



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **Nutrient Management Plans Statutes & Regulations**

**Arkansas**

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## Nutrient Management Plans

### STATE OF ARKANSAS

- 1) Ark. Code Ann. §§ 15-20-1101, 1103, 1107, 1111, 1112; 138 00 CARR 2201.1, .2, .4, 2202.1, .2, .3, 2203.1—.6
- 2) Ark. Code Ann. §§ 15-20-1101, 1103, 1108, 1109, 1111, 1112; 138 00 CARR 2201.1, .2, .4, 2202.1, .2, .3, 2204.1—.5, 2205.2
- 3) Ark. Code Ann. §§ 8-4-201, 202, 203, 8-6-1801; 014 04 CARR 5.101—5.201, 5.301—.303, 5.405—.407, 5.601, 5.901
- 4) Ark. Code Ann. §§ 8-4-201, 202, 208; 014 04 CARR 6.101—.104, .106, 6.201, .207, 6.601, .602
- 5) Ark. Code Ann. §§ 15-20-1001—1004, 1006, 1008; 138 00 CARR 2001.1, .3, 2002.1—.5, 2003.1—.5, 2004.1, .2, 2005.1, 2006.1, .2
- 6) 1) Ark. Code Ann. §§ 15-20-901 et seq.; 138 00 CARR 1901.1—.3, 1902.1—.3, 1903.1—.3

*The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Arkansas Bureau of Legislative Services.*

- 1) Ark. Code Ann. § 15-20-1101, 1103, 1107, 1111, 1112; 138 00 CARR 2201.1, .2, .4, 2202.1, .2, .3, 2203.1—.6

#### **15-20-1101. Title.**

This subchapter shall be known and may be cited as the "Arkansas Soil Nutrient Application and Poultry Litter Utilization Act".

#### **15-20-1103. Definitions.**

As used in this subchapter:

- (1) "Certified nutrient applicator" means any natural person that has shown to the Arkansas Natural Resources Commission that he or she has the minimal knowledge and technical competence necessary to properly apply nutrients;

- (2) "Commission" means the Arkansas Natural Resources Commission;
- (3) "Conservation district" means a conservation district created under the Conservation Districts Law, § 14-125-101 et seq.;
- (4) "Crop" means any vegetative cover;
- (5) "Executive director" means the Executive Director of the Arkansas Natural Resources Commission;
- (6) "Litter" means byproducts associated with the confinement of livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof;
- (7) "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and poultry;
- (8)
  - (A) "Nutrient" means a substance or recognized plant nutrient, element, or compound that is used or sold for its plant-nutritive content or its claimed nutritive value.
  - (B) "Nutrient" includes substances in litter, compost as fertilizer, commercially manufactured chemical and organic fertilizers, sewage sludge, and combinations thereof;
- (9) "Nutrient application" means the process by which humans apply nutrients to soil or associated crops;
- (10) "Nutrient applicator" means any person that applies nutrients to soil or associated crops;
- (11) "Nutrient management plan" means a plan prepared to assist landowners and operators in the management of fertilizers, litter, sewage sludges, compost, and other nutrient sources for maximum soil fertility and protection of the waters within the state;
- (12) "Nutrient surplus area" means an area declared by § 15-20-1104 in which the soil concentration of one (1) or more nutrients is so high or the physical characteristics of the soil or area are such that continued application of the nutrient to the soil could negatively impact soil fertility and the waters within the state;

(13) "Person" means any individual, partnership, company, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;

(14) "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds;

(15)

(A) "Poultry feeding operation" means any lot or facility where two thousand five hundred (2,500) or more poultry are housed or confined and fed or maintained on any one (1) day in the preceding twelve-month period.

(B) Multiple poultry houses within a reasonable proximity to one another under the control of one (1) owner shall be considered one (1) facility;

(16) "Poultry litter management plan" means the plan for utilization of litter by poultry feeding operations pursuant to § 15-20-1108;

(17) "Protective rate" means the agronomic rate or other rate as determined by the commission of a designated nutrient that provides for proper crop utilization and prevention of significant impact to waters within the state; and

(18) "Waters within the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this state or any portion of the state.

#### **15-20-1107. Nutrient management plan.**

(a)

(1) Nutrient management plans shall be approved by the board of directors of the conservation district where a majority of the land to which the nutrient management plan applies is located.

(2) The person requesting a nutrient management plan may appeal the nutrient management plan's disapproval or any of the nutrient management plan's provisions to the Executive Director of the Arkansas Natural Resources Commission.

(b) In considering the approval of a nutrient management plan, a conservation district board of directors and the Arkansas Natural Resources Commission shall consider the nutrient management plan's provision for:

- (1) Soil nutrient testing;
- (2) The level of nutrients contained in the nutrient source;
- (3) Nutrient application rates, including the methodology utilized in determining the rate;
- (4) Crops being grown, soil type, geology, hydrology, and other physical characteristics of land on which the nutrient will be applied;
- (5) The manner and timing of nutrient application;
- (6) The method for keeping application records contained in the nutrient management plan; and
- (7) The qualifications of the person developing the nutrient management plan.

(c) If the land application of a designated nutrient within a nutrient surplus area is a part of a process regulated under the Arkansas Water and Air Pollution Control Act, § 8-4-101 et seq., or other similar federal or state law and the permit contains conditions regulating the nutrient application of the designated nutrient acceptable to the commission, then the permit shall serve as the nutrient management plan.

(d) An approved nutrient management plan shall constitute a permit to apply nutrients consistent with the nutrient management plan.

#### **15-20-1111. Implementation.**

- (a)
  - (1) The Arkansas Natural Resources Commission may develop all regulations necessary to implement this subchapter.
  - (2) Regulations shall be adopted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- (b) The commission may delegate portions of the program for implementation to the Executive Director of the Arkansas Natural Resources Commission or conservation districts, or both.
- (c)
  - (1) The commission may defer the requirements of §§ 15-20-1106 -- 15-20-1108 for up to two (2) years after declaration as a nutrient surplus area to allow the development of nutrient management plans and poultry litter management

plans and implementation of alternative use plans in order that persons affected may come into compliance with this subchapter.

(2) The commission may further defer the requirements of §§ 15-20-1106 -- 15-20-1108 if it determines that there is no alternative use for litter or there are no readily available, affordable alternative nutrient supplies for which litter has been used.

### **15-20-1112. Enforcement.**

(a)

(1) Agents of the Arkansas Natural Resources Commission or a conservation district may enter on private property to determine compliance with this subchapter.

(2)

(A) Entry shall not occur without prior notification of the owner.

(B) Notice shall be given to the owner, operator, or agent in charge of the property at least seventy-two (72) hours before entry.

(3) Documentation of biosecurity measures taken and biosecurity certification received by an inspection agent of the Arkansas Natural Resources Commission or by a conservation district officer, including a biosecurity log book, shall be available to the owner upon request.

(4) Upon notice of disease outbreak by the Arkansas Livestock and Poultry Commission, inspection under this subchapter shall be automatically suspended until notification by the Arkansas Livestock and Poultry Commission that it is safe to resume inspections.

(b) The process for the imposition of administrative penalties under § 15-20-1113 shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

### **Section 2201.1 Purpose**

A. The Arkansas Natural Resources Commission developed this Title to encourage prudent practices regarding the application and management of soil Nutrients and Poultry Litter to protect and enhance the State's surface water quality while allowing for optimum soil fertility and proper plant growth. The primary goal of this Title is to maintain the benefits derived from the wise use of Poultry Litter, commercial fertilizers, and other soil Nutrients while avoiding unwanted effects from excess Nutrient Applications on the waters within the State. In furtherance of this goal, these Rules provide requirements

applicable to Nutrient Surplus Areas, Nutrient Management Plans, and Poultry Litter Management Plans. These rules are designed to protect the waters within the State from adverse effects of excess nutrients while allowing for maximum soil fertility and proper plant growth.

