Pollution Control and Ecology Commission # 014.00-006

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

REGULATION NO. 6

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

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CHAPTER ONE: GENERAL PROVISIONS

Reg.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 regulation to implement State administration of the National Pollutant Discharge Elimination System.

Reg.6.102 Purpose

It is the purpose of this regulation to adopt regulations necessary to qualify the State of Arkansas to receive authorization to implement the State water pollution control permitting program, in lieu of the federal National Pollutant Discharge Elimination System program, pursuant to the federal Clean Water Act, 33 U.S.C. § 1251 *et seq*. In order to receive such authorization, it is necessary for the Arkansas Department of Environmental Quality to have regulations as stringent as the federal program administered by the United States Environmental Protection Agency.

Reg.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 Reg.6.104.

(B) In addition, the following definitions also apply to this Regulation:

"Act" means the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 *et seq.*

"Animal Feeding Operation (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.

"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 (also called Biopesticides)" 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 (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.

"Department" means the Arkansas Department of Environmental Quality, or its successor.

"Director" means the Director of the Arkansas Department 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.*)

"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.

"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. Such a 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.) 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 dessicant that: (1) is a eucaryotic microorganism including, but not limited to, protozoa, algae, and fungi; (2) is a procaryotic microorganism, including, but not limited to, Eubacteria and Archaebacteria; or (3) is a parasitically replicating microscopic element, including but not limited to, viruses.

"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.

"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 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 which 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 which may impact non-target species. It may include the pesticide and degradates 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.

"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.

"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."

Reg.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 Regulation 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 Arkansas Department of Environmental Quality", and all references to the "U.S. Environmental Protection Agency" or "EPA" shall be considered references to the "Arkansas Department of Environmental Quality"; and all references elsewhere in this Regulation 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 Regulation shall be the date such 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 provisions of this regulation:

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 (for analogous provision, see Reg. 7); 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), (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 129;

(8) Part 133;

(9) Part 136;

(10) Part 257;

(11) Parts 400 through 471 with the following exceptions: § 401.17.

All as adopted as final rules (including "interim final rules" and "technical amendments") by the United States Environmental Protection Agency on or before August 24, 2012.

(B) The Director, within 180 days after the date of promulgation of any new or revised federal National Pollutant Discharge Elimination System regulations, shall conduct rulemaking procedures with reference to this Regulation necessary to maintain a state National Pollutant Discharge Elimination System program as stringent as the federal program. Such 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 regulation but shall not be construed to limit or interfere with the adoption of provisions more stringent than federal regulations.

Reg.6.105 Confidentiality

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

(A) Any information submitted to the Department may be claimed as confidential by the submitter. Any such 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 Department 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 make each page containing such information with the 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 Department which 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 which is not deemed by the submitter as confidential and shall include appropriate cross references to the second part which contains data, words, phrases, paragraphs or pages and appropriate affidavits containing or relating to information which is claimed to be confidential.

(D) No information shall be protected as confidential information by the Director unless it is submitted to him 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 which 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 information which has been submitted does not meet the criteria of subsection (D) above, he shall promptly notify the person submitting such information of his finding and shall give that person reasonable opportunity to further justify his 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 said person fails to satisfactorily demonstrate to the Director that such information in the form presented to him meets the criteria of subsection (D) above, the Director shall mark the information "REJECTED" and promptly return such information to the person submitting such information. Such person shall have 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 Regulation 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 Department 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 such access in order to carry out his responsibilities and duties. No person shall disclose any confidential information except in accordance with the provisions of this section.

(G) NPDES 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 such material. Consequently, applications containing confidential information will be returned to the applicant.

Reg.6.106 Violations

Violation of any of the following prohibitions shall be considered a violation of this regulation and shall be subject to the penalties provided in the Arkansas Water and Air Pollution Control Act, 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 of the waters of the State without first having obtained a permit from the Department for such 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 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 having first obtained a permit for such activity from the Department.

(E) No person shall discharge sewage, industrial wastes or other wastes into any of the waters of the State without having first obtained a permit for such activity from the Department.

(F) No person shall violate any other provision of this regulation or the Act.

