

**ECONOMIC IMPACT STATEMENT
OF PROPOSED RULES OR REGULATIONS
EO 05-04: Regulatory Flexibility**

Department Arkansas Department of Environmental Quality Division Water

Contact Person Martin Maner Date January 5, 2006

Contact Phone 501.682.0654 Contact Email maner@adeq.state.ar.us

Title or Subject: Arkansas Pollution Control and Ecology Commission Regulation Number 6, Regulation for the State Administration of the National Pollution Discharge Elimination System

Benefits of the Proposed Rule or Regulation

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

ADEQ engaged in a review of the regulation and proposed changes to Regulation Number 6 which include the following:

- a. Adding the definition of the term “operator” in section 6.103(B) of this regulation;
- b. Clarification that this Commission has promulgated Minute Order 80-21 in 1980 that specified “Recommended Standards for Sewage Works” in addition to the “Recommended Standards for Wastewater Facilities” (also referred to as “10 State Standards”) in section 6.202(B) of this regulation; and
- c. Clarification that only CAFO operations with actual discharges, not potential discharges, have an obligation to apply for a NPDES permit through this Department until EPA revises its 2003 CAFO regulation in response to the Second Circuit Court Decision in *Waterkeeper Alliance et al. v EPA.*, 399 F.3d 486 (2005), in section 6.501.

2. What are the top three benefits of the proposed rule or regulation?

- a. Clarifies the definition of an operator;
- b. Clarifies the recommended standards for sewer works;
- c. Clarifies the requirements of CAFO permitting which greatly lessens the impact to poultry growers in Arkansas.

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

The regulation would be less clear to the public. Without the clarification of the CAFO language, many small businesses could assume that they must seek a permit with the Department.

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

None

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of *collecting information, completing paperwork, filing recordkeeping, auditing and inspecting* associated with this new rule or regulation.
The cost to state government would be greatly reduced without the requirement to permit CAFO operations that have no actual discharge. This program was in the initial stages of development when the Second Circuit Court's decision greatly impacted the scope of this program.
6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.
The addition of the definition of "operator" and the inclusion of the 10 state's standard will have no impact as this simply clarifies existing practices and guidelines. The changes to the CAFO program, as rendered by the Second Circuit Court's decision, will greatly reduce the number of poultry operations that must be permitted through the federal NPDES program. It has been estimated that Arkansas has in excess of 2,000 poultry growers that could have been required to seek an NPDES CAFO permit. With the decision of the Second Circuit Court, the number of poultry growers anticipated to have an "actual discharge" is extremely minimal. Further changes to the regulation will be made once the US EPA has finalized its rulemaking on the CAFO program. Until such time, ADEQ wants its poultry growers to have a clear understanding that permit coverage is not required at this time.
7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.
No.
8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.
No additional requirements for small business owners and will actually reduce the requirements for poultry growers.
9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.
This regulation adopts federal NPDES requirements, which may or may not have varying degrees of conditions for compliance.
10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.
Small business owners should be able to implement changes as easily as other size entities.
11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?
These changes compare to regulations in other states concerning the National Pollution Discharge Elimination Program.

Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

No comments are available at the time.