B. The rules in this Title have no effect until January 1, 2006.

### **Section 2201.2 Enabling and Pertinent Legislation**

A. Arkansas Code Annotated §§ 8-4-101 et seq., "Arkansas Water and Air Pollution Control Act."

B. Ark. Code Ann. §§ 15-20-201 et seq., "Arkansas Soil and Water Conservation Commission."

C. Ark. Code Ann. §§ 15-20-901 et seq., "Arkansas Poultry Feeding Operations Registration Act."

D. Ark. Code Ann. §§ 15-20-1001 et seq., "Arkansas Soil Nutrient Management Planner and Applicator Certification Act."

E. Ark. Code Ann. §§ 15-20-1101 et seq., "Arkansas Soil Nutrient Application and Poultry Litter Utilization Act."

F. Ark. Code Ann. §§ 25-15-201 et seq., "Arkansas Administrative Procedure Act."

### **Section 2201.4 Definitions**

As used in this Title, the following terms shall have the definitions below unless otherwise specifically stated herein.

A. "Administrative Consent Order" means a legal agreement signed by the Director and a violator of this title through which the violator agrees to pay a fine, take a required corrective action, refrain from an activity, or a combination of the listed actions. It describes the actions to be taken by all signatories and may be enforced in court.

B. "Arkansas Phosphorus Index" means the risk-based assessment tool referenced in Nutrient Management Plans developed to govern the terms and conditions under which Nutrients may be land-applied. See P. B. DeLaune, P. A. Moore, Jr., D. K. Carman, T. C. Daniel, and A. N. Sharpley; Development and validation of a Phosphorus Index for pastures fertilized with animal manure [CD-ROM]; International Symposium Addressing Animal Production and Environmental Issues; 2001.

C. "Certified Nutrient Applicator" may refer to either a Certified Commercial Applicator or a Certified Private Applicator and means a person who has been certified by the Commission as competent to apply Nutrients to land pursuant to Emergency Rules Governing the Arkansas Nutrient Management Applicator Certification Program, Title XXI.

D. "Certified Nutrient Planner" means a person who has been certified by the Commission as competent to develop Nutrient Management Plans pursuant to Emergency Rules Governing the Arkansas Nutrient Management Planner Certification Program, Title XX.

E. "Commission" means the Arkansas Natural Resources Commission.

F. "Compost" means a process which biologically stabilizes livestock and poultry mortalities, making them suitable for disposal by Land Application. The process uses a simple mixture of dry Poultry manure (Litter), carcasses, and a bulking agent or aeration medium such as hay or straw. Only enough water is added to keep the material moist and the mixture should never be saturated. Compost does not include composted plant material with no animal carcasses or manure added that is used as a soil amendment and not principally for its Nutrient value.

G. "Conservation District" means a Conservation District created under the Conservation Districts Law, Ark. Code Ann. §§ 14-125-101 et seq.

H. "Crop" means any managed vegetative cover.

I. "Director" means the Executive Director of the Arkansas Natural Resources Commission.

J. "Land Application" means the spreading on or incorporation of Litter into the soil mantle primarily for beneficial purposes.

K. "Litter" means byproducts associated with the confinement of Livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any other combinations thereof.

L. "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and Poultry.

M. "Nutrient" means a substance or recognized plant Nutrient, element or compound that is used or sold for its plant nutritive content or its claimed nutritive value including, without limitation, substances in Litter, compost as fertilizer, commercially manufactured chemical and organic fertilizers, sewage sludge and combinations thereof.



N. "Nutrient Application" means the process by which Persons apply Nutrients to soil or associated Crops.

O. "Nutrient Applicator" means any Person who applies Nutrients to soil or associated Crops.

P. "Nutrient Management Plan" means a documented record of how Nutrients will be managed on a Nutrient Management Unit and is prepared in accordance with United States Department of Agriculture Natural Resources Conservation Service conservation practice standards for Arkansas to guide and assist landowners and Operators in the use of fertilizers, Litter, sewage sludges, compost and other Nutrient sources for soil fertility and protection of the Waters Within the State.

Q. "Nutrient Management Unit" means the field, group of fields, or other land units, that collectively include all land area on which Nutrients will or may be applied and managed pursuant to a Nutrient Management Plan.

R. "Nutrient Surplus Area" means a defined geographic area, declared by Ark. Code Ann. § 15-20-1104 and described more specifically in Subtitle II of these Rules, which has been determined to be an area in which the soil concentration of one or more Nutrients is so high or the physical characteristics of the soil or area is such that continued application of the Nutrient to the soil could negatively impact soil fertility and the Waters Within the State.

S. "Operator" means the Person(s) with control over the day-to-day operation of, or decision-making authority over, the facility, process, or physical location to which the term is applied.

T. "Person" means any legal entity including, without limitation, any individual, partnership, company, association, fiduciary, corporation, limited liability company, cooperative, or any organized group of persons whether incorporated or not.

U. "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds.

V. "Poultry Feeding Operation" means any lot or facility where two thousand five hundred (2,500) or more Poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple Poultry houses under common ownership are considered to be a single Poultry Feeding Operation if they adjoin each other or if they share a common area or system for the disposal of wastes.

W. "Poultry Litter Management Plan" means the documented plan for use, disposal, and storage of Litter by Poultry Feeding Operations as further described in Subtitle IV of these Rules.

X. "Protective Rate" or "Arkansas Protective Rate" means the application rate approved by the Commission for designated Nutrients that provides for proper Crop utilization and prevention of significant impact to Waters Within the State.

Y. "Warning Letter" means a written description signed by the Director of a violation of this Title and the necessary corrective action. A Warning Letter cannot be used to assess civil penalties, is not appealable to the Commission, and is not final agency action.

Z. "Waters Within the State" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this State or any portion of this State.

### **Section 2202.1 Declared Nutrient Surplus Areas**

Act 1061 of 2003 (codified at Ark. Code Ann. § 15-20-1104) declared the following areas to be Nutrient Surplus Areas:

1. The Illinois River watershed, included within Benton, Washington, and Crawford counties;
2. The Spavinaw Creek watershed, included within Benton County;
3. The Honey Creek watershed, included within Benton County;
4. The Little Sugar Creek watershed, included within Benton County;
5. The upper Arkansas River watershed, which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County;
6. The Poteau River watershed, included within Scott, Sebastian, and Polk counties;
7. The Mountain Fork of the Little River watershed, included within Polk County; and
8. The upper White River watershed above its confluence with Crooked Creek.

### **Section 2202.2 Geographic Boundaries of Nutrient Surplus Areas**

A. The Commission further defines the geographic boundaries of the designated Nutrient Surplus Areas listed in Section 2202.1 by utilizing the National Datasets for Natural Resource Analysis. Hydrologic Units have been classified based on data compiled by United States Geological Survey, Natural Resources Conservation Service and others. Each hydrologic unit is identified by a unique hydrologic unit code (HUC). Detailed maps and digital coverage of the boundaries are available at the Commission office or District office. Hydrologic unit codes for the Nutrient Surplus Areas are as follows:

1. Illinois River watershed: HUC 11110103
2. Spavinaw Creek watershed: HUC 11070209
3. Honey Creek watershed: HUC 11070206
4. Little Sugar Creek watershed: HUC 11070208
5. Upper Arkansas River watershed (which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County): HUC 11110104
6. Poteau River watershed: HUC 11110105
7. Mountain Fork of the Little River watershed: HUC 11140108
8. Upper White River watershed above its confluence with the Buffalo River: HUC 11010001 and HUC 11010003 (excluding coverage under HUC 1101000308, 1101000309, 1101000310, and 110100031108).

B. See Appendix A for general coverage map.

### **Section 2202.3 Requirements Applicable to Nutrient Surplus Areas**

A. Until January 1, 2007, except as provided in Subsection G of this Section, it shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is performed in compliance with a Nutrient Management Plan prepared by a Certified Nutrient Planner or at the Protective Rate set forth in Section 2202.5.

1. After January 1, 2007, any Person applying Nutrients from Poultry Litter to soils or associated Crops within a Nutrient Surplus Area must apply in compliance with a Nutrient Management Plan or Poultry Litter Management Plan.
2. After a soil test with nutrient application recommendations is obtained for lands within a nutrient surplus area, application of commercial fertilizer may continue in compliance with the protective rate after January 1, 2007.

3. After a soil test with nutrient application recommendations is obtained for lands within a Nutrient Surplus Area, the Protective Rate as indicated by the soil test shall constitute a permit to apply Nutrients consistent with the Protective Rate.

B. Except as provided in Subsection G of this Section, it shall be unlawful for any owner or Operator of land within a Nutrient Surplus Area to allow the application of Nutrients to soils or associated Crops on that land unless the Nutrient Application is performed in compliance with a Nutrient Management Plan prepared by a Certified Nutrient Planner or at the Protective Rate set forth in Section 2202.5.