CHAPTER TWO: PERMIT PROCEDURES

Reg.6.201 Status and Continuation of Permits

Conditions of a National Pollutant Discharge Elimination System permit issued by the Arkansas Department 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, through no fault of the permittee, does not issue a new permit prior to the expiration date of the previous permit.

Reg.6.202 Application Requirements for Construction and Operation of Wastewater Facilities

(A) Any person who desires to construct, operate or modify any disposal system which 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 for which Ark. Code Ann. § 8-4-217(b) requires a permit shall submit an application for a permit for such activity. 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 Reg. 6.104, hereof, the applicant must also submit Arkansas Department of Environmental Quality Form 1. The application must be submitted, approved, along with the approval letter from Arkansas Department of Health for domestic discharges and a permit issued and effective before the activity applied for can begin.

(B) A state permit for construction or modification of a wastewater treatment facility does not constitute a National Pollutant Discharge Elimination System permit. Issuance of a state permit for construction or modification of a treatment system in no way guarantees or assumes that an application for an National Pollutant Discharge Elimination System permit to operate the system will be approved or the National Pollutant Discharge Elimination System permit issued, nor does issuance of an National Pollutant Discharge Elimination System permit assume or require a prior permit for construction or a satisfactory review of the design or construction of the treatment facility. Arkansas Department of Environmental Quality Form 1 plans and specifications, and design calculations are required for a state construction permit. Plans and specifications and design calculations must be stamped and signed by a Registered Professional Engineer in the State of Arkansas. The basic design criteria for wastewater treatment plants in the State of Arkansas should be based on the latest edition of the "Recommended Standards for Sewage Works," published by the Great Lakes-Upper Mississippi Board of State Sanitary Engineers known as 10 States Standards, with the following modifications. Exception to these criteria will only be approved by the Department when fully justified.

The following exceptions to 10 States Standards, as provisions adopted through Arkansas

Pollution Control and Ecology Commission Minute Order 80-21, are allowed:

Combined Sewer Interceptors

- Combined sewers will not be approved

(1) Biological Treatment

Waste Sludge Facilities

Activated sludge treatment plant of 10,000 gallons per day or more capacity shall be provided with an aerated waste sludge holding tank or other sludge disposal facility.

(2) 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.

(3) Wastewater Treatment Ponds (Lagoons)

Basis of Design

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.

Multiple Units

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

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.

(b) For three (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.

(4) Control Structures and Interconnecting Piping

Control structures shall be provided for interconnecting cell piping and for final cell effluent flow. The structures shall have the ability to vary the water depth in each cell a range of, at least, twenty-four (24) inches. Non-corrosive stop-logs, slide gates, or slide tubes are the devices that shall be utilized to regulate the wastes level. A baffle of the same type of material as the control devices shall extend a minimum of six (6) inches

below the low-water surface.

(5) Appendix – Ground Disposal of Wastewaters

Land treatment of wastewater shall be in accordance with the Land Application Guidelines as promulgated by this department and the Arkansas Department of Health.

(C) At the discretion of the Director, the provisions of Reg.6.202(B) may not apply to minor revision to the existing treatment system, routine repair, replacement (i.e. aerator) or maintenance.

(D) Prior to obtaining a construction permit for domestic wastewater discharges from ADEQ, an approval letter from Arkansas Department of Health is required.

All information supplied to this Department 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 Reg.6.105 above.

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

Operators of a small construction sites 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, Ark. Code Ann. § 8-4-101 *et seq.*, if the following conditions are met:

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

(B) A Stormwater Pollution Prevention Plan must be prepared in accordance with good engineering practices as follows:

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

(2) 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;

(3) Identify the responsible party for on-site Stormwater Pollution Prevention Plan implementation;

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

(a) Pre-construction topographic view;

(b) Direction of stormwater flow (i.e., use arrows to show which direction stormwater will flow) and approximate slopes anticipated after grading activities;

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

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

(e) Location of main construction entrance and exit;

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

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

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

(i) Location of all surface water bodies (including wetlands);

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

(k) Locations where stormwater is discharged off-site (should be continuously updated);

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

Reg.6.204 Permitting Requirements for Industrial Users of Publicly Owned Treatment Works

(A) Industrial users discharging to publicly owned treatment works shall be deemed to have a permit by rule for construction and discharge for the purposes of the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-2-101 *et seq.*, if either of the following conditions are met:

(1) The industrial user is discharging into a receiving publicly owned treatment works with an approved local pretreatment program; or

(2) The industrial user is not subject to categorical pretreatment standards set forth in 40 C.F.R. Parts 400-471 (Subchapter N) and not likely to introduce pollutants to the publicly owned treatment works which would pass through or interfere with the treatment works or which would contaminate the sewage sludge of the treatment works.

