

Title 8. Environmental Law

Chapter I. Arkansas Pollution Control and Ecology Commission, Department of Energy and Environment

Subchapter C. Water Quality

Part 25. Rules for State Administration of the National Pollutant Discharge Elimination System (NPDES)

Subpart 1. General Provisions

8 CAR § 25-101. Adoption.

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

8 CAR § 25-102. Purpose.

(a) The purpose of this part 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, 33 U.S.C. § 1251 et seq.

(b) 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.

8 CAR § 25-103. Definitions.

(a) The definitions set forth in 40 C.F.R. §§ 122.2 and 124.2 are all adopted herein by reference in 8 CAR § 25-104.

(b) In addition, the following definitions also apply to this part:

(1) "Animal feeding operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(A) Animals (other than aquatic animals) have been, are, or will be

stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period; and

(B) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility;

(2) "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 of the Division of Environmental Quality in accordance with 40 C.F.R. § 403.11;

(3) "Biochemical pesticide" means a pesticide that:

(A) Is a naturally occurring substance or structurally similar and functionally identical to a naturally occurring substance;

(B) 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

(C) Has a nontoxic mode of action to the target pest or pests;

(4) "Biological pesticides" or "biopesticides" includes:

(A) Microbial pesticides;

(B) Biochemical pesticides; and

(C) Plant-incorporated protectants;

(5) "Chemical pesticides" means all pesticides not otherwise classified as biological pesticides;

(6) "Commission" means the Arkansas Pollution Control and Ecology Commission;

(7)(A) "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).

(B) Two (2) 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;

(8) "Director" means the Director of the Division of Environmental Quality, unless the context dictates otherwise, see 40 C.F.R. §§ 122.2 and 124.2 and Arkansas Code § 8-1-202 et seq.;

(9) "Division" means the Division of Environmental Quality, or its successor;

(10) "Domestic wastewater" means the spent wastewater originating from all aspects of human sanitary water usage;

(11) "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;

(12) "General permit" means a permit issued by the Division of Environmental Quality to a category of qualifying sources in lieu of individual permits for every source;

(13) "Indirect discharge" means the introduction of pollutants into a publicly owned treatment works from any nondomestic source regulated under Section 307(b), (c), or (d) of the Clean Water Act;

(14) "Industrial user" or "user" means a source of indirect discharge;

(15)(A) "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 (1) plan.

(B)(i) This plan might consist of many small projects, e.g., a common plan of development for a residential subdivision might lay out the streets, house lots, and areas for parks, schools, and commercial development that the developer plans to build or sell to others for development.

(ii) All these areas would remain part of the common plan of development or sale.

(C) 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;

(16) "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 is a:

(A) Eukaryotic microorganism including, but not limited to:

(i) Protozoa;

(ii) Algae; and

(iii) Fungi;

(B) Prokaryotic microorganism, including, but not limited to, Eubacteria and Archaeobacteria; or

(C) Parasitically replicating microscopic element, including but not limited to viruses;

(17) "Nondomestic wastewater" means any wastewater that does not meet the definition of domestic wastewater;

(18) "Nonmunicipal 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;

(19) "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;

(20)(A)(i) "Owner or operator" means the owner or operator or any "facility or activity" subject to regulation under the NPDES program.

(ii) For the purposes of a permit, "owner or operator" means any person (an individual, association, partnership, corporation, municipality, or state or federal agency) who has the primary management and ultimate decision-making responsibility over the operation of a facility or activity.

(B) The owner or operator is responsible for ensuring compliance with all

applicable environmental rules, regulations, and conditions;

(21)(A) "Pesticide" means any:

- (i) Substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest;
- (ii) Substance or mixture of substances intended for use as a plant:
 - (a) Regulator;
 - (b) Defoliant; or
 - (c) Desiccant; and
- (iii) Nitrogen stabilizer, except that the term pesticide shall not include any article that is:

(a) A "new animal drug" within the meaning of Section 201(w) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(v), that has been determined by the United States Secretary of Health and Human Services not to be a new animal drug by a regulation establishing conditions of use for the article; or

(b) An animal feed within the meaning of Section 201(x) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321(w), bearing or containing a new animal drug.

(B)(i) 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 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 321.

