposes of the federal Clean Water Act, 33 U.S.C § 1251 *et seq.*; the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*; and Ark. Code Ann. § 8-4-203(l), if the following conditions are met:

- (A) The application of biological pesticides or chemical pesticides that leave a residue (hereinafter collectively “pesticides”) to waters of the state falls under one of the following pesticide use patterns and annual threshold:
 - (1) Mosquito and Other Flying Insect Pest Control—to control public health/nuisance and other flying insect pests that develop or are present during a portion of their

life cycle in or above standing or flowing water. Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies.

- (2) Weed and Algae Control—to control invasive or other nuisance weeds and algae in water and at water’s edge, including irrigation ditches or irrigation canals. This use pattern is understood to include right-of-way maintenance for utilities and forest lands, as well as other applicable uses.
 - (3) Aquatic Nuisance Animal Control—to control invasive or other nuisance animals in water and at water’s edge. Aquatic nuisance animals in this use category include, but are not limited to fish and mollusks.
 - (4) Forest Canopy Pest Control—aerial application of a pesticide over a forest canopy to control the population of a pest species (e.g., insect or pathogen) where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to water.
- (B) A completed Notice of Coverage must be posted at the suite or kept at the physical address of the owner or operator for automatic permit coverage prior to commencing the pesticide application;
 - (C) Pesticides must be handled, used, or applied in accordance with state law and rules and the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, which include all instructions on the pesticide label; and
 - (D) An owner or operator must comply with all requirements of the NPDES General Permit for Pesticide Discharges Located within the State of Arkansas except the notification and fee payment requirements.

Rule 6.207 Public Notice Requirements for Concentrated Animal Feeding Operation (CAFO) Permits

Public notification requirements for any proposed CAFO in Arkansas are as follows:

- (A) The applicant shall provide written notice by letter, certified mail, return receipt requested, to the following people:
 - (1) Property owners adjacent to the CAFO production site and property owners adjacent to the manure spreading sites;
 - (2) The County Judge of the county where the CAFO production site and any manure spreading site is located;
 - (3) Mayors of incorporated municipalities within ten (10) miles of the CAFO production site; and

- (4) The superintendent of the school district that serves the CAFO production site.
- (B) It shall be the applicant's responsibility to retain return receipts for the active life of the permit.
- (C) DEQ shall provide the contents of the written public notice distributed by the applicant in a form letter made available to the applicant.
- (D) The form letter shall include, at a minimum, the following:
 - (1) Notice of the proposed CAFO, including the address of the production site, and the name of the applicant and farm;
 - (2) An explanation of the thirty-day public comment period and the right to comment;
 - (3) The telephone number of a person to contact at DEQ with questions;
 - (4) Directions to DEQ's website, including directions regarding how an interested party may submit his or her name to receive electronic notifications regarding the sought-after CAFO permit; and
- (E) The applicant shall publish notice one (1) time of the proposed CAFO in the paper of the largest circulation in the county of the CAFO production site. DEQ shall determine the form of that notice, and determine the proper paper for publication.
- (F) The applicant shall post a sign measuring at least two-feet-by-three-feet (2' x 3') on a public road nearest the entrance to the CAFO production site. The sign shall be clearly legible and conspicuous in such a manner that passersby can clearly see from the public road the applicant's requirements set forth in this section. DEQ will prescribe the sign's minimum requirements which, at a minimum, will contain the same information as that which DEQ requires the applicant to publish in the paper. The sign shall be posted prior to any submittals to DEQ and shall remain in place until thirty (30) days following DEQ approval.
- (G) Applicants for a CAFO permit must certify compliance with the public notification requirements in subsections (A)–(F) of this section.

Chapter 3 : LOSING STREAM SEGMENTS

Rule 6.301 Effluent Discharges to Losing Stream Segments

- (A) In addition to all applicable effluent standards and conditions required by State and federal laws, rules, and regulations, wastewater discharged to losing stream segments shall comply with subsections (B) through (D) below.
- (B) For purposes of this rule, a “losing stream segment” is defined as a stream segment that beginning at the point of existing or proposed discharge and extending two (2) miles downstream, loses thirty percent (30%) or more of its flow at a 7Q10 flow or one (1) cubic feet per second (cfs), whichever is greater, through natural processes such as permeable subsoil or cavernous bedrock. If the topography, geology, flow data, or other stream-specific information indicates that a stream may be a losing stream, then the stream segment should be presumed to be a losing stream unless a specific evaluation is made of the stream that concludes the stream segment is not a losing stream.
- (C) Implementation of Losing Stream Rule
 - (1) Discharges to losing stream segments shall be approved and permitted only after other alternatives have been evaluated and determined to be unacceptable for environmental and economic reasons. Other alternatives to be evaluated include without limitation discharge to a non-losing stream segment or connection to a regional wastewater treatment facility.
 - (2) Stream studies for determining classification as a losing stream segment must be conducted during the critical low flow season, when stream flow is at least one (1) cfs and representative of seasonal flow. Effluent flow, when existing, can be included in the minimum one (1) cfs stream flow.
 - (3) Existing discharges. An existing facility operating under an existing NPDES permit that has been determined through additional information to discharge to a losing stream shall demonstrate one of the following:
 - (a) the owner or operator may conduct a study for Division approval demonstrating the discharge is not to a losing stream segment; or
 - (b) the facility is in compliance with the final effluent limits and remains in compliance with limits in Rule 6.301(D), as a minimum; or
 - (c) the facility must be designed and operated to meet the effluent limitations in Rule 6.301(D), as a minimum.