An "approved pretreatment program" means a program approved by either the Environmental

Protection Agency pursuant to 40 C.F.R. § 403.11 or the Department pursuant to 40 C.F.R. § 403.11, as incorporated in Reg.6.102. The determination of which industrial users are likely to introduce pollutants which would pass through or interfere with a publicly owned treatment works or which are likely to contaminate sewage sludge from the treatment works shall be made by the Director subject to the provisions of Arkansas Pollution Control and Ecology Commission Regulation No. 8 and Ark. Code Ann. § 8-4-216.

(B) With the exception of industrial users qualifying for a permit-by-rule pursuant to Reg.6.204(A) above, all industrial users discharging or proposing to discharge to publicly owned treatment works shall obtain a permit hereunder in accordance with Reg.6.202 prior to construction or modification of the disposal system, and a permit prior to discharge in accordance with the requirements incorporated in Reg.6.104 and the other applicable provisions of this regulation.

Reg.6.205 Financial Assurance Permitting Requirements

(A) The Department shall not issue, modify, renew, or transfer a National Pollutant Discharge Elimination System permit for a non-municipal domestic sewage treatment works without the permit applicant first demonstrating to the Department its financial ability to cover the estimated costs of operating and maintaining the non-municipal domestic sewage treatment works for a minimum period of five (5) years.

(B) State or federal facilities, schools, universities, and colleges are specifically exempted from the requirements of this section.

(C) Each permit application for a non-municipal domestic sewage treatment works submitted under this section shall be accompanied by a cost estimate for a third party to operate and maintain the non-municipal domestic sewage treatment works each year for a period of five (5) years.

(D) A commercial nonmunicipal domestic sewage treatment works that does not include residential services is not required to post financial assurance.

(E) The department shall not issue or, modify, renew, or transfer a National Pollutant Discharge Elimination System permit for a non-municipal domestic sewage treatment works that proposes to use a new technology that, in the discretion of the Department, cannot be verified to meet permit requirements without the applicant first demonstrating its financial ability to replace the new technology with a non-municipal domestic sewage treatment works that uses technology acceptable to the Department.

(F) Each permit application for a non-municipal domestic sewage treatment works that proposes to use a new technology that, in the discretion of the Department, cannot be verified to meet permit requirements shall be accompanied by a cost estimate to replace the proposed system with a non-municipal domestic sewage treatment works that uses technology acceptable to the Department.

(G) The applicant's financial ability to operate and maintain the non-municipal domestic sewage treatment works for a period of five (5) years shall be demonstrated to the Department by:

(1) Obtaining insurance that specifically covers operation and maintenance costs;

(2) Obtaining a letter of credit;

(3) Obtaining a surety bond;

(4) Obtaining a trust fund or an escrow account; or

(5) Using a combination of insurance, letter of credit, surety bond, trust fund, or escrow account.

(H) The financial assurance required under this section shall:

(1) Be posted to the benefit of the department;

(2) Provide that the financial instrument underlying the financial assurance cannot be cancelled without ninety (90) days prior written notice addressed to the department's legal division chief as evidenced by a signed notice sent by certified mail with a return receipt requested; and

(3) Be reviewed by the department upon receipt of the cancellation notice to determine whether to initiate procedures to:

(a) Revoke or suspend the permit for the nonmunicipal domestic sewage treatment works; and

(b) Take possession of the funds guaranteed by the financial instrument underlying the financial assurance.

(I) (1) The owner or operator of a nonmunicipal domestic sewage treatment works shall establish and maintain financial assurance that demonstrates to the department's satisfaction the applicant's financial ability to ensure adequate operation and maintenance costs as required under this section.