(ii) For purposes of subdivision (b)(16)(B)(i) of this section, 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, see the Federal Insecticide, Fungicide, and Rodenticide Act, Section 2(u), 7 U.S.C. § 136(u).

(C) The term "pesticide" applies to:

- (i) Insecticides;

- (ii) Herbicides;
- (iii) Fungicides;
- (iv) Rodenticides; and
- (v) Various other substances used to control pests.

(D) The definition encompasses all uses of pesticides authorized under the Federal Insecticide, Fungicide, and Rodenticide Act 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 the Federal Insecticide, Fungicide, and Rodenticide Act), see 7 U.S.C. § 136.

(E) **Note.**

(i) Drugs used to control diseases of humans or animals (such as livestock, fish stock, and pets) are not considered pesticides.

(ii) Such drugs are regulated by the United States Food and Drug Administration.

(F) Fertilizers, nutrients, and other substances used to promote plant survival and health are not considered plant growth regulators and thus are not pesticides.

(G)(i) Biological control agents, except for certain microorganisms, are exempted from regulation under the Federal Insecticide, Fungicide, and Rodenticide Act.

(ii) Biological control agents include beneficial predators such as birds or ladybugs that eat insect pests, parasitic wasps, fish, etc.;

(22)(A) "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 which may impact nontarget species.

(B) It may include the pesticide and degradents of the pesticide;

(23)(A) "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.

(B) It also includes any inert ingredient contained in the plant or produce;

(24) "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;

(25)(A) "Small construction site" means construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres.

(B) Small construction activity also includes the disturbance of less than one (1) 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 (1) and less than five (5) acres.

(C) Small construction activity does not include routine maintenance;

(26) "Stormwater" means:

(A) Runoff from rainfall;

(B) Snow melt runoff; and

(C) Surface runoff and drainage;

(27) "Stormwater pollution prevention plan" means a plan that describes the measures and practices used to control the discharge of pollutants through stormwater discharges;

(28) "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; and

(29)(A) "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.

(B) Multiple treatment areas may be located within a single pest management area.

8 CAR § 25-104. Incorporation of federal regulations.

(a)(1) The following regulations promulgated by the United States Environmental Protection Agency are hereby adopted as provisions of this part 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 "United States Environmental Protection Agency" or "EPA" shall be considered references to the "Division of Environmental Quality".

(2)(A) All references elsewhere in this part 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 part shall be the date when the provisions are specified as being effective by the Arkansas Pollution Control and Ecology Commission in its rulemaking, and the effective date of the federal regulations adopted herein shall have no bearing on the effective date of any provisions of this part.

(B) Portions of Title 40 of the Code of Federal Regulations adopted verbatim:

- (i) Part 116;
- (ii) Part 117;
- (iii) Subparts A, B, C, and D of Part 122 with the following exceptions:
 - (a) Section 122.6(a);
 - (b) Section 122.7(a);
 - (c) Section 122.21(l);
 - (d) Section 122.29(c) and (d); and
 - (e) Section 122.49;
- (iv) The following sections, only, of Part 123:
 - (a) Section 123.25(b);
 - (b) Section 123.26(d);
 - (c) Section 123.27(d);
 - (d) Section 123.41(a); and
 - (e) Section 123.62(e);
- (v) The following sections, only, of Part 124:

- (a)* Section 124.2;
- (b)* Section 124.3(a);
- (c)* Section 124.5(a), (c), (d), and (f);
- (d)* Section 124.6(a), (c), (d), and (e);
- (e)* Section 124.7;
- (f)* Section 124.8;
- (g)* Section 124.10(a)(1)(ii), (iii), and (v);
- (h)* Section 124.10(b), (c), (d), and (e);
- (i)* Section 124.11;
- (j)* Section 124.12(a), (b), (c), and (d);
- (k)* Section 124.13;
- (l)* Section 124.14;
- (m)* Section 124.17(a) and (c);
- (n)* Section 124.19;
- (o)* Section 124.56;
- (p)* Section 124.57(a);
- (q)* Section 124.59; and
- (r)* Section 124.62;
- (vi) Subparts A, B, C, D, H, I, J, K, and L, only, of Part 125;
- (vii) Part 127;
- (viii) Part 129;
- (ix) Part 133;
- (x) Part 136;
- (xi) Part 257; and
- (xii) Parts 400 – 471.