C. It shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is done in compliance with the time, place, and manner restrictions determined necessary by the Commission and set forth in Section 2202.4.

D. It shall be unlawful for any Poultry Feeding Operation to operate within a Nutrient Surplus Area unless the Poultry Feeding Operation develops and implements a Poultry Litter Management Plan or applies Nutrients at the Protective Rate.

E. Except as provided in Subsection G of this Section, it shall be unlawful for any Person other than a Certified Nutrient Applicator to make a Nutrient Application within a Nutrient Surplus Area unless the person making application is a volunteer or an employee under the direction or control of a Certified Nutrient Applicator.

F. Except as provided in Subsection G of this Section, Nutrient Application within a Nutrient Surplus Area shall be documented in records maintained by the Nutrient Applicator and the owner or Operator of the land where Nutrient Application is made, in sufficient detail to demonstrate that the Nutrient Application was conducted in compliance with these Rules. Such records shall be maintained for a minimum of five years or for such longer period of time as may be required by an approved Nutrient Management Plan, and shall be available for inspection by the Commission or Conservation District employees upon request. Records maintained by commercial fertilizer distributors or applicators may be relied upon to meet this requirement.

G.

1. Nutrient Application within a Nutrient Surplus Area on residential lands of two and one-half (2.5) acres or less ("Residential Nutrient Application") shall be applied at a rate not to exceed the Protective Rate set forth in Section 2202.5 and in compliance with the time, place, and manner restrictions set forth in Section 2202.4, or in compliance with an approved Nutrient Management Plan.

2. A Nutrient Management Plan is not required for Residential Nutrient Application as defined in this Subsection, but may be voluntarily obtained.

3. The landowner or resident making a Residential Nutrient Application, as defined in this Subsection, is not required to be a Certified Nutrient Applicator, but is required to maintain documentation of each Nutrient Application for a minimum of five years sufficient to demonstrate compliance with the Time, Place, and Manner Restrictions in Section 2202.4 and either the Protective Rate requirements in Section 2202.5 or an approved Nutrient Management Plan.

H. Upon written request, the Executive Director may waive any provision of these rules consistent with the purposes of this Title as set forth in Section 2201.1.

I. Persons applying poultry litter to land within the Spavinaw-Eucha Watershed, including Benton County, as defined by *The City of Tulsa et al. v. Tyson Foods, Inc. et al*, No. 01 CV 0900EA(C), (Northern District of Okla. July 16, 2003) must follow any term of that suit in conflict with these rules.

### **Section 2203.1 Obtaining a Nutrient Management Plan**

A. Any Person seeking a Nutrient Management Plan should contact the local Conservation District and request a Plan. The Person seeking a Nutrient Management Plan may also contact third parties who have obtained certification from the Commission to develop Plans.

B. A Certified Planner will certify by his signature that each Plan he drafts meets all applicable standards and will provide a copy to the Owner for review. The Certified Planner will also provide a copy of each drafted Plan to the Conservation District where a majority of the facility is located. The Conservation District board will review each Plan to determine whether it meets all applicable standards. If the standards are met, the Conservation District shall approve the Plan and retain one copy. If the Conservation District board does not approve a Plan, it shall provide the Owner written notice of the denial and its basis.

C. An Owner may appeal a Conservation District denial of Plan approval or any provision of a certified and approved Nutrient Management Plan within 90 days by applying in writing to the Executive Director. The Owner must follow the Plan during the appeal process. The Executive Director will consider appeals only when the Owner asserts that the applicable standards were not followed in drafting the Plan or that a Conservation District failed to approve a Plan which meets those standards. The Executive Director may deny the appeal, modify the Plan, or approve the Plan. The Owner may appeal an unfavorable decision to the full Commission upon written application within 30 days. The Commission's decision may be appealed as provided in Section 2206.4.

D. Any Plan obtained by a Person prior to the effective date of these rules meets the requirements of this Title if developed using the Arkansas Phosphorus Index.

E. An approved Plan shall constitute a permit to apply Nutrients consistent with the Plan.

### **Section 2203.2 Substitution of Existing Arkansas Water and Air Pollution Control Act Permit for Nutrient Management Plan**

- A. If a Nutrient Application process within a Nutrient Surplus Area is a part of a process or system for which a permit has been issued and is in effect pursuant to the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. §§ 8-4-101 et seq., or other similar federal or state law, and if the permit contains conditions regulating Nutrient Application acceptable to the Conservation District, then the permit may be substituted for and serve as the Nutrient Management Plan.
- B. Before such permit is effective as a substitute for a Nutrient Management Plan, the permittee must submit a complete copy of the permit to the local Conservation District and request approval in writing.
- C. Upon approval by the Conservation District, the permit shall be substituted for and serve as the Nutrient Management Plan required by these Rules, and all other requirements of these Rules shall apply.

### **Section 2203.3 Contents of a Nutrient Management Plan**

- A. A Nutrient Management Plan shall contain sufficient documentation to demonstrate that Nutrients will be managed within the Nutrient Management Unit in compliance with these Rules and in a manner sufficient to protect the Waters Within the State.
- B. A proposed Nutrient Management Plan shall address the following major elements:
- (1) general site information,
  - (2) applicable permits and certifications,
  - (3) Nutrient Application site information,
  - (4) Nutrient Application plans,
  - (5) actual activity records, and
  - (6) operation and maintenance.

The precise content of a Nutrient Management Plan will vary as necessary to meet the needs of the specific Nutrient Management Unit addressed. Unless clearly inapplicable, a Nutrient Management Plan shall address all of the items listed under the six major elements shown below in this Section.

1. General site information

- a. Names, phone numbers, and addresses of the owner(s) and Operator(s) of all lands within the Nutrient Management Unit.
- b. Location of site: legal description of all lands in the Nutrient Management Unit, driving instructions from the nearest municipality, street address, and emergency 911 coordinates.
- c. Sketch or aerial photograph of farmstead and all fields in the Nutrient Management Unit.
- d. Operation procedures.
- e. Existing documentation of present facility components that would aid in evaluating existing conditions.

2. Applicable permits and certifications

- a. Federal, State, or local permits or ordinances, if applicable.
- b. Operator or manager certifications, if applicable.
- c. Certification number of Certified Nutrient Planner responsible for developing plan.
- d. Records of inspections or site assessments, if applicable.

3. Nutrient Application site information

- a. Date Plan was prepared.
- b. Written agreements, if any, relating to Nutrient Application.
- c. Aerial maps of Nutrient Application areas.
- d. Individual field maps with marked conservation features, setbacks, buffers, waterways, Poultry houses or facilities, surface water features, and environmentally sensitive areas such as sinkholes, wells, gullies, tile inlets, etc.
- e. Landowner and Operator names, addresses, and phone numbers.
- f. Eight-digit watershed codes for Nutrient Application sites.
- g. Specific and unique field identification codes, if applicable.
- h. Land use designation, if applicable.

- i. Soil map with appropriate interpretations.
- j. Calculations, assumptions, interpretations, and narrative description demonstrating appropriate application of the Phosphorus Index in development of the proposed Nutrient Application rates.
- k. Land treatment practices planned, applied, and level of treatment provided.

#### 4. Nutrient Application

- a. Crop types, realistic yield targets, and expected Nutrient uptake amounts, if available.
- b. Application equipment descriptions and methods of application.
- c. Expected application seasons and estimated days of application per season.
- d. Proposed Nutrient Application rates; i.e., amounts per acre (volume in gallons or tons per acre, and pounds of plant available nitrogen, phosphorus as P205, and potassium as K20 per acre), and detailed information on the calculations, assumptions, and interpretations used to determine application rates.
- e. Estimate of acres needed to apply Litter generated on the Nutrient Management Unit or by any related Poultry Feeding Operation, if applicable, consistent with application of the Phosphorus Index and respecting any guidelines published for nitrogen and other Nutrient loading limits.

#### 5. Actual activity records

- a. Soil tests --not more than five years old.
- b. Litter test results --not more than five years old.
- c. Planned and applied rates, methods of application, and timing (month and year) of all sources of Nutrients applied.
- d. Current and planned Crop rotation.
- e. Records of any spill events.