Facilities undertaking Rule 6.301(C)(3) will be given a schedule of compliance for a period not to exceed three (3) years.

 - (4) New discharges. New facilities proposing to discharge to a stream segment that may be a losing stream segment shall submit one of the following to the Division

for review and approval:

- (a) Documentation of a detailed stream segment study based on Rules 6.301(B) and (C)(2) before submitting the initial NPDES permit application; or
- (b) Certification from a professional engineer licensed in the State of Arkansas certifying that the system is designed to meet the effluent limitations in Rule 6.301(D) and can be operated consistently to meet those effluent limitations.

(D) Effluent Limitations for Discharges into Losing Stream Segments

- (1) Carbonaceous Biochemical Oxygen Demand (CBOD₅) or Biochemical Oxygen Demand (BOD₅) equal to or less than a monthly average of 10 mg/L and a seven (7) day average of 15 mg/L;
- (2) Total Suspended Solids (TSS) equal to or less than a monthly average of 15 mg/L and a seven (7) day average of 23 mg/L;
- (3) pH shall be maintained in the range from 6.0–9.0 Standard Units, see 40 C.F.R. § 133.102(c);
- (4) Discharge limitations for fecal coliform: the fecal coliform content of discharges shall not exceed a monthly geometric mean of 200 colonies per 100 milliliters and a weekly geometric mean of 400 colonies per 100 milliliters. However, the fecal coliform content of discharges to any water defined as an Extraordinary Resource Water or Natural and Scenic Waterway shall not exceed a monthly or weekly geometric mean of 200 colonies per 100 milliliters.

Discharge limitations for E. coli: the E. coli content of discharges shall not exceed the criteria set forth in APC&EC Rule 2.507 ;

- (5) Nitrate plus nitrite nitrogen levels shall not exceed 10 mg/L;
- (6) Ammonia, NH₃-N, limitations shall be included as necessary to prevent ammonia toxicity in-stream and to maintain instream dissolved oxygen; and
- (7) Other parameters as deemed appropriate by the Division.
- (8) For non-domestic discharges, the Division may exclude effluent pollutant limitations from a permit based on reasonable potential.

(E) Review of Applications by Arkansas Department of Health.

Nothing in this rule limits the authority of the Arkansas Department of Health to include additional requirements as a prerequisite to its approval.

Chapter 4 : WASTEWATER DISCHARGES

Rule 6.401 Determination of Domestic Wastewater Effluent Limitations

- (A) Small discharges (less than or equal to 0.05 MGD) discharging to a receiving stream:
- (1) At the minimum, effluent limitations for oxygen demanding flows will be 10/15 mg/L CBOD₅/TSS, with nutrient removal where appropriate.
 - (2) Ammonia, NH₃-N, limitations shall be included as necessary to prevent ammonia toxicity in-stream and to maintain instream dissolved oxygen.
 - (3) On a case-by-case basis, less stringent effluent limitations may be permitted if stream modeling demonstrates that water quality standards will be maintained.
 - (4) In all cases, applicable water quality standards shall be met.
- (B) Outstanding State Resource Waters
- Outstanding State Resource Waters include all water bodies designated in the Arkansas Water Quality Standards, Arkansas Pollution Control and Ecology Commission Rule No. 2, as Extraordinary Resource Waters, Natural and Scenic Waterways, or Ecologically Sensitive Waterbodies.
- (1) For Extraordinary Resource Waters and Natural and Scenic Waterways: Effluent limitations shall not be greater than 10/15 mg/L CBOD₅/TSS.
 - (2) For Ecologically Sensitive Waterbodies: Limitations shall be determined on a case-by-case basis to protect the specific species in the waterbody as specified in Arkansas Pollution Control and Ecology Commission Rule No. 2.
- (C) Reservoirs/Domestic Water Supply
- (1) In all cases, applicable water quality standards shall be met.
 - (2) All oxygen demanding effluent flows that are discharged into any lake shall have effluent limitations of 10/15 mg/L CBOD₅/TSS with nutrient removal as appropriate.
- (D) Discharge of Domestic Wastewater to the Illinois River Watershed, the Osage Creek Watershed (tributary of the Kings River), Little Sugar Creek Watershed, and Spavinaw Creek Watershed
- (1) The discharge permit shall not authorize more than 1.0 mg/L monthly average Total Phosphorus into the waters of the state referenced in Rule 6.401(D) or their tributaries.