(C) 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, 2024.

(b)(1) The director, within one hundred eighty (180) days after the date of promulgation of any new or revised federal NPDES regulations, shall conduct

rulemaking procedures with reference to this part necessary to maintain a state NPDES program as stringent as the federal program.

(2) The new or revised federal regulations, upon their publication as final rules by the United States Environmental Protection Agency, shall constitute minimum guidelines to the director in formulating rulemaking proposals to this part, but shall not be construed to limit or interfere with the adoption of provisions more stringent than federal regulations.

8 CAR § 25-105. Confidentiality.

In addition to the provisions of 40 C.F.R. § 122.7(b) and (c), which are adopted by reference in 8 CAR § 25-104, the following provisions apply:

(1)(A) Any information submitted to the Division of Environmental Quality may be claimed as confidential by the submitter.

(B) Any claim must be asserted at the time of submission in accordance with the provisions of this section.

(C) If no claim is made at the time of submission, the division may make the information available to the public without further notice.

(D) If a claim is asserted, the Director of the Division of Environmental Quality will make a determination of whether the material, if made public, would divulge trade secrets entitled to protection;

(2) It shall be the responsibility of the person claiming any information as confidential under the provisions of subdivision (1) of this section to:

(A) Clearly mark each page containing such information with the word "CONFIDENTIAL"; and

(B) Submit an affidavit setting forth the reasons that said person believes that such information is entitled to protection as a trade secret;

(3)(A) 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.

(B)(i) The document shall be submitted in two (2) separate parts.

(ii) 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;

(4)(A) No information shall be protected as confidential information by the director unless it is submitted to the director in accordance with the provisions of subdivisions (2) and (3) of this section.

(B) 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.

(C) 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;

(5)(A) All information that the director determines is entitled to protection shall be marked with the term "ACCEPTED" and shall be protected as confidential information.

(B) Whenever the director finds that the submitted information does not meet the criteria of subdivision (4) of this section, the director shall:

(i) Promptly notify the person submitting the information of his or her finding; and

(ii) 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.

(C) 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 subdivision (4) of this section, the director shall mark the information "REJECTED" and promptly return the information to the person submitting the information.

(D) 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 Subpart 6 of 8 CAR pt. 11;

(6)(A) 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.

(B) 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.

(C) No person shall disclose any confidential information except in accordance with the provisions of this section; and

(7)(A) NPDES permits and permit applications and all information contained in them are required by 40 C.F.R. § 122.7 to be publicly available.

(B) No claim of confidentiality will be accepted hereunder for this material.

(C) Consequently, applications containing confidential information will be returned to the applicant.

8 CAR § 25-106. Violations.

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

(1) 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 of the waters of the state without first having obtained a permit from the Division of Environmental Quality for the activity;

(2) 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;

(3) No person shall construct, install, or operate any building plant, works, establishment, or facility or any extension or modification 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;

(4) 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;

(5) 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; and

(6) No person shall violate any other provision of this part or the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq.

Subpart 2. Permit Procedures

8 CAR § 25-201. Status and continuation of permits.

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

(1) The permittee has submitted a timely and complete application as described in 40 C.F.R. § 122.21; and

(2) The Director of the Division of Environmental Quality, through no fault of the permittee, does not issue a new permit prior to the expiration date of the previous permit.

8 CAR § 25-202. Application requirements for construction and operation of wastewater facilities.

(a)(1) 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 Arkansas Code § 8-4-217(b), shall submit an application for a permit for the activity.

(2) In addition to the permit application procedures set forth in 40 C.F.R. pts. 122, 123, and 124 that are incorporated by reference in 8 CAR § 25-104, the applicant also must submit Division of Environmental Quality Form 1.

(3) The application must be submitted, approved, along with the approval letter from the Department of Health for domestic discharges, and a permit issued and effective before the activity applied for can begin.

(b)(1) A state permit for construction or modification of a wastewater treatment facility does not constitute an NPDES permit.

(2) Issuance of a state permit for construction or modification of a treatment system in no way guarantees or assumes that an application for an NPDES permit to operate the system will be approved or the NPDES permit issued, nor does issuance of an NPDES permit assume or require a prior permit for construction or a satisfactory review of the design or construction of the treatment facility.