## 6. Operation and Maintenance

- a. Reasonably detailed operation and maintenance procedures and schedules for all aspects of the Nutrient Management Plan including, by way of example, holding systems, Litter storage, Land Application, application equipment, soil and Nutrient source sampling techniques, etc.
- b. Description of recordkeeping procedures including records for date and location of each Nutrient Application, amount of Litter or other Nutrients applied, phosphorus content of the soil, phosphorus content of Litter or other Nutrient source, application rates used, source of Litter or other Nutrients, and total acreage of Nutrient Applications.
- c. Designation of when periodic review and revision of the Plan will occur. See Section 2203.5.

### **Section 2203.4 Additional Plan content**

The Certified Nutrient Planner should incorporate additional Plan requirements as appropriate if required by incentive programs which apply to a specific owner or Operator.

### **Section 2203.5 Review and Revision of Nutrient Management Plans**

- A. Nutrient Management Plans shall be reviewed by the owner or Operator of the Nutrient Management Unit at least annually to determine if adjustments or modifications are needed.
- B. Plans would need to be modified if the facilities were expanded, total acreage receiving Nutrient Application changes, use of acreage changes, or facilities are under control of a different owner or Operator.
- C. Nutrient Management Plans shall be reviewed thoroughly by a Certified Nutrient Planner every five years and a report of the five-year review shall be provided to the local Conservation District within one hundred twenty (120) days following the end of the fifth annual growing period identified in the Plan. The five-year review shall update the existing Plan with recent soil and Litter testing data. All other information required to be included in a Nutrient Management Plan in Section 2203.3 of this Subtitle shall be updated with current information.

### **Section 2203.6 Recordkeeping Requirements**

- A. Records required to be compiled or kept by these Rules or by the provisions of any approved Nutrient Management Plan shall be maintained by the owner and Operator of

the lands within the Nutrient Management Unit for a minimum period of five years and shall be available for inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

B. Records required to be compiled or kept by these Rules or by the provisions of any approved Nutrient Management Plan relating to the activities of a Nutrient Applicator shall be maintained by the Nutrient Applicator for a minimum period of five years and shall be available for inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

C. Owners, Operators, and Applicators may rely on records maintained by commercial fertilizer distributors and applicators to meet these requirements.

**2) Ark. Code Ann. §§ 15-20-1101, 1103, 1108, 1109, 1111, 1112; 138 00 CARR 2201.1, .2, .4, 2202.1, .2, .3, 2204.1—.5, 2205.2**

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- (4) "Crop" means any vegetative cover;
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- (6) "Litter" means byproducts associated with the confinement of livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof;

(7) "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and poultry;

(8)

(A) "Nutrient" means a substance or recognized plant nutrient, element, or compound that is used or sold for its plant-nutritive content or its claimed nutritive value.

(B) "Nutrient" includes substances in litter, compost as fertilizer, commercially manufactured chemical and organic fertilizers, sewage sludge, and combinations thereof;

(9) "Nutrient application" means the process by which humans apply nutrients to soil or associated crops;

(10) "Nutrient applicator" means any person that applies nutrients to soil or associated crops;

(11) "Nutrient management plan" means a plan prepared to assist landowners and operators in the management of fertilizers, litter, sewage sludges, compost, and other nutrient sources for maximum soil fertility and protection of the waters within the state;

(12) "Nutrient surplus area" means an area declared by § 15-20-1104 in which the soil concentration of one (1) or more nutrients is so high or the physical characteristics of the soil or area are such that continued application of the nutrient to the soil could negatively impact soil fertility and the waters within the state;

(13) "Person" means any individual, partnership, company, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;

(14) "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds;

(15)

(A) "Poultry feeding operation" means any lot or facility where two thousand five hundred (2,500) or more poultry are housed or confined and fed or maintained on any one (1) day in the preceding twelve-month period.

(B) Multiple poultry houses within a reasonable proximity to one another under the control of one (1) owner shall be considered one (1) facility;

(16) "Poultry litter management plan" means the plan for utilization of litter by poultry feeding operations pursuant to § 15-20-1108;

(17) "Protective rate" means the agronomic rate or other rate as determined by the commission of a designated nutrient that provides for proper crop utilization and prevention of significant impact to waters within the state; and

(18) "Waters within the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this state or any portion of the state.

**15-20-1108. Poultry litter management plan.**

(a)

(1) Poultry litter management plans shall be approved by the board of directors of the conservation district where a majority of the land to which the poultry litter management plan applies is located.

(2) The person requesting a poultry litter management plan may appeal the poultry litter management plan's disapproval or any of the poultry litter management plan's provisions to the Executive Director of the Arkansas Natural Resources Commission.

(b)

(1) Poultry feeding operations within a surplus nutrient area shall develop and implement a poultry litter management plan acceptable to the Arkansas Natural Resources Commission.

(2) The person that develops the poultry litter management plan shall have obtained certification from the commission in planning.

(3) If the commission determines it to be beneficial, the poultry litter management plan may be a part of a nutrient management plan.

(c) At a minimum, the poultry litter management plan shall contain a:

(1) Periodic poultry litter nutrient content analysis component;

(2) Poultry litter utilization component providing for the proper utilization of the litter produced, including provisions ensuring that:

(A) Land application within a nutrient surplus area is in accordance with a nutrient management plan or at a rate not to exceed the protective rate;

(B) Land application outside a nutrient surplus area is in a method and at a rate acceptable to the commission; and

(C) Litter not land-applied is converted to a nonnutrient use or other use acceptable to the commission; and

(3) Records component that requires the owner of the poultry feeding operation to maintain sufficient records at the site of the poultry feeding operation to determine poultry litter utilization and compliance with the other portions of the poultry litter management plan.

(d) The commission may accept a plan or permit prepared to comply with federal law as a poultry litter management plan if the plan or permit substantially meets the requirements of this section.

(e) An approved poultry litter management plan shall constitute a permit to apply nutrients consistent with the poultry litter management plan.

**15-20-1109. Sale or transfer of litter.**

(a) Upon sale or transfer of poultry litter from a poultry feeding operation within a nutrient surplus area to any user, the poultry feeding operation shall not be responsible for the ultimate utilization of the poultry litter.

(b) Any person receiving poultry litter from a poultry feeding operation within a nutrient surplus area shall utilize the poultry litter in compliance with the poultry litter management plan or other method of utilization that complies with the requirements of this subchapter.

**15-20-1111. Implementation.**

(a)

(1) The Arkansas Natural Resources Commission may develop all regulations necessary to implement this subchapter.

(2) Regulations shall be adopted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) The commission may delegate portions of the program for implementation to the Executive Director of the Arkansas Natural Resources Commission or conservation districts, or both.

(c)

(1) The commission may defer the requirements of §§ 15-20-1106 -- 15-20-1108 for up to two (2) years after declaration as a nutrient surplus area to allow the development of nutrient management plans and poultry litter management plans and implementation of alternative use plans in order that persons affected may come into compliance with this subchapter.

(2) The commission may further defer the requirements of §§ 15-20-1106 -- 15-20-1108 if it determines that there is no alternative use for litter or there are no readily available, affordable alternative nutrient supplies for which litter has been used.

### **15-20-1112. Enforcement.**

(a)

(1) Agents of the Arkansas Natural Resources Commission or a conservation district may enter on private property to determine compliance with this subchapter.

(2)

(A) Entry shall not occur without prior notification of the owner.

(B) Notice shall be given to the owner, operator, or agent in charge of the property at least seventy-two (72) hours before entry.

(3) Documentation of biosecurity measures taken and biosecurity certification received by an inspection agent of the Arkansas Natural Resources Commission or by a conservation district officer, including a biosecurity log book, shall be available to the owner upon request.

(4) Upon notice of disease outbreak by the Arkansas Livestock and Poultry Commission, inspection under this subchapter shall be automatically suspended until notification by the Arkansas Livestock and Poultry Commission that it is safe to resume inspections.

(b) The process for the imposition of administrative penalties under § 15-20-1113 shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

### **Section 2201.1 Purpose**

A. The Arkansas Natural Resources Commission developed this Title to encourage prudent practices regarding the application and management of soil Nutrients and Poultry

Litter to protect and enhance the State's surface water quality while allowing for optimum soil fertility and proper plant growth. The primary goal of this Title is to maintain the benefits derived from the wise use of Poultry Litter, commercial fertilizers, and other soil Nutrients while avoiding unwanted effects from excess Nutrient Applications on the waters within the State. In furtherance of this goal, these Rules provide requirements applicable to Nutrient Surplus Areas, Nutrient Management Plans, and Poultry Litter Management Plans. These rules are designed to protect the waters within the State from adverse effects of excess nutrients while allowing for maximum soil fertility and proper plant growth.

