

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

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

**PETITION TO INITIATE RULEMAKING TO AMEND
REGULATION NO. 6: REGULATIONS FOR STATE ADMINISTRATION
OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)**

Comes now, the Division of Environmental Quality¹ (DEQ or the “Division”), by and through its attorney, Basil V. Hicks III, and for its Petition to Initiate Rulemaking to Amend Regulation No. 6: Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES), states:

1. DEQ proposes to initiate this rulemaking to make permanent the moratorium on confined animal operations of a certain size in the Buffalo National River Watershed in accordance with the Governor’s request; to incorporate statutory changes from Acts 910 and 315 of 2019 passed by the General Assembly that amend the name of DEQ and references to rules; and to make minor stylistic revisions.

2. DEQ also proposes amendments, listed below, for Regulation No. 6 pursuant to Ark. Code Ann. §§ 8-6-207(b)(1), 8-4-202(a), and 8-1-203(b)(1)(A), which allow the Arkansas Pollution Control and Ecology Commission to promulgate and modify regulations implementing the substantive statutes that DEQ administers and enforces.

3. Dr. Robert Blanz and Michael McAlister from DEQ will be available to answer questions concerning this proposed rulemaking.

¹ Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly-created Department of Energy and Environment.

4. The proposed regulatory amendments are as follows:
- 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 continuous pH monitoring; and
 - (4) Reg. 6.104 to update the effective date of all referenced United States Environmental Protection Agency (EPA) regulations to January 1, 2016.
 - 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 that amend the name of DEQ 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, specifically to:
 - (1) Clarify certain definitions under Reg. 6.103 and eliminate term 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 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 States 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 a small construction site, 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 “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 6.401(D) to add (E) through (G) for clarification and simplicity; and
- (15) 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 National River Watershed; and
- g. Minor, non-substantive stylistic and formatting corrections throughout the Regulation.

5. The proposed changes will make the regulation consistent with the amended provisions of 40 C.F.R. §§ 122.21(e)(3), 122.44(i)(1)(iv), 125(I) and (J), 136.1(c), 401.17, and Parts 122, 123, and 127. The proposed changes will also make the regulation consistent with the amended provisions of Ark. Code Ann. § 8-4-203. The proposed changes are required to implement Acts 94 and 575 of 2015 and Acts 315 and 910 of 2019 of the General Assembly.

6. The following exhibits to this petition are hereby incorporated by reference:
- a. Exhibit A: Mark-up version of the regulation showing the proposed changes
 - b. Exhibit B: Governor's Approval
 - c. Exhibit C: Copy of the Legislative Questionnaire
 - d. Exhibit D: Copy of a Financial Impact Statement
 - e. Exhibit E: Copy of the Economic Impact/Environmental Benefit Analysis

f. Exhibit F: Proposed Minute Order

WHEREFORE, DEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and adopt the proposed amendments to Regulation No. 6.

Respectfully Submitted,

By: 

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