(3)(A) Division of Environmental Quality Form 1 plans and specifications and design calculations are required for a state construction permit.

(B) Plans and specifications and design calculations must be stamped and signed by a professional engineer licensed in the State of Arkansas.

(4)(A) The design criteria for wastewater treatment plants in the State of Arkansas should be based on the latest edition of the Ten States Standards with the following modifications.

(B) Exceptions to these criteria will only be approved by the division when fully justified.

(c) The following exceptions to 10 States Standards, as provisions adopted through Arkansas Pollution Control and Ecology Commission Minute Order 80-21, are allowed:

- (1) **Combined Sewer Interceptors.** Combined sewers will not be approved;
- (2) **Biological Treatment — Waste Sludge Facilities.** Activated sludge treatment plant of ten thousand gallons (10,000 gals.) per day or more capacity shall be provided with an aerated waste sludge holding tank or other sludge disposal facility;
- (3) **Disinfection.** Disinfection shall be required when necessary to meet the state's water quality standards for the receiving stream or to protect public water

supplies and recreational use areas;

(4) Wastewater Treatment Ponds (Lagoons).

(A) **Basis of Design.** The maximum design loading rate for the primary cell or cells will be thirty pounds (30 lbs.) of BOD5 per acre per day, with a minimum surface area of one (1) acre.

(B) Multiple Units.

(i)(a) Two-cell systems must be followed by sand or rock filtration, or other solids, removal devices.

(b) The second cell of a two-cell system will be designed on the same biological loading rate as a primary cell, with at least thirty (30) days detention time.

(ii) For three (3), or more, cell systems, the cells following the primary will have a combined detention time of at least thirty (30) days. The final cell shall be designed to facilitate solids reduction and minimize algae growth;

(5) Control Structures and Interconnecting Piping.

(A) Control structures shall be provided for interconnecting cell piping and for final cell effluent flow.

(B) The structures shall have the ability to vary the water depth in each cell a range of, at least, twenty-four inches (24").

(C)(i) Noncorrosive stop-logs, slide gates, or slide tubes are the devices that shall be utilized to regulate the wastes level.

(ii) A baffle of the same type of material as the control devices shall extend a minimum of six inches (6") below the low-water surface; and

(6) Appendix – Ground Disposal of Wastewaters. Land treatment of wastewater shall be in accordance with the land application guidelines as promulgated by the division and the Department of Health.

(d) At the discretion of the director, the provisions of subsections (b) and (c) of this section may not apply to:

- (1) Minor revision to the existing treatment system;
- (2) Routine repair;

(3) Replacement; or

(4) Maintenance.

(e) Prior to obtaining a construction permit for domestic wastewater discharges from the division, an approval letter from the Department of Health is required.

(f) 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 8 CAR § 25-105.

8 CAR § 25-203. Permitting requirements for stormwater discharges associated with a small construction site.

An owner or operator of a small construction site shall be deemed to have a permit by rule for the purposes of the federal Clean Water Act, 33 U.S.C. § 1251 et seq., and the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., if the following conditions are met:

(1) A completed notice of coverage must be posted at the site for automatic permit coverage prior to commencing construction; and

(2) A stormwater pollution prevention plan must be prepared in accordance with good engineering practices as follows:

(A) Identify potential, site-specific sources of pollution which may reasonably be expected to affect the quality of stormwater discharges from the construction;

(B) Identify, describe, and ensure the implementation of site-specific best management practices, with emphasis on initial site stabilization, which are to be used to reduce pollutants in stormwater discharges from the construction site;

(C) Identify the responsible party for on-site stormwater pollution prevention plan implementation; and

(D) Develop a legible site map (or multiple maps, if necessary) complete to scale, showing the entire site, that identifies, at a minimum, the following:

(i) Preconstruction topographic view;

(ii) Direction of stormwater flow, i.e., use arrows to show which

direction stormwater will flow, and approximate slopes anticipated after grading activities;

(iii) Delineate on the site map areas of soil disturbance and areas that will not be disturbed;

(iv) Location of major structural and nonstructural controls identified in the plan;

(v) Location of main construction entrance and exit;

(vi) Location where stabilization practices are expected to occur;

(vii) Locations of off-site materials, waste, borrow area, or equipment storage area;

(viii) Location of areas used for concrete wash-out;

(ix) Location of all surface water bodies, including wetlands;

(x) Locations where stormwater is discharged to a surface water and/or municipal separate storm sewer system if applicable;

(xi) Locations where stormwater is discharged off site (should be continuously updated); and

(xii) Location of areas where final stabilization has been accomplished and no further construction phase permit requirements apply.