B. The rules in this Title have no effect until January 1, 2006.

### **Section 2201.2 Enabling and Pertinent Legislation**

A. Arkansas Code Annotated §§ 8-4-101 et seq., "Arkansas Water and Air Pollution Control Act."

B. Ark. Code Ann. §§ 15-20-201 et seq., "Arkansas Soil and Water Conservation Commission."

C. Ark. Code Ann. §§ 15-20-901 et seq., "Arkansas Poultry Feeding Operations Registration Act."

D. Ark. Code Ann. §§ 15-20-1001 et seq., "Arkansas Soil Nutrient Management Planner and Applicator Certification Act."

E. Ark. Code Ann. §§ 15-20-1101 et seq., "Arkansas Soil Nutrient Application and Poultry Litter Utilization Act."

F. Ark. Code Ann. §§ 25-15-201 et seq., "Arkansas Administrative Procedure Act."

### **Section 2201.4 Definitions**

As used in this Title, the following terms shall have the definitions below unless otherwise specifically stated herein.

A. "Administrative Consent Order" means a legal agreement signed by the Director and a violator of this title through which the violator agrees to pay a fine, take a required corrective action, refrain from an activity, or a combination of the listed actions. It describes the actions to be taken by all signatories and may be enforced in court.

B. "Arkansas Phosphorus Index" means the risk-based assessment tool referenced in Nutrient Management Plans developed to govern the terms and conditions under which Nutrients may be land-applied. See P. B. DeLaune, P. A. Moore, Jr., D. K. Carman, T. C. Daniel, and A. N. Sharpley; Development and

validation of a Phosphorus Index for pastures fertilized with animal manure [CD-ROM]; International Symposium Addressing Animal Production and Environmental Issues; 2001.

C. "Certified Nutrient Applicator" may refer to either a Certified Commercial Applicator or a Certified Private Applicator and means a person who has been certified by the Commission as competent to apply Nutrients to land pursuant to Emergency Rules Governing the Arkansas Nutrient Management Applicator Certification Program, Title XXI.

D. "Certified Nutrient Planner" means a person who has been certified by the Commission as competent to develop Nutrient Management Plans pursuant to Emergency Rules Governing the Arkansas Nutrient Management Planner Certification Program, Title XX.

E. "Commission" means the Arkansas Natural Resources Commission.

F. "Compost" means a process which biologically stabilizes livestock and poultry mortalities, making them suitable for disposal by Land Application. The process uses a simple mixture of dry Poultry manure (Litter), carcasses, and a bulking agent or aeration medium such as hay or straw. Only enough water is added to keep the material moist and the mixture should never be saturated. Compost does not include composted plant material with no animal carcasses or manure added that is used as a soil amendment and not principally for its Nutrient value.

G. "Conservation District" means a Conservation District created under the Conservation Districts Law, Ark. Code Ann. §§ 14-125-101 et seq.

H. "Crop" means any managed vegetative cover.

I. "Director" means the Executive Director of the Arkansas Natural Resources Commission.

J. "Land Application" means the spreading on or incorporation of Litter into the soil mantle primarily for beneficial purposes.

K. "Litter" means byproducts associated with the confinement of Livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any other combinations thereof.

L. "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and Poultry.

M. "Nutrient" means a substance or recognized plant Nutrient, element or compound that is used or sold for its plant nutritive content or its claimed nutritive value including, without limitation, substances in Litter, compost as fertilizer,



commercially manufactured chemical and organic fertilizers, sewage sludge and combinations thereof.

N. "Nutrient Application" means the process by which Persons apply Nutrients to soil or associated Crops.

O. "Nutrient Applicator" means any Person who applies Nutrients to soil or associated Crops.

P. "Nutrient Management Plan" means a documented record of how Nutrients will be managed on a Nutrient Management Unit and is prepared in accordance with United States Department of Agriculture Natural Resources Conservation Service conservation practice standards for Arkansas to guide and assist landowners and Operators in the use of fertilizers, Litter, sewage sludges, compost and other Nutrient sources for soil fertility and protection of the Waters Within the State.

Q. "Nutrient Management Unit" means the field, group of fields, or other land units, that collectively include all land area on which Nutrients will or may be applied and managed pursuant to a Nutrient Management Plan.

R. "Nutrient Surplus Area" means a defined geographic area, declared by Ark. Code Ann. § 15-20-1104 and described more specifically in Subtitle II of these Rules, which has been determined to be an area in which the soil concentration of one or more Nutrients is so high or the physical characteristics of the soil or area is such that continued application of the Nutrient to the soil could negatively impact soil fertility and the Waters Within the State.

S. "Operator" means the Person(s) with control over the day-to-day operation of, or decision-making authority over, the facility, process, or physical location to which the term is applied.

T. "Person" means any legal entity including, without limitation, any individual, partnership, company, association, fiduciary, corporation, limited liability company, cooperative, or any organized group of persons whether incorporated or not.

U. "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds.

V. "Poultry Feeding Operation" means any lot or facility where two thousand five hundred (2,500) or more Poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple Poultry houses under common ownership are considered to be a single Poultry Feeding

Operation if they adjoin each other or if they share a common area or system for the disposal of wastes.

W. "Poultry Litter Management Plan" means the documented plan for use, disposal, and storage of Litter by Poultry Feeding Operations as further described in Subtitle IV of these Rules.

X. "Protective Rate" or "Arkansas Protective Rate" means the application rate approved by the Commission for designated Nutrients that provides for proper Crop utilization and prevention of significant impact to Waters Within the State.

Y. "Warning Letter" means a written description signed by the Director of a violation of this Title and the necessary corrective action. A Warning Letter cannot be used to assess civil penalties, is not appealable to the Commission, and is not final agency action.

Z. "Waters Within the State" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this State or any portion of this State.

### **Section 2202.1 Declared Nutrient Surplus Areas**

Act 1061 of 2003 (codified at Ark. Code Ann. § 15-20-1104) declared the following areas to be Nutrient Surplus Areas:

1. The Illinois River watershed, included within Benton, Washington, and Crawford counties;
2. The Spavinaw Creek watershed, included within Benton County;
3. The Honey Creek watershed, included within Benton County;
4. The Little Sugar Creek watershed, included within Benton County;
5. The upper Arkansas River watershed, which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County;
6. The Poteau River watershed, included within Scott, Sebastian, and Polk counties;
7. The Mountain Fork of the Little River watershed, included within Polk County; and
8. The upper White River watershed above its confluence with Crooked Creek.

## **Section 2202.2 Geographic Boundaries of Nutrient Surplus Areas**

A. The Commission further defines the geographic boundaries of the designated Nutrient Surplus Areas listed in Section 2202.1 by utilizing the National Datasets for Natural Resource Analysis. Hydrologic Units have been classified based on data compiled by United States Geological Survey, Natural Resources Conservation Service and others. Each hydrologic unit is identified by a unique hydrologic unit code (HUC). Detailed maps and digital coverage of the boundaries are available at the Commission office or District office. Hydrologic unit codes for the Nutrient Surplus Areas are as follows:

1. Illinois River watershed: HUC 11110103
2. Spavinaw Creek watershed: HUC 11070209
3. Honey Creek watershed: HUC 11070206
4. Little Sugar Creek watershed: HUC 11070208
5. Upper Arkansas River watershed (which includes Lee Creek within Crawford and Washington counties, and Massard Creek within Sebastian County): HUC 11110104
6. Poteau River watershed: HUC 11110105
7. Mountain Fork of the Little River watershed: HUC 11140108
8. Upper White River watershed above its confluence with the Buffalo River: HUC 11010001 and HUC 11010003 (excluding coverage under HUC 1101000308, 1101000309, 1101000310, and 110100031108).

B. See Appendix A for general coverage map.

## **Section 2202.3 Requirements Applicable to Nutrient Surplus Areas**

A. Until January 1, 2007, except as provided in Subsection G of this Section, it shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is performed in compliance with a Nutrient Management Plan prepared by a Certified Nutrient Planner or at the Protective Rate set forth in Section 2202.5.