Rule 6.402 Discharge of Treated Wastewater to the Ouachita River

No permit for the discharge of treated wastewater into the Ouachita River commencing at or downstream of the H.K. Thatcher Lock and Dam in segment 2D of the Ouachita River Watershed shall authorize a total phosphorous limit in excess of the following:

- (A) A proposed permit with a design flow less than or equal to 13.5 MGD shall have a total phosphorous mass limit calculated using a total phosphorous concentration of 1.0 mg/L year-round.
- (B) A proposed permit with a design flow greater than 13.5 MGD but less than 20.0 MGD shall have a total phosphorous mass limit calculated using a total phosphorous concentration of 1.0 mg/L for the months of November through June and 0.7 mg/L total phosphorus for the months of July through October.
- (C) The above mass calculations are considered to be on a monthly average basis. A daily maximum mass limit, if applicable, will be 1.5 to 2.0 times the monthly average mass limit.
- (D) At the Director's discretion, the permit may include concentration limits in addition to the mass limit(s).

Rule 6.403 Wastewater Discharge Permit General Standards

- (A) Mixing Zones

Where mixing zones are allowed, the effects of wastes on the receiving waters shall be determined after the wastes have been thoroughly mixed with the mixing zone volume. Outfall structures should be designed to minimize the extent of mixing zones to ensure rapid and complete mixing.

- (1) Streams with 7Q10 flows equal to or greater than 100 cfs

For aquatic life toxic substances in larger streams (those with 7Q10 flows equal to or greater than 100 cfs), the zone of mixing shall not exceed 1/4 of the cross-sectional area and/or critical flow volume of the stream. The remaining 3/4 of the stream shall be maintained as a zone of passage for swimming and drifting organisms, and shall remain of such quality that stream ecosystems are not significantly affected.

- (2) Streams with 7Q10 flows less than 100 cfs

In the smaller streams (7Q10 flows less than 100 cfs), because of varying local physical and chemical conditions and biological phenomena, a site-specific determination shall be made on the percentage of river width necessary to allow passage of critical free-swimming and drifting organisms so that negligible or no effects are produced on their populations. As a guideline, no more than 2/3 of the cross-sectional area and/or critical flow volume of smaller streams should be

devoted to mixing zones thus leaving at least 1/3 of the cross-sectional area free as a zone of passage.

(3) Lakes and reservoirs

In lakes and reservoirs the size of mixing zones shall be defined by the Division on an individual basis, and the area shall be kept at a minimum.

(4) Mixing zone standards applicable to all receiving waters

(a) Mixing zones are not allowed for the parameters of bacteria or oil and grease, or where the background flow is less than the critical flow or where the background concentration of a waste parameter exceeds the specific criteria for that waste parameter.

(b) Mixing zones shall not prevent the free passage of fish or significantly affect aquatic ecosystems.

(c) A mixing zone shall not include any domestic water supply intake.

(B) Toxic Substances

Discharges shall not be allowed into any receiving waters which, after consideration of the zone of initial dilution, the mixing zone, and critical flow conditions, will cause toxicity to human, animal, plant, or aquatic biota or interfere with normal propagation, growth, and survival of aquatic biota.

Rule 6.404 Wastewater Discharge Permit Specific Standards

(A) Temperature

For purposes of determining effluent limits, heat shall not be added to any receiving waters in excess of the amount that will elevate the natural temperature, outside the mixing zone, by more than 5°F (2.8°C) based upon the monthly average of the maximum daily temperatures measured at mid-depth or three (3) feet (whichever is less) in streams, lakes, or reservoirs.

(B) Turbidity

There shall be no distinctly visible increase in turbidity of receiving waters attributable to discharges or instream activities.

(C) pH

There shall be no fluctuation of pH in excess of 1.0 standard unit over a period of twenty-four (24) hours in streams or lakes due to wastewater discharges.

(D) Dissolved Oxygen

For purposes of determining effluent discharge limits, the following conditions shall apply:

- (1) The primary season dissolved oxygen standard is to be met at a water temperature of 22°C (71.5°F) and at the minimum stream flow for that season. At water temperatures of 10°C (50°F), the dissolved oxygen criteria is 6.5 mg/L.
- (2) During March, April and May, when background stream flows are 15 cfs or higher, the dissolved oxygen standard is 6.5 mg/L in all areas except the Delta Ecoregion, where the primary season dissolved oxygen criteria will remain at 5 mg/L.
- (3) The critical season dissolved oxygen standard is to be met at maximum allowable water temperatures and at 7Q10 flows. However, when water temperatures exceed 22°C (71.6°F), a 1 mg/L diurnal depression will be allowed below the applicable critical criteria for no more than 8 hours during any 24-hour period.