8 CAR § 25-204. Pretreatment requirements for industrial users of publicly owned treatment works (POTWs).

(a)(1) 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.

(2) 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.

8 CAR § 25-205. Trust fund permitting requirements.

The Division of Environmental Quality shall not issue, modify, renew, or transfer an NPDES permit for a nonmunicipal domestic sewage treatment works without the permit applicant first complying with Arkansas Code § 8-4-203(b).

8 CAR § 25-206. Permitting requirements for discharges of pesticides.

An owner or operator of a pesticide application site shall be deemed to have a permit by rule for the purposes of the federal Clean Water Act, 33 U.S.C. § 1251 et seq., and the Arkansas Water and Air Pollution Control Act, Arkansas Code § 8-4-101 et seq., if the following conditions are met:

(1) The application of biological pesticides or chemical pesticides that leave a residue (hereinafter collectively pesticides) to waters of the state falls under one (1) of the following pesticide use patterns and annual threshold:

(A) Mosquito and other flying insect pest control.

(i) 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.

(ii) Public health/nuisance and other flying insect pests in this use category include, but are not limited to, mosquitoes and black flies;

(B) Weed and algae control.

(i) To control invasive or other nuisance weeds and algae in water and at water's edge, including irrigation ditches or irrigation canals.

(ii) This use pattern is understood to include right-of-way maintenance for utilities and forest lands, as well as other applicable uses;

(C) Aquatic nuisance animal control.

(i) To control invasive or other nuisance animals in water and at water's edge.

(ii) Aquatic nuisance animals in this use category include, but are not limited to:

(a) Fish;

(b) Lampreys; and

(c) Mollusks; and

(D) 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;

(2) A completed notice of coverage must be posted at the site or kept at the physical address of the owner or operator for automatic permit coverage prior to commencing the pesticide application;

(3) Pesticides must be handled, used, or applied in accordance with state laws 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

(4) An owner or operator must comply with all requirements of the NPDES General Permit for Pesticide Discharges Located within the State of Arkansas.

8 CAR § 25-207. Public notice requirements for concentrated animal feeding operation (CAFO) general permits.

Public notification requirements for any NPDES permit application for a proposed CAFO in Arkansas are as follows:

(1) The applicant shall provide written notice by letter, certified mail, return

receipt requested, to the following people:

(A) Property owners adjacent to the CAFO production site and property owners adjacent to manure spreading sites;

(B) The county judge of the county where the CAFO production site and any manure spreading site is located;

(C) Mayors of incorporated municipalities within ten (10) miles of the CAFO production site; and

(D) The superintendent of the school district that serves the CAFO production site;

(2) It shall be the applicant's responsibility to retain return receipts for the active life of the permit;

(3) The division shall provide the contents of the written public notice distributed by the applicant in a form letter made available to the applicant;

(4) The form letter shall include, at a minimum, the following:

(A) Notice of the proposed CAFO, including the address of the production site and the name of the applicant and farm;

(B) An explanation of the thirty-day public comment period and the right to comment;

(C) The telephone number of a person to contact at the division with questions;

(D) Directions to the division'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) All letters shall include the certified mail, return receipt number;

(5)(A) 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.

(B) The division shall determine the form of that notice and determine the proper paper for publication;

(6)(A) 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.

(B) 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.

(C) The division will prescribe the sign's minimum requirements which, at a minimum, will contain the same information as that which the division requires the applicant to publish in the paper.

(D) The sign shall be posted prior to any submittals to the division and shall remain in place until thirty (30) days following division approval; and

(7) Applicants for a CAFO NPDES permit must certify compliance with the public notification requirements in subdivisions (1) – (6) of this section.

Subpart 3. Losing Stream Segments

8 CAR § 25-301. 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 (e) of this section.

(b) For purposes of this part, 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 cubic feet per second (1 cfs), whichever is greater, through natural processes such as permeable subsoil or cavernous bedrock into an aquifer.

(c) Effluent limitations for discharges into losing stream segments.