1. After January 1, 2007, any Person applying Nutrients from Poultry Litter to soils or associated Crops within a Nutrient Surplus Area must apply in compliance with a Nutrient Management Plan or Poultry Litter Management Plan.

2. After a soil test with nutrient application recommendations is obtained for lands within a nutrient surplus area, application of commercial fertilizer may continue in compliance with the protective rate after January 1, 2007.

3. After a soil test with nutrient application recommendations is obtained for lands within a Nutrient Surplus Area, the Protective Rate as indicated by the soil test shall constitute a permit to apply Nutrients consistent with the Protective Rate.

B. Except as provided in Subsection G of this Section, it shall be unlawful for any owner or Operator of land within a Nutrient Surplus Area to allow the application of Nutrients to soils or associated Crops on that land unless the Nutrient Application is performed in compliance with a Nutrient Management Plan prepared by a Certified Nutrient Planner or at the Protective Rate set forth in Section 2202.5.

C. It shall be unlawful for any Person to apply Nutrients to soils or associated Crops within a Nutrient Surplus Area unless the Nutrient Application is done in compliance with the time, place, and manner restrictions determined necessary by the Commission and set forth in Section 2202.4.

D. It shall be unlawful for any Poultry Feeding Operation to operate within a Nutrient Surplus Area unless the Poultry Feeding Operation develops and implements a Poultry Litter Management Plan or applies Nutrients at the Protective Rate.

E. Except as provided in Subsection G of this Section, it shall be unlawful for any Person other than a Certified Nutrient Applicator to make a Nutrient Application within a Nutrient Surplus Area unless the person making application is a volunteer or an employee under the direction or control of a Certified Nutrient Applicator.

F. Except as provided in Subsection G of this Section, Nutrient Application within a Nutrient Surplus Area shall be documented in records maintained by the Nutrient Applicator and the owner or Operator of the land where Nutrient Application is made, in sufficient detail to demonstrate that the Nutrient Application was conducted in compliance with these Rules. Such records shall be maintained for a minimum of five years or for such longer period of time as may be required by an approved Nutrient Management Plan, and shall be available for inspection by the Commission or Conservation District employees upon request. Records maintained by commercial fertilizer distributors or applicators may be relied upon to meet this requirement.

G.

1. Nutrient Application within a Nutrient Surplus Area on residential lands of two and one-half (2.5) acres or less ("Residential Nutrient Application") shall be applied at a rate not to exceed the Protective Rate set forth in Section 2202.5 and in compliance with the time, place, and manner restrictions set forth in Section 2202.4, or in compliance with an approved Nutrient Management Plan.

2. A Nutrient Management Plan is not required for Residential Nutrient Application as defined in this Subsection, but may be voluntarily obtained.

3. The landowner or resident making a Residential Nutrient Application, as defined in this Subsection, is not required to be a Certified Nutrient Applicator, but is required to maintain documentation of each Nutrient Application for a minimum of five years sufficient to demonstrate compliance with the Time, Place, and Manner Restrictions in Section 2202.4 and either the Protective Rate requirements in Section 2202.5 or an approved Nutrient Management Plan.

H. Upon written request, the Executive Director may waive any provision of these rules consistent with the purposes of this Title as set forth in Section 2201.1.

I. Persons applying poultry litter to land within the Spavinaw-Eucha Watershed, including Benton County, as defined by *The City of Tulsa et al. v. Tyson Foods, Inc. et al*, No. 01 CV 0900EA(C), (Northern District of Okla. July 16, 2003) must follow any term of that suit in conflict with these rules.

#### **Section 2204.1 Obtaining a Poultry Litter Management Plan**

A. Any Person seeking a Poultry Litter Management Plan should contact the local Conservation District and request information on how to obtain a Plan. The Person seeking a Poultry Litter Management Plan may also contact third parties who have obtained certification from the Commission to develop Plans.

B. A Certified Planner will certify by his signature that each Plan he drafts meets all applicable standards and will provide a copy to the Owner for review. The Certified Planner will also provide a copy of each drafted Plan to the Conservation District where a majority of the facility is located. The Conservation District board will review each Plan to determine whether it meets all applicable standards. If the standards are met, the Conservation District shall approve the Plan and retain one copy. If the Conservation District board does not approve a Plan, it shall provide the Owner written notice of the denial and its basis.

C. An Owner may appeal a Conservation District denial of Plan approval or any provision of a certified and approved Nutrient Management Plan within 90 days by applying in writing to the Executive Director. The Owner must follow the Plan during the appeal process. The Executive Director will consider appeals only when the Owner asserts that the applicable standards were not followed in drafting the Plan or that a Conservation District failed to approve a Plan which meets those standards. The Executive Director may deny the appeal, modify the Plan, or approve the Plan. The Owner may appeal an unfavorable decision to the full Commission upon written application within 30 days. The Commission's decision may be appealed as provided in Section 2206.4.

D. Any Plan obtained by a Person prior to the effective date of these rules meets the requirements of this Title if the Plan was developed using the Arkansas Phosphorus Index.

E. An approved Plan shall constitute a permit to apply Nutrients consistent with the Plan.

### **Section 2204.2 Contents of a Poultry Litter Management Plan**

A. A Poultry Litter Management Plan shall contain sufficient documentation to demonstrate that Litter and associated Nutrients will be managed in compliance with these Rules and in a manner sufficient to protect the Waters Within the State.

B. A proposed Poultry Litter Management Plan shall address the following major elements:

- (1) general site information,
- (2) production information,
- (3) applicable permits and certifications,
- (4) Land Application site information,
- (5) Land Application plans,
- (6) actual activity records,
- (7) mortality disposal procedures, and
- (8) operation and maintenance.

The precise content of a Poultry Litter Management Plan will vary as necessary to meet the needs of the specific Poultry Feeding Operation(s) addressed in the Plan. Unless clearly inapplicable, a Poultry Litter Management Plan shall address all of the items listed under the eight major elements shown below in this Section.

#### 1. General site information

a. Names, phone numbers, and addresses of the owner(s) and Operator(s) of the Poultry Feeding Operation.

b. Location of Poultry Feeding Operation: legal description of all lands and facilities in the Poultry Feeding Operation, driving instructions from the nearest municipality, street address, and emergency 911 coordinates.

- c. Sketch or aerial photograph of Poultry Feeding Operation.
- d. Operation procedures specific to the Poultry Feeding Operation, including an emergency action plan for Litter storage and handling.
- e. Any other information requested by the Commission.

2. Poultry production information

- a. Poultry types, phases of production, and length of confinement for each type.
- b. Animal count and average weight.
- c. Calculated Litter volumes.
- d. Litter storage type, volume, and approximate time period of storage.

3. Applicable permits and certifications

- a. Federal, State, or local permits or ordinances, if applicable.
- b. Operator or manager certifications, if applicable.
- c. Certification number of Certified Nutrient Planner responsible for developing Poultry Litter Management Plan.
- d. Records of inspections or site assessments, if applicable.

4. Land Application site information

- a. Date Plan was prepared.
- b. Written agreements, if any, relating to Litter transfers and Land Application.
- c. Aerial maps of Land Application areas.
- d. Individual field maps with marked conservation features, setbacks, buffers, waterways, Poultry houses or facilities, surface water features, and environmentally sensitive areas such as sinkholes, wells, gullies, tile inlets, etc.
- e. Landowner and Operator names, addresses, and phone numbers.

- f. Eight-digit watershed codes for the Land Application sites.
- g. Specific and unique field identification codes, if applicable.
- h. Land use designation, if applicable.
- i. Soil map with appropriate interpretations.
- j. Calculations, assumptions, interpretations, topographic maps, and narrative description demonstrating appropriate application of the Phosphorus Index in development of the proposed Land Application rates.
- k. Land treatment practices planned, applied, and level of treatment provided.

#### 5. Land Application

- a. Crop types.
- b. Application equipment descriptions and methods of application.
- c. Expected application seasons and estimated days of application per season.
- d. Proposed Land Application rates; i.e., amounts per acre (volume in gallons or tons per acre, and pounds of plant available nitrogen, phosphorus as P205, and potassium as K20 per acre), and detailed information on the calculations, assumptions, and interpretations used to determine application rates.
- e. Estimate of acres needed to apply Litter generated by the Poultry Feeding Operation, consistent with application of the Phosphorus Index and respecting any guidelines published for nitrogen and other Nutrient loading limits.