(2) Financial assurance shall provide that the department is the obligee or payee of the financial instrument underlying the financial assurance and shall otherwise comply with the regulations promulgated under this subchapter.

(3) The amount of financial assurance required under this subsection shall be equal to or greater than the detailed cost estimate for a third party to maintain and operate the permitted nonmunicipal domestic sewage treatment works in accordance with the permit and applicable regulations.

(4) The owner or operator shall provide continuous financial assurance for the operation and maintenance costs of a nonmunicipal domestic sewage treatment works until the department:

(a) Releases the owner or operator from the financial assurance requirements under this section and the permit;

(b) Approves the closure of the nonmunicipal domestic sewage treatment works; or

(c) Approves the transfer of a permit and the replacement financial assurance under subsection (O) of this section.

(J) (1) Operation and maintenance costs shall be updated with each permit renewal to account for inflation and the condition of the nonmunicipal domestic sewage treatment works.

(2) The updated operation and maintenance costs based on the condition of the nonmunicipal domestic sewage treatment works required under this section shall be provided in a report certified by a professional engineer registered in the State of Arkansas and submitted to the department with each permit renewal.

(K) (1) If an owner or operator establishes a trust as financial assurance, the owner or operator shall either fully fund the trust or make payments into a trust fund.

(2) (a) If the owner or operator elects to make payments into a trust fund, the payments shall be made in equal monthly installments by the owner or operator.

(b) The trust fund shall be fully funded within five (5) years of the issuance of the permit unless otherwise approved by the Director of the Arkansas Department of Environmental Quality.

(L) (1) The director may order that any financial assurance filed pursuant to this section be forfeited to the department if the director determines that the owner or operator has not adequately operated, maintained, or completed closure of the nonmunicipal domestic sewage treatment works.

(2) Following the determination of the director under this section, the department shall commence proceedings to collect on the financial assurance on which the department is the obligee or payee.

(3) For each permit, the financial instrument underlying the financial assurance shall be renewed or an alternate financial instrument shall be issued to maintain continuous financial assurance.

(4) If documentation of the renewed financial assurance or alternate financial assurance is not received by the department at least sixty (60) days before the expiration date of the existing financial instrument underlying the financial assurance, the department shall:

(a) Take possession of the funds guaranteed by the financial instrument underlying the financial assurance; and

(b) (i) Initiate procedures to suspend or revoke the permit under which the nonmunicipal domestic sewage treatment works is operated.

(ii) A permit shall remain suspended until financial assurance is provided to the department in accordance with this subsection.

(M) The permittee is responsible for ensuring that documentation of the financial assurance and all renewals of financial instruments underlying the financial assurance are received by the department by the due date.

(N) The department shall deposit all forfeited funds into the Water Performance Bond Fund.

(O) (1) (a) Existing responsibilities and financial instruments underlying the financial assurance remain in full force and effect, and a permit shall not be transferred until the proposed new owner or operator has filed and the department has approved the required replacement financial assurance in accordance with the requirements of this section and applicable regulations.

(b) The department shall approve or deny the replacement financial assurance offered under subdivision (O)(1)(a) of this section within thirty (30) days of receipt of the completed permit transfer request.

(2) The department shall release to the former owner, operator, or issuing institution, if appropriate, the financial assurance that the former owner or operator filed if the department does not:

(a) Object to the replacement financial assurance within thirty (30) days of receipt of the completed permit transfer request; and

(b) Deny the permit transfer.

(3) A completed permit transfer request shall be submitted on the forms required by the department and shall include the following:

(a) A disclosure statement, unless the nonmunicipal domestic sewage treatment works is exempt under Ark. Code Ann. § 8-1-106 or an Arkansas Pollution Control and Ecology Commission rule; and

(b) Acceptable replacement financial assurance.

(4) The new owner or operator is responsible for ensuring that the financial assurance meets all applicable requirements.