(1) Discharges to losing stream segments shall be permitted only after other alternatives including land application of wastewater, discharge to nonlosing stream segment, and connection to a regional wastewater treatment facility, have been evaluated and determined to be unacceptable for environmental and/or economic reasons.

(2)(A) If the Division of Environmental Quality agrees to allow a discharge to a losing stream segment, the permit will be written using the limitations described below,

as a minimum.

(B) Discharges from wastewater treatment facilities, which receive primarily domestic waste, or from publicly owned treatment works shall undergo treatment sufficient to meet the following limitations:

(i) Carbonaceous Biochemical Oxygen Demand (CBOD₅) or Biochemical Oxygen Demand (BOD₅) equal to or less than a monthly average of ten milligrams per liter (10 mg/L) and a seven (7) day average of fifteen milligrams per liter (15 mg/L);

(ii) Total suspended solids equal to or less than a monthly average of fifteen milligrams per liter (15 mg/L) and a seven (7) day average of twenty-three milligrams per liter (23 mg/L);

(iii) Provisions of 40 C.F.R. § 133.102(c);

(iv)(a) The fecal coliform content of discharges shall not exceed a monthly geometric mean of two hundred (200) colonies per one hundred (100) milliliters, and a weekly geometric mean of four hundred (400) colonies per one hundred (100) milliliters.

(b) However, at no time shall the fecal coliform content exceed a geometric mean of two hundred (200) colonies per one hundred (100) milliliters in any water defined as an extraordinary resource water or natural and scenic waterway;

(v) Nitrate plus nitrite nitrogen levels shall not exceed ten milligrams per liter (10 mg/L);

(vi) Ammonia, NH₃-N, limitations shall be included as necessary to prevent ammonia toxicity instream and to maintain instream dissolved oxygen; and

(vii) Other parameters as deemed appropriate by the division.

(d) Implementation of losing stream rule.

(1) Existing discharges.

(A) At the time of permit renewal, or when deemed necessary by the division, NPDES permittees discharging to stream segments which may be losing stream segments, as defined above, shall submit documentation as part of the renewal permit application, showing that the segment is or is not a losing stream segment.

(B) If the discharge is into a losing stream segment, then the facility must be capable of meeting the effluent limitations described above, as a minimum.

(2) New discharges.

(A) New facilities proposing to discharge to a stream which may be a losing stream segment shall submit documentation as part of the initial NPDES permit application demonstrating that the segment is or is not a losing stream segment.

(B) This documentation includes, but is not limited to, stream studies or other data, showing the stream segment does or does not meet the criteria in subsection (b) of this section.

(C) If the proposed discharge is into a losing stream segment, then the facility must be designed and operated to meet the effluent limitations described above, as a minimum.

(3)(A) For facilities in both subdivisions (d)(1) and (2) of this section, 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.

(B) Effluent flow, when existing, can be included in the minimum one (1) cfs stream flow.

(4) The division shall determine the requirement for, and the content and level of detail of, stream studies, based on local topography, geological data, file data, other dischargers in area, stream flow, etc.

(e) Review of applications by the Department of Health for discharges of domestic effluents. Nothing in this part limits the authority of the Department of Health to include additional requirements as a prerequisite to its approval of the treatment/disposal system.

Subpart 4. Wastewater Discharges

8 CAR § 25-401. Determination of domestic wastewater effluent limitations.

(a) Small discharges (less than or equal to five hundredths (0.05) MGD):

(1) The most stringent effluent limitations for oxygen demanding flows from small dischargers will be ten/fifteen milligrams per liter (10/15 mg/L) CBOD₅/TSS, with nutrient removal where appropriate, which is considered as best conventional treatment for dischargers in this flow range; and

(2) On a case-by-case basis, less stringent effluent limitations may be permitted if stream modeling shows that water quality standards will be maintained.

(b) **Outstanding state resource waters.**

(1) Outstanding state resource waters include all water bodies designated in the Arkansas Water Quality Standards, 8 CAR pt. 21, as:

(A) Extraordinary resource waters;

(B) Natural and scenic waterways; or

(C) Ecologically sensitive water bodies.

(2) For extraordinary resource waters and natural and scenic waters, in no event shall the effluent limitations be greater than ten/fifteen milligrams per liter (10/15 mg/L) CBOD₅/TSS.