#### 6. Actual activity records

- a. Soil tests --not more than five years old.
- b. Litter test results --not more than five years old.
- c. Planned and applied rates, methods of application, and timing (month and year) of all sources of Nutrients applied.
- d. Current and planned Crop rotation.



- e. Actual Crop yield and harvest from Land Application sites.
- f. Records of internal inspections for Litter storage, handling, and application system components.
- g. Records of any spill events.
- h. Records of all Land Applications, both within and outside of Nutrient Surplus Areas.
- i. For any Litter not land applied, records demonstrating that the Litter was converted to a non-nutrient use or other use acceptable to the Commission.

7. Mortality disposal

- a. Plan for mortality disposal including approved site for catastrophic die-off.
- b. Methods and equipment used to implement the disposal plan, including any applicable permits.

8. Operation and Maintenance

- a. Reasonably detailed operation and maintenance procedures and schedules for all aspects of the Poultry Litter Management Plan including, by way of example, Litter storage and handling systems, Land Application, application equipment, soil and Litter sampling techniques, etc.
- b. Description of recordkeeping procedures including records for date and location of each Land Application, amount of Litter or other Nutrients applied, phosphorus content of the soil, phosphorus content of Litter or other Nutrient source, application rates used, source of Litter or other Nutrients, and total acreage of Land Applications.
- c. Designation of the annual growing period that will be used for purpose of periodic review and revision of the Plan. See Section 2204.3.

**Section 2204.3 Review and Revision of Poultry Litter Management Plans**

- A. Poultry Litter Management Plans shall be reviewed by the owner or Operator at least annually to determine if adjustments or modifications are needed.

B. Plans shall be modified if facilities are expanded, total acreage receiving Nutrient Application changes, use of acreage changes, or facilities are under control of a different Operator.

C. Poultry Litter Management Plans shall be reviewed thoroughly by a Certified Nutrient Planner every five years, and a report of the five-year review shall be provided to the Commission within one hundred twenty (120) days following the end of the fifth annual growing period identified in the Plan. The five-year review shall update the existing Plan with recent soil and Litter testing data. All other information required to be included in a Poultry Litter Management Plan in Section 2204.2 of this Subtitle shall be updated with current information.

#### **Section 2204.4 Recordkeeping Requirements**

A. Records required to be compiled or kept by these Rules or by the provisions of any approved Poultry Litter Management Plan shall be maintained by the owner and Operator of the Poultry Feeding Operation for a minimum period of five years and shall be available for inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

B. Records required to be compiled or kept by these Rules or by the provisions of any approved Poultry Litter Management Plan relating to the activities of a Nutrient Applicator shall be maintained by the Nutrient Applicator for a minimum period of five years and shall be available for inspection by the Commission or Conservation District employees upon reasonable request. Such records shall not be public records.

C. Owners, Operators, and Applicators may rely on records maintained by commercial fertilizer distributors and applicators to meet these requirements.

#### **Section 2204.5 Comprehensive Nutrient Management Plans**

If an owner or operator obtains a comprehensive nutrient management plan properly developed by the United States Department of Agriculture, the Arkansas Natural Resources Commission, or a Conservation District and based on the Arkansas Phosphorus Index, then he is not required to obtain a Nutrient Management Plan, a Poultry Litter Management Plan, or apply at the Protective Rate.

#### **Section 2205.1 No Responsibility of Transferor for Use of Litter After Transfer**

Upon the sale or transfer of Litter from a Poultry Feeding Operation within a Nutrient Surplus Area to any user, the Poultry Feeding Operation shall not be responsible for the use of the Litter by the purchaser or other transferee. Notwithstanding the foregoing, the Poultry Feeding Operation remains responsible for use of the Litter in compliance with this Title until actual possession of the Litter transfers to the purchaser or transferee and the Litter is removed from the Poultry Feeding Operation premises.

## **Section 2205.2 Responsibility of Litter User**

Any Person receiving Litter from a Poultry Feeding Operation within a Nutrient Surplus Area who intends to use the Litter for a purpose other than Land Application must use the Litter in a manner approved by the Commission. If the Person receiving the Litter intends to transfer the Litter to others, the Person must keep transfer records.

### **3) Ark. Code Ann. §§ 8-4-201, 202, 203, 8-6-1801; 014 04 CARR 5.101—5.201, 5.301—.303, 5.405—.407, 5.601, 5.901**

#### **8-4-201. Powers and duties of department and commission generally.**

(a) The Arkansas Department of Environmental Quality or its successor is given and charged with the following powers and duties:

(1) Enforcement of Laws. To administer and enforce all laws and regulations relating to the pollution of any waters of the state;

(2) Investigations and Surveys.

(A) To investigate the extent, character, and effect of the pollution of the waters of this state; and

(B) To conduct investigations, research, surveys, and studies and gather data and information necessary or desirable in the administration or enforcement of pollution laws;

(3) Program. To prepare a comprehensive program for the elimination or reduction of the pollution of the waters of this state, including application for and delegation of federal regulatory programs; and

(4) Plans of Disposal Systems. To require to be submitted and to approve plans and specifications for disposal systems, or any part of them, and to inspect the construction thereof for compliance with the approved plans thereof.

(b) The Arkansas Pollution Control and Ecology Commission is given and charged with the following powers and duties:

(1)

(A) Promulgation of rules and regulations, including water quality standards and the classification of the waters of the state and moratoriums

or suspensions of the processing of types or categories of permits, implementing the substantive statutes charged to the department for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report that shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

(2) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;

(3) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;

(4) In the case of permitting or grants decisions, provide the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;

(5) In the case of an administrative enforcement or emergency action, provide the right to contest any such action initiated by the director;

(6) Instruct the director to prepare such reports or perform such studies or investigations as will advance the cause of environmental protection in the state;

(7) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor; and

(8) Upon a majority vote, initiate review of any director's decision.

**8-4-202. Rules and regulations.**

(a) The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules and regulations implementing or effectuating the powers and duties of the Arkansas Department of Environmental Quality and the commission under this chapter.

(b) Without limiting the generality of this authority, these rules and regulations may, among other things, prescribe:

(1) Effluent standards specifying the maximum amounts or concentrations and the physical, thermal, chemical, biological, and radioactive nature of the contaminants that may be discharged into the waters of this state or into publicly owned treatment facilities;

(2) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, including publicly owned treatment facilities and industrial discharges into such facilities, the collection of samples, and the collection, reporting, and retention of data resulting from such monitoring; and

(3) Water quality standards, performance standards, and pretreatment standards.

(c)

(1) Any person shall have the right to petition the commission for the issuance, amendment, or repeal of any rule or regulation. Within sixty (60) days from the date of the submission of a petition, the commission shall either institute rulemaking proceedings or give the petitioner written notice denying the petition, together with a written statement setting out the reasons for denial.

(2) In the event the petition is denied, the decision of the commission will be deemed a final order subject to appeal as provided in subdivision (d)(5) of this section.

(3) The record for appeal in a petition denial shall consist of the petition for rulemaking filed with the commission, the commission's written statement setting out the reasons for denial, and any document referenced therein.

(d)

(1)

(A) Before the adoption, amendment, or repeal of any rule or regulation or before suspending the processing of a type or category of permits or the declaration of a moratorium on a type or category of permits, the commission shall give at least thirty (30) days' notice of its intended action.

(B) The notice shall include:

- (i) A statement of the substance of the intended action;
- (ii) A description of the subjects and issues involved; and
- (iii) The time, place, and manner in which interested persons may make comments.

(C) The notice shall be mailed or emailed to all persons who have requested advance notice of rulemaking proceedings.

(D) The notice shall also be published at least two (2) times in newspapers having a general statewide circulation and in the appropriate industry, trade, or professional publications the commission may select.

(2)

(A) All interested parties shall be afforded a reasonable opportunity to:

- (i) Submit written data, information, views, opinions, and arguments; and
- (ii) Make oral statements concerning the proposed rule, regulation, suspension, or moratorium prior to a decision being rendered by the commission.

(B) All written material, photographs, published material, and electronic media received by the commission shall be preserved and, along with a record of all oral comments made at any public hearing, shall become an element of the record of rulemaking.

(C) Any person who considers himself or herself injured in his or her person, business, or property by final agency action under this section shall be entitled to judicial review of the action under this section.