Lakes and Reservoirs

The Commission may, after full satisfaction of the intergovernmental coordination and public participation provisions of the State of Arkansas Continuing Planning Process, establish alternative limits for dissolved oxygen in lakes and reservoirs where studies and other relevant information can demonstrate that predominant ecosystem conditions may be more accurately reflected by such alternate limits; provided that these limits shall be compatible with all designated beneficial uses of named lakes and reservoirs.

(E) Toxic Substances

Toxic substances shall not be present in receiving waters, after mixing, in such quantities as to be toxic to human, animal, plant, or aquatic life or to interfere with the normal propagation, growth, and survival of the indigenous aquatic biota. Acute toxicity standards apply outside the zone of initial dilution. Within the zone of initial dilution acute toxicity standards may be exceeded but acute toxicity may not occur. Chronic toxicity and chronic numeric toxicity standards apply at, or beyond, the edge of the mixing zone. Permitting of all toxic substances shall be in accordance with the toxic implementation strategy found in the State of Arkansas Continuing Planning Process.

Only ambient water quality data for dissolved metals generated or approved by the Division after March 1, 1993 will be considered in the documentation of background concentrations for the purpose of developing permit limitations.

(F) Nutrients

Materials stimulating algal growth shall not present in any discharges in concentrations sufficient to cause objectionable algal densities or other nuisance aquatic vegetation or otherwise impair any designated use of the receiving waters.

All point source discharges into the watershed of waters officially listed in Arkansas's impaired waterbody list (303(d)) with phosphorus as the major cause shall have monthly average discharge permit limits no greater than those listed below. Additionally, waters in nutrient surplus watersheds, as set forth in Ark. Code Ann. § 15-20-1104, and subsequently designated nutrient surplus watersheds may be included under this Rule if point source discharges are shown to provide a significant phosphorus contribution to waters within the listed nutrient surplus watersheds.

<u>Facility Design Flow (MGD)</u>	<u>Total Phosphorus Discharge Limit (mg/l)</u>
≥15	case-by-case
3 to <15	1.0
1 to <3	2.0
0.5 to <1.0	5.0
<0.5	case-by-case

For discharges from point sources that are greater than 15 MGD, reduction of phosphorus below 1 mg/l may be required based on the magnitude of the phosphorous load (mass) and the type of downstream waterbodies (e.g., reservoirs, Extraordinary Resource Waters). Additionally, any discharge limits listed above may be further reduced if it is determined that these values are causing impairments to special waters such as domestic water supplies, lakes or reservoirs, or Extraordinary Resource Waters.

(G) Oil and Grease

Oil, grease, or petrochemical substances shall not be present in any discharges to the extent that they produce globules, other residue, or any visible, colored film on the surface; coat the banks and/or bottoms of the waterbodies; or adversely affect any of the associated biota in the receiving waters.

No mixing zones are allowed for discharges of oil and grease.

(H) Ammonia

For permitted discharges, the daily maximum or seven-day average permit limit shall be calculated using the four-day average value, described in Rule 2, after mixing and based on a season when fish early life stages are present and season when fish early life stages are absent.

Chapter 5 : RESERVED

Chapter 6 : SPECIFIC WATERSHED REQUIREMENTS

Rule 6.601 Lake Maumelle Watershed

All surface discharges of wastewater in the Lake Maumelle Watershed are prohibited, with the exception of discharges permitted under the NPDES stormwater discharge program.

Rule 6.602 Buffalo River Watershed

(A) As used under this Rule 6.602:

The “Buffalo River Watershed” is the area within United States Geological Survey Hydrologic Unit Code 11010005.

(B) The Director shall not issue a permit pursuant to Rule No. 6 for a CAFO in the Buffalo River Watershed with:

(1) 750 or more swine weighing 55 pounds or more; or

(2) 3000 or more swine weighing less than 55 pounds.

(C) The Director shall not issue a new permit or modify or reissue an existing permit for a CAFO pursuant to Rule No. 6 for land application sites in the Buffalo River Watershed.

Chapter 7 : REPEALER, SEVERABILITY, AND EFFECTIVE DATE

Rule 6.701 Repealer

All rules and parts of rules promulgated by the Arkansas Pollution Control and Ecology Commission that are in conflict with this rule are repealed to the extent of the conflict.

Rule 6.702 Severability

The provisions of this rule are severable. If any part of this rule is declared invalid or unenforceable by a court, the remainder of the rule will continue to be valid and enforceable.

Rule 6.703 Effective Date

This rule is effective ten (10) days after filing with the Secretary of State, the State Library, and the Bureau of Legislative Research.