(3) For ecologically sensitive waterbodies, limitations shall be determined on a case-by-case basis to protect the specific species in the waterbody.

(c) Reservoirs/domestic water supply:

(1) In all cases, applicable water quality standards shall be met; and

(2) All oxygen demanding effluent flows that are discharged into any lake shall have effluent limitations of ten/fifteen milligrams per liter (10/15 mg/L) CBOD₅/TSS with nutrient removal as appropriate.

(d) Discharge of domestic wastewater to the Illinois River Basin:

(1) No permit for discharge of domestic wastewater into the Illinois River or its tributaries by the cities of Fayetteville, Springdale, Rogers, and Siloam Springs shall authorize more than one milligram per liter (1.0 mg/L) total phosphorus based on a monthly average; and

(2) Compliance with subdivision (d)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.

(e) Discharge of domestic wastewater to the Osage Creek Basin, a tributary of the Kings River:

(1) No permit for discharge of domestic wastewater into Osage Creek or its tributaries by the City of Berryville shall authorize more than one milligram per liter (1.0 mg/L) total phosphorus based on a monthly average; and

(2) Compliance with subdivision (e)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.

(f) Discharge of domestic wastewater to Little Sugar Creek Basin:

(1) No permit for discharge of domestic wastewater into Little Sugar Creek or its tributaries by the City of Bentonville shall authorize more than one milligram per liter (1.0 mg/L) total phosphorus based on a monthly average; and

(2) Compliance with subdivision (f)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.

(g) Discharge of domestic wastewater to Spavinaw Creek Basin:

(1) No permit for discharge of domestic wastewater into Spavinaw Creek or its tributaries by the City of Decatur shall authorize more than one milligram per liter (1.0 mg/L) total phosphorus based on a monthly average; and

(2) Compliance with subdivision (g)(1) of this section shall be attained as soon as feasible, but no later than January 1, 2012.

8 CAR § 25-402. Discharge of treated wastewater to the Ouachita River.

(a) 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 phosphorus limit in excess of the following:

(1) A proposed permit with a design flow of less than or equal to thirteen and five-tenths (13.5) MGD shall have a total phosphorus mass limit calculated using a total phosphorus concentration of one milligram per liter (1.0 mg/L) year-round; and

(2) A proposed permit with a design flow greater than thirteen and five-tenths (13.5) MGD but less than twenty (20.0) MGD shall have a total phosphorus mass limit

calculated using a total phosphorus concentration of one milligram per liter (1.0 mg/L) for the months of November through June, and seven-tenths milligram per liter (0.7 mg/L) total phosphorus for the months of July through October.

(b)(1) The above mass calculations are considered to be on a monthly average basis.

(2) A daily maximum mass limit, if applicable, will be one and five-tenths (1.5) to two (2.0) times the monthly average mass limit.

(c) At the Director of the Division of Environmental Quality's discretion, the permit may include concentration limits in addition to the mass limit or limits.

Subpart 5. [Reserved]

Subpart 6. Specific Watershed Requirements

8 CAR § 25-601. 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.

8 CAR § 25-602. Buffalo National River Watershed.

(a) "Buffalo National River Watershed" means the area within United States Geologic Service Hydrologic Unit Code 11010005.

(b) The Director of the Division of Environmental Quality shall not issue a permit pursuant to this part for a new swine CAFO in the Buffalo National River Watershed.

(c) This part does not prohibit the director from issuing a new Part 25 permit for a facility that holds an active liquid animal waste management systems permit as of the effective date of this part.

(d) A new permit or subsequent permit renewals issued pursuant to subsection (c) of this section shall not increase the number of swine permitted at a facility.

Subpart 7. Administrative Procedures

8 CAR § 25-701. Penalty policy and administrative procedures.

Part 10, Civil Penalties, and Part 11, Administrative Procedures, of Title 8 of the Code of Arkansas Rules apply to this part.

8 CAR § 25-702. Severability.

If any provision of this part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this part which can be given effect with the invalid provision or application and, to this end, provisions of this part are declared to be severable.

8 CAR § 25-703. Effective date.

This part is effective ten (10) days after filing with the:

- (1) Secretary of State;
- (2) Arkansas State Library; and
- (3) Bureau of Legislative Research.