



DIVISION OF ENVIRONMENTAL QUALITY

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Proposed amendments to APC&EC REGULATION 6: “REGULATIONS FOR STATE ADMINISTRATION OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)”

May, 2024

PURPOSE AND AUTHORITY

The Department of Energy and Environment and the Division of Environmental Quality (DEQ) propose this rulemaking to modify Regulation 6: “Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES).”

The Arkansas Pollution Control and Ecology Commission has general rulemaking authority through Ark. Code Ann. § 8-1-203(b)(1)(A), and specific authority to promulgate this rule through Ark. Code Ann. § 8-4-202(a).

BACKGROUND

The purpose of Regulation 6 is to adopt the federal regulations necessary to qualify the State of Arkansas to receive and maintain authorization to implement the state water pollution control permitting program, in lieu of the federal NPDES program, pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* In order for DEQ to maintain its delegated authority to administer the NPDES permit program, DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection Agency.

THE PROPOSED RULE AMENDMENTS

The DEQ proposes this rulemaking to Regulation 6 before the Arkansas Pollution Control and Ecology Commission: to adopt federal revisions to the NPDES program, incorporate statutory revisions made by the Arkansas General Assembly, and make corrections and stylistic and formatting updates throughout the regulation. Regulation 6 establishes the parameters for the state water pollution control permitting program in lieu of the federal NPDES program and pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.* The state legislative acts prompting the regulatory amendments are Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910 of 2019, Act 441 of 2021, and Act 46 of 2023. The federal regulatory changes prompting the amendments are 40 C.F.R §§ 122.21(e)(3), 122.44(i)(l)(iv), 136.1(c), 125(I) and (J), 423, 122, 123, 127, and 401.17.

Proposed changes to Rule 6 include:

- **Incorporation of Updates to Federal Regulations.** Amendments to Regulation 6.104 to incorporate changes made to federal regulations;
- **Incorporation of Updates to Arkansas Law.** Acts 94 and 575 of 2015, Acts 987 and 1037 of 2017, 315 and 910 of 2019, Act 441 of 2021, and Act 46 of 2023, were enacted by the Arkansas General Assembly and require revisions to Regulation 6;
- **Amendments to Provide Clarification and Minor Corrections.** Corrections to the rule, including adding necessary definitions and corrections to be consistent with other state rules.;
- **Amendments to Chapter 6.** To amend Chapter 6 to be consistent with the Department of Agriculture’s rule for Liquid Animal Waste Management Systems.
- **Stylistic and Formatting Corrections.** To make minor, non-substantive stylistic and formatting corrections throughout the regulation.

NECESSITY AND PRACTICAL IMPACT OF RULE AMENDMENTS

DEQ must have rules as stringent as the federal program administered by the United States Environmental Protection

Agency to maintain its delegated authority to administer the NPDES permit program. Pursuant to 40 C.F.R. § 123.62(e), states administering the NPDES program must make revisions to its rules to conform to the federal regulations within one year of the date of promulgation of the federal regulation, with the exception that if a state must amend or enact a statute in order to make the required revision, the revision shall take place within two years of promulgation of the federal regulations. The risk of not updating this rule is that EPA could attempt to remove Arkansas's delegated authority to issue NPDES permits under the federal Clean Water Act. Loss of delegated authority would result in EPA becoming the permitting authority for Arkansas.