(P) The Department may reduce or waive the amount of the required financial assurance if the permit applicant can demonstrate to the Department's satisfaction that:

(1) For a renewal permit, during the five (5) years preceding the application for a renewal permit, the nonmunicipal domestic sewage treatment works has:

(a) Maintained the nonmunicipal domestic sewage treatment works in continuous operation;

(b) Maintained the nonmunicipal domestic sewage treatment works in substantial compliance with the existing discharge permit issued by the department, which shall be demonstrated by submitting the following:

(i) All discharge monitoring reports;

(ii) Evidence that the nonmunicipal domestic sewage treatment works has not exceeded the same permit effluent criteria in any two (2) consecutive monitoring periods during the previous three (3) years;

(iii) Evidence that no more than ten percent (10%) of the nonmunicipal domestic sewage treatment works' submitted discharge monitoring reports show effluent violations; and

(iv) Evidence that there have not been any administrative or judicial orders entered against the owner or operator for violations of state or federal environmental laws, rules, or regulations or permits issued by the department;

(c) Maintained the services of a certified wastewater treatment operator, where applicable;

(d) (i) Remained financially solvent, which shall be demonstrated by an independent certified public accountant's report on the examination of the owner's or operator's independently audited financial statement.

(ii) The examination of financial statements under subdivision (P)(1)(d)(i) above of this section shall be conducted in accordance with the American Institute of Certified Public Accountants' Professional Standards, as they existed on January 1, 2013; and

(e) Operated the nonmunicipal domestic sewage treatment works to prevent the discharge of waterborne pollutants in unacceptable concentrations to the surface waters or groundwater of the State as defined in the permit or as defined in the State's water quality standards; or

(2) For a new permit, that the reduction or waiver is necessary to accommodate important economic or social development in the area of the proposed nonmunicipal domestic sewage treatment works and the applicant has shown a history of financial responsibility and compliance with regulatory requirements.

(Q) The Department may withdraw a reduction or waiver granted under this subsection at any time in order to protect human health or the environment.

(R) The Department shall not directly operate nor be responsible for the operation of a nonmunicipal domestic sewage treatment works.

Reg.6.206 Permitting Requirements for Discharges of Pesticides

Operators 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, Ark. Code Ann. § 8-4-101 *et seq.*, 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, lampreys, 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 site or kept at the physical address of the operator for automatic permit coverage prior to commencing the pesticide application;

(C) Pesticides must be handled, used, or applied in accordance with state laws and regulations 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) Operators must comply with all requirements of the National Pollutant Discharge Elimination System General Permit for Pesticide Discharges Located within the State of Arkansas.

Reg.6.207 Public Notice Requirements of Notice of Intent for Concentrated Animal Feeding Operation General Permit

Public notification requirements for any notice of intent filed with the Department for a general permit for a proposed Concentrated Animal Feeding Operation (CAFO) in Arkansas (ARG59000) 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 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 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) ADEQ 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 ADEQ with questions;

(4) Directions to ADEQ's website, including directions regarding how an interested party may submit his or her name to receive electronic notification of notices of intent for coverage under the CAFO general permit; and

(5) All letters shall include the certified mail, return receipt number.

(E) The applicant shall publish notice one time of the proposed CAFO in the paper of the largest circulation in the county of the CAFO production site. ADEQ 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. ADEQ will prescribe the sign's minimum requirements which, at a minimum, will contain the same information as that which ADEQ requires the applicant to publish in the paper. The sign shall be posted prior to submittal of an NOI and shall remain in place until thirty (30) days following ADEQ approval of the NOI and NMP.

(G) Applicants for a CAFO general permit must certify compliance with the public notification requirements in subsections (A) — (F) of this section when submitting the Notice of Intent (NOI) and Nutrient Management Plan (NMP) to ADEQ.

CHAPTER THREE: LOSING STREAM SEGMENTS

Reg.6.301 Effluent Discharges to Losing Stream Segments

(A) In addition to all applicable effluent standards and conditions required by State and federal laws and regulations, wastewater discharged to losing stream segments shall comply with subsections (B) through (E) below.

(B) For purposes of this regulation, a "losing stream segment" is defined as a stream segment which, beginning at the point of existing or proposed discharge and extending two (2) miles downstream, contribute thirty percent (30%) or more of its flow at a 7Q10 flow or one (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 (a) land application of wastewater, (b) discharge to non-losing stream segment, and (c) connection to a regional wastewater treatment facility, have been evaluated and determined to be unacceptable for environmental and/or economic reasons.

(2) If the Department agrees to allow a discharge to a losing stream segment, the permit will be written using the limitations described below, as a minimum. Discharges from wastewater treatment facilities, which receive primarily domestic waste, or from publicly owned treatment works shall undergo treatment sufficient to conform to the following limitations:

(a) $CBOD_5$ equal to or less than a monthly average of ten (10) mg/1 and a seven (7) day average of fifteen (15) mg/1.

(b) Total Suspended Solids equal to or less than a monthly average of fifteen (15) mg/1 and a seven (7) day average of twenty-three (23) mg/1;

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

(d) The fecal coliform content of discharges shall not exceed a monthly average of 200 colonies per 100 milliliters and a weekly average of 400 colonies per 100 milliliters. However, at no time shall the fecal coliform content exceed 200 colonies per 100 milliliters in any water defined as an Extraordinary Resource Water or Natural and Scenic Waterway;

(e) Nitrate plus nitrite nitrogen levels shall not exceed ten (10) mg/1;

(f) Ammonia (as Nitrogen) limitations shall be included as necessary to prevent ammonia toxicity in-stream and/or to maintain instream dissolved oxygen.

(g) Other parameters as deemed appropriate by the Department.

(D) Implementation of Losing Stream Regulation

(1) Existing discharges. At the time of permit renewal, or when deemed necessary by the Department, National Pollutant Discharge Elimination System 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. 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. New facilities proposing to discharge to a stream which may be a losing stream segment shall submit documentation as part of the initial National Pollutant Discharge Elimination System permit application demonstrating that the segment is or is not a losing stream segment. 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 Reg.6.301(B) above. 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) For facilities in both Reg.6.301(D)(1) and (2) above, 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 1 cfs and representative of seasonal flow. Effluent flow, when existing, can be included in the minimum 1 cfs stream flow.

(4) The Department 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 Arkansas Department of Health for Discharges of Domestic Effluents.

Nothing in this regulation limits the authority of the Arkansas Department of Health to include additional requirements as a prerequisite to its approval of the treatment/disposal system.

CHAPTER FOUR: WASTEWATER DISCHARGES

Reg.6.401 Determination of Domestic Wastewater Effluent Limitations

(A) Small discharges (less than or equal to 0.05 MGD)

(1) The most stringent effluent limitations for oxygen demanding flows from small dischargers will be 10/15 ($CBOD_5$/Total Suspended Solids), with nutrient removal where appropriate, which is considered as Best Conventional Treatment for dischargers in this flow range.

(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

Outstanding State Resource Waters include all water bodies designated in the Arkansas Water Quality Standards, Arkansas Pollution Control and Ecology Commission Regulation No. 2, as Extraordinary Resource Waters, Natural and Scenic Waterways, or Ecologically Sensitive Waterbodies.

(1) For Extraordinary Resource Waters and Natural and Scenic Waterways: In no event shall the effluent limitations be greater than 10/15 ($CBOD_5$/Total Suspended Solids).

(2) 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.

(2) All oxygen demanding effluent flows which are discharged into any lake shall have effluent limitations of 10/15 ($CBOD_5$/Total Suspended Solids) 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 1.0 mg/l Total Phosphorus based on a monthly average.

(2) Compliance with (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 1.0 mg/l Total Phosphorus based on a monthly average.

(2) Compliance with (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 1.0 mg/l Total Phosphorus based on a monthly average.

(2) Compliance with (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 1.0 mg/l Total Phosphorus based on a monthly average.

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

Reg.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 Basin shall authorize a total phosphorous limit in excess of the following:

(A) A proposed permit with a design flow of 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).

CHAPTER FIVE: (RESERVED)

CHAPTER SIX: LAKE MAUMELLE BASIN

Reg.6.601 Lake Maumelle Basin

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

CHAPTER SEVEN: ADMINISTRATIVE PROCEDURES

Reg.6.701 Penalty Policy and Administrative Procedures

Arkansas Pollution Control and Ecology Commission Regulation No. 7, Civil Penalties, and Regulation No. 8, Administrative Procedures apply to this regulation.

Reg.6.702 Severability

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

CHAPTER EIGHT: EFFECTIVE DATE

Reg.6.801 Effective Date

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