(3)

(A) If, in response to comments, the commission amends a proposed regulation to the extent that the rule would have an effect not previously

expressed in the notice required by subdivision (d)(1) of this section, the commission shall provide another adequate public notice.

(B) Subdivision (d)(3)(A) of this section shall not, however, require a second public notice if the final regulation is a logical outgrowth of the regulation proposed in the prior notice.

(4) The commission shall compile and maintain a record of rule-making that shall contain:

(A)

(i) A copy of all notices described in this subsection and a concise general statement of the basis and purpose of the proposed rule, which shall include a written explanation of the necessity of the regulation and a demonstration that any technical regulation or technical standard is based on generally accepted scientific knowledge and engineering practices.

(ii) For any standard or regulation that is identical to a regulation promulgated by the United States Environmental Protection Agency, this portion of the record may be satisfied by reference to the Code of Federal Regulations.

(iii) In all other cases, the department must provide its own justification with appropriate references to the scientific and engineering literature or written studies conducted by the department;

(B) Copies of all written material, photographs, published materials, electronic media, and the record of all oral comments received by the commission during the public comment period and hearings; and

(C) A responsive summary that groups public comments into similar categories and explains why the commission accepted or rejected the rationale of each category.

(5)

(A) The decisions of the commission with regard to this section are final and may be judicially appealed to the appropriate circuit court as provided in § 8-4-222 within thirty (30) days after filing with the office of the Secretary of State by persons that have standing as set out in subdivision (d)(2) of this section.

(B) The record for review shall consist of a copy of the regulation and the record of rulemaking described in subdivision (d)(4) of this section.

(C) Rule changes, suspensions, or moratoria on types of categories of permits adopted by the commission shall be stayed and not take effect during the pendency of the appeal, except as specified in subsection (e) of this section.

(e)

(1) If the commission determines that imminent peril to the public health, safety, or welfare requires immediate change in the rules or immediate suspension or moratorium on categories or types of permits, it may, after documenting the facts and reasons, declare an emergency and implement emergency rules, regulations, suspensions, or moratoria.

(2) No rule, regulation, suspension, or moratorium adopted under an emergency declaration shall be effective for longer than one hundred eighty (180) days.

(3) The imminent loss of federal funding, certification, or authorization for any program administered by the department shall establish a prima facie case of imminent peril to the public health, safety, or welfare.

#### **8-4-203. Permits generally – Definitions.**

(a) The Arkansas Department of Environmental Quality or its successor is given and charged with the power and duty to issue, continue in effect, revoke, modify, or deny permits, under such conditions as it may prescribe:

(1) To prevent, control, or abate pollution;

(2) For the discharge of sewage, industrial waste, or other wastes into the waters of the state, including the disposal of pollutants into wells; and

(3) For the installation, modification, or operation of disposal systems or any part of them.

(b)

(1)

(A) The department shall not issue, modify, renew, or transfer a National Pollutant Discharge Elimination System permit or state permit for a nonmunicipal domestic sewage treatment works without the permit applicant first:



- (i) Paying the trust fund contribution fee required under subdivision (b)(4) of this section;
- (ii) Submitting the assessment required by subdivision (b)(1)(D) of this section; and
- (iii) Certifying that the permit applicant has complied with applicable local ordinances and regulations, including without limitation:
  - (a) Local zoning ordinances;
  - (b) Local planning authority regulations; and
  - (c) Local permitting requirements.

(B) As used in this section, "nonmunicipal domestic sewage treatment works" means a device or system operated by an entity other than a city, town, or county 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.

(C) The following are specifically exempted from the requirements of this subsection:

- (i) State or federal facilities;
- (ii) Schools;
- (iii) Universities and colleges;
- (iv) Entities that continuously operate due to a connection with a city, town, or county; and
- (v) A commercial or industrial entity that treats domestic sewage from its operations and does not accept domestic sewage from other entities or residences.

(D) Each application for the initial permit and any subsequent permit renewal, modification, or transfer for a nonmunicipal domestic sewage treatment works submitted under this section shall be accompanied by an assessment developed by a professional engineer licensed by the state that includes:

- (i) A cost estimate for a third party to operate and maintain the nonmunicipal domestic sewage treatment works for five (5) years;
- (ii) A list of all necessary capital expenditures, system upgrades, or significant repairs and a milestone schedule for completion within five (5) years; and
- (iii) A financial plan that demonstrates to the department's satisfaction the permittee's financial ability to operate and maintain the nonmunicipal domestic sewage treatment works each year for five (5) years.

(E)

- (i) Except as provided under subdivision (b)(1)(E)(ii) of this section, the department shall not issue, renew, or transfer permit coverage for nonmunicipal domestic sewage treatment works to property owners' associations or homeowners' associations after January 1, 2018.
- (ii) A property owners' association or homeowners' association with permit coverage before December 31, 2017, may retain permit coverage if the property owners' association or homeowners' association complies with this section.

(2) Until January 1, 2016, 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:

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

- (i) Maintained the nonmunicipal domestic sewage treatment works in continuous operation;
- (ii) 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:
  - (a) All discharge monitoring reports;
  - (b) 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;

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

(d) 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;

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

(iv)

(a) Remained financially solvent, which shall be demonstrated by either:

(1) The nonmunicipal domestic sewage treatment works' federal tax returns for the five (5) years preceding the application for a renewal permit and a sworn affidavit from a corporate official or other responsible official representing the nonmunicipal domestic sewage treatment works that lists all assets and liabilities for the nonmunicipal domestic sewage treatment works; or

(2) An independent certified public accountant's report on the owner's or operator's independently reviewed financial statements.

(b) The review of financial statements under subdivision (b)(2)(A)(iv)(a)(2) 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

(v) 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

(B) For a new permit:

(i) 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

(ii) The applicant has shown a history of financial responsibility and compliance with regulatory requirements.

(3) The department may withdraw a reduction or waiver granted under this subsection at any time if the permittee has a permit violation in three (3) or more consecutive discharge monitoring periods.

(4)

(A) A permittee shall pay the trust fund contribution fee determined by the department under this subdivision (b)(4) to the department.

(B)

(i) The department shall determine the required initial and annual trust fund contribution fees for each nonmunicipal domestic sewage treatment works based on each nonmunicipal domestic sewage treatment works' design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit and existing and projected number of residential end users.

(ii)

(a) The department shall require an initial trust fund contribution fee for each construction permit for a new nonmunicipal domestic sewage treatment works or any modification to an existing nonmunicipal domestic sewage treatment works resulting in an increase in design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit.

(b) The initial trust fund contribution fee required by the department for a new nonmunicipal domestic sewage treatment works is ten percent (10%) of the estimated cost of construction of the new nonmunicipal domestic sewage treatment works as certified by the engineer of record.

(c) The initial trust fund contribution fee required by the department for modifications to existing nonmunicipal domestic sewage treatment works is ten percent (10%) of

the estimated cost of construction for the modification of the nonmunicipal domestic sewage treatment works as certified by the engineer of record.

(d) The department shall reduce the initial trust fund contribution fee if:

(1) The nonmunicipal domestic sewage treatment works is subject to an enforcement action; and

(2) The corrective actions approved by the department would require the nonmunicipal domestic sewage treatment works to make an initial trust fund contribution.

(e) The department shall not require an initial trust fund contribution fee if the design treatment capacity according to the National Pollutant Discharge Elimination System permit or the state permit is not increased.

(iii) The annual trust fund contribution fee required by the department shall not exceed one thousand dollars (\$1,000) per year for no-discharge permits or five thousand dollars (\$5,000) per year for discharge permits.

(iv)

(a) Except as otherwise provided in this subsection, a nonmunicipal domestic sewage treatment works may apply for reimbursement for a maximum of fifty percent (50%) of the costs for capital expenditures necessary to maintain permit compliance made to the nonmunicipal domestic sewage treatment facility in the previous five (5) years if:

(1) Funding is available and appropriated; and

(2) The department has issued that nonmunicipal domestic sewage treatment facility's third permit renewal following its initial trust fund contribution.

(b) Applications for reimbursement under this subdivision (b)(4)(B) shall include a statement certified by a professional engineer licensed by the State of Arkansas identifying the necessary capital costs expended.

(v) Reimbursements from the Nonmunicipal Domestic Sewage Treatment Works Trust Fund are subject to the following restrictions:

(a) Over the lifetime of a nonmunicipal domestic sewage treatment facility, the reimbursement to a nonmