

## MEMORANDUM

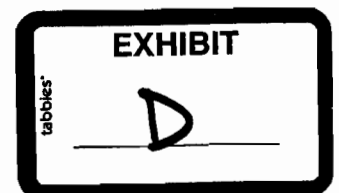
To: Arkansas Pollution Control and Ecology Commission

From: Jamie Ewing, Attorney, Arkansas Department of Environmental Quality

Date: September 14, 2007

**RE: Compliance with Act 143 of 2007**

Please see the attached Economic Impact Statement and email from Attorney Dan Etzkorn to Ms. Pat Brown of the Arkansas Economic Development Commission. On September 6, 2007, Mr. Etzkorn properly submitted the proposed rule changes to AEDC for review pursuant to Act 143 of 2007. At the time of filing this petition to initiate rulemaking, AEDC had not reviewed the rule. At such time as AEDC provides documentation of its review of the rule, ADEQ will supplement this memorandum.



**ECONOMIC IMPACT STATEMENT  
OF PROPOSED RULES OR REGULATIONS  
EO 05-04 and Act 143 of 2007: Regulatory Flexibility**

Department Arkansas Department of Environmental Quality

Divisions Water, Air and Solid Waste Divisions

Contact Person Mary Leath

Date September 6, 2007

Contact Phone 501.682.0959

Contact Email leath@adeq.state.ar.us

Title or Subject: Arkansas Pollution Control and Ecology Commission Regulation Number 9, Fee Regulation

**Benefits of the Proposed Rule or Regulation**

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, Please explain the nature of such complaints.

The proposed revisions to Regulation Number 9 cover general permits issued by the Water, Air and Solid Waste Divisions at the Arkansas Department of Environmental Quality. A summary of the proposed changes to Regulation Number 9 include the following:

- a. Page 1 of the Table of Contents, strike through the word ~~NPDES~~;
- b. Page 1 of the Table of Contents, add Reg.9.609 General Permits 6-3;
- c. Page 4-5, in the title of 9.404, strike through ~~NPDES~~;
- d. Page 4-5, in Section Reg.9.404(A), strike through ~~n NPDES, ARG010000 (Concentrated Animal Feedlot Liquid Animal Waste Disposal) \$400, ARG590000 (Concentrated Animal Feedlot Dry Litter Disposal) \$100~~;
- e. Page 4-5, in Section Reg.9.404(A), add Water Division, initial fee and an, When general permits are revised, no additional initial fee will be required to be submitted if the currently permitted facility has maintained coverage under the existing general permit, 00000-WG-P (Oil and Gas Drilling Pits) \$300, 00000-WG-LA (Land Application of Drilling Fluids) \$500, 00000-WG-CW (Carwash) \$200, 00000-WG-WR (Wastewater Treatment Plant Residuals) \$500, 00000-WG-SW (Salt Water Disposal) \$250, and 00000-WG-AW (Confined Animal) \$200;
- f. Page 4-5, in Section Reg.9.404(A), tab \$200 for general permit ARG500000 and add parentheses around the term (Aggregate Facilities);
- g. Page 4-5, in Section Reg.9.404(C) add Miscellaneous general permits not specifically mentioned above that are issued by the Water Division shall be subject to an initial fee not to exceed \$500 and an annual fee not to exceed \$500;
- h. Page 5-1, in Section Reg.9.502(A), add Reg.9.901 and strike Reg.9.801;
- i. Page 5-3, in Section Reg.9.507, strike through ~~In lieu of the fee schedules described above, sources which qualify for a general permit issued by the Department shall be subject to an initial fee of \$200.00 and annual fee of \$200.00 thereafter~~;
- j. Page 5-3, in Section Reg.9.507, add:  
(A) In lieu of the fees schedules above, and except as provided in 9.507(B) below, sources which qualify for a General Air Permit issued pursuant to APC&EC Reg. Nos. 18, 19, or 26 shall be subject to an Initial Fee and Annual Fee as described below:
  - (1) The Initial Fee of \$200.00 shall be remitted with the Notice of Intent (NOI) for coverage under the applicable General Permit.
  - (2) Until a Notice of Termination (NOT) is submitted and approved by the Department, the Permittee shall be billed \$200.00 annually thereafter on the anniversary date of coverage.
  - (3) When general permits are revised, no additional initial fee will be required to be submitted if the currently permitted facility has maintained coverage under the existing general permit.(B) The following General Permit holders shall not be assessed or billed an Annual Fee:
  - (1) Non-part 70 General Permits in which the tons/year predominant air contaminant is less than 10 tons per year.
- k. Page 6-2, in Section 9.603(B)(5), strike through General Permit \_\_\_\_\_ \$900;
- l. Page 6-2, in Section 9.604(F), strike through General Permit \_\_\_\_\_ \$450;

- m. Page 6-2, in Section 9.606(C), strike through General Permit \_\_\_\_\_ \$450;
- n. Page 6-3, in Section Reg.9.609, add:
  - (A) In lieu of the fees schedules above in 9.603 through 9.606, solid waste management facility permit applicants which qualify for a General Solid Waste Permit shall be subject to an Initial Fee, an Annual Fee, a Modification Fee and a Permit Transfer Fee as described below:
    - (1) An Initial Fee of \$900.00 shall be remitted with the Notice of Intent (NOI) for coverage under the applicable solid waste General Permit.
    - (2) Until the Permittee notifies the Department to terminate its solid waste General Permit and the permit is voided, the Permittee shall be billed an Annual Fee of \$450.00 annually thereafter on the anniversary date of coverage.
    - (3) An application for the modification of an existing solid waste General Permit shall be accompanied by a \$450.00 permit Modification Fee.
    - (4) An application for the transfer of an existing solid waste General Permit shall be accompanied by a \$450.00 permit Transfer Fee.
    - (5) When solid waste General Permits are revised, no additional initial fee will be required to be submitted if the currently permitted facility has maintained coverage under the existing General Permit.

- 2. What are the top three benefits of the proposed rule or regulation?
  - a. The Arkansas Department of Environmental Quality plans to offer to the public a new oil and gas drilling pits general permit and a new land application of drilling fluids general permit in the near future. Regulation Number 9 needs to be revised to include a permit fee for these two new general permits. In addition, Section 9.404 is being revised to include all Water Division general permits and the removal of the ARG010000 and the ARG590000 general permits which are no longer being issued. Without these changes in Section 9.404, ADEQ would not have a method of charging for the two new general permits;
  - b. A second important benefit of revising Regulation Number 9 concerns the language in Section 9.507. The language concerning general air permits is being clarified to specify a \$200.00 initial fee will be required at the time of the submission of the NOI to the Department and the applicant will be charged a \$200.00 annual fee thereafter until the Department receives a NOT from the applicant. These revisions to Section 9.507 are intended to make the AIR Division general permitting fees more clear to the public; and
  - c. A third important benefit of revising Regulation Number 9 concerns the language in Section 9.609. The language concerning solid waste general permits is being modified to clarify that the Department will assess a \$900.00 initial fee, a \$450.00 annual fee, a \$450.00 modification fee, and a \$450.00 permit transfer fee concerning this program. These revisions to Section 9.609 are intended to make the Solid Waste Division general permitting fees more clear to the public.

- 3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

In this case, ADEQ would not have regulatory authority to charge for the two new general Water Division permits which the public is very interested in utilizing in the near future.

- 4. Describe market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.

None.

### **Impact of Proposed Rule or Regulation**

- 5. Estimate the cost to state government of *collecting information, completing paperwork, filing recordkeeping, auditing and inspecting* associated with this new rule or regulation.

It is in the interest of state government to issue these general permits because it expedites the permit issuing process for permit applicants. A general permit is usually less complicated for a permit applicant to apply for and is usually less expensive for the permit applicant to operate and maintain. It is less expensive to ADEQ to issue a general permit rather than an individual permit to permit applicants.

6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.

It is the permit applicant's option to apply for a general permit rather than an individual permit in each case. The type of small business that would be interested in the new oil and gas drilling pits general permit and the new land application of drilling fluids general permit would be those already involved in the oil and gas exploration business in Arkansas. ADEQ is not proposing to change the general permit fee in the Air Program. The initial fee, the annual fee, the modification fee and permit transfer fee is also not being changed in ADEQ's Solid Waste program. The language in Section 9.507 and 9.609 is being revised for clarification purposes only. Since the annual fee for the new Water Division general permit is very similar to the cost of an individual Water Division state permit, the impact on small businesses in Arkansas would be minimal.

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.  
No.
8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.  
No additional requirements for small business owners.
9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.

The proposed revision to Regulation Number 9 provides the public an optional general permit for oil and gas drilling pits and land application of drilling fluids in Arkansas. General permits are favored by the public because they can be issued in an expedited fashion to permit applicants that qualify for this program. The new general permit does not contain different requirements for different sized entities.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.  
Small businesses will embrace the flexibility found in the new general oil and gas drilling pits general permit and land application of drilling fluids general permit program because it gives the permit applicant an option other than an individual permit for this same type activity.
11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?  
The new oil and gas drilling pits general permit and land application of drilling fluids general permit would be very similar to a general permit that would be available in another state in EPA Region 6.
12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

Based on ADEQ's experiences with permit applicants, an expedited process in issuing oil and gas drilling pits permits and land application of drilling fluids permits would be welcomed by the public.

**Ewing, Jamie**

**From:** Etzkorn, Dan  
**Sent:** Friday, September 07, 2007 2:45 PM  
**To:** Ewing, Jamie  
**Subject:** FW: ADEQ and Regulation Number 9

-----Original Message-----

**From:** Etzkorn, Dan  
**Sent:** Thursday, September 06, 2007 8:37 AM  
**To:** 'pbrown@1800arkansas.com'  
**Subject:** ADEQ and Regulation Number 9

Dear Ms. Brown:

I am submitting to you ADEQ's proposed Regulation Number 9. Please review these documents and notify me at your earliest convenience of any comments you may have concerning this regulation. My goal is for the Arkansas Pollution Control and Ecology Commission to consider this rule at its meeting on September 28, 2007. Thank you for your assistance.

Dan Etzkorn  
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(501) 682-0888

9/14/2007