



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Regulations for Arkansas Administration of the National Pollutant Discharge Elimination System (Reg. No. 6): Arkansas Environmental Quality Petition to Initiate Rulemaking to Amend

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The Arkansas Department of Environmental Quality (“ADEQ”) submitted a:

Petition to Initiate Rulemaking to Amend Regulation No. 6 (Regulations for State Administration of the National Pollutant Discharge Elimination System) (“Petition”)

The *Petition* has been submitted to the Arkansas Pollution Control and Ecology Commission and will be heard at the July 26th meeting.

Arkansas obtained delegation of the Clean Water Act National Pollution Discharge Elimination System (“NPDES”) in 1986. Therefore, since that time Arkansas facilities have obtained NPDES permits from ADEQ as opposed to the United States Environmental Protection Agency.

An NPDES permit must be acquired if four of five jurisdictional elements are present: 1) a person; 2) adds a; 3) pollutant; 4) to navigable waters; 5) from a point source. The NPDES permit must reflect the applicable federal technology standards and any additional necessary restrictions to meet Arkansas water quality standards.

A substantial portion of the substantive and procedural framework for the Arkansas NPDES program is found in Arkansas Pollution Control and Ecology Commission Regulation No. 6. The Regulation incorporates by reference the majority of the federal NPDES regulatory provisions. However, it does address a number of issues that are substantive and Arkansas specific. Some of the issues addressed in this *Petition* include:

1. Moratorium on Confined Animal Operations of a certain size in the Buffalo River National Watershed would be made permanent
2. Revisions incorporating changes to the federal NPDES regulations addressing:
 - a. Sufficiently sensitive test methods
 - b. NetDMR electronic reporting

- c. Continuous pH monitoring
 - d. Effective date of EPA regulations
- 3. Incorporating Acts 94 and 575 of 2015 Arkansas General Assembly addressing Trust Fund permitting requirements
- 4. Incorporating Acts 910 and 315 of 2019 amending the name of the DEQ
- 5. Amendments described as providing clarification to sections of the regulations that were otherwise unclear and minor corrections to make the regulation more illustrative of the regulatory intent:
 - a. Clarify certain definitions under Reg. 6.103
 - b. Simplify Reg. 6.202
 - c. Minor corrections to Reg. 6.202(E)
 - d. State construction permit not required if the construction is authorized under a General NPDES Permit
 - e. Addressing Ten States Standards
 - f. Addressing design criteria for nondomestic wastewater treatment plants
 - g. Addressing permitting requirements for stormwater discharges associated with a small construction site
 - h. Change in terminology to Pretreatment Requirements
 - i. Addressing presumption of a losing stream where there is intermittent flow or flow insufficient to measure absent a specific evaluation to the contrary
 - j. Move and renumber Reg. 6.301(D)
 - k. Addresses effluent limitations for discharges in the losing stream segments, to include biochemical oxygen demands as an acceptable measurement for limitation, and the use of geometric mean rather than average when addressing fecal coliform content of discharges
 - l. Amend Reg. 6.401 concerning the termination of domestic wastewater effluent limitations
 - m. Amend Reg. 6.401(D) to add (E) through (G) for clarification
 - n. Rename Chapter 6 "Specific Basin and Watershed Requirements"

A link to the agenda which contains the Petition can be downloaded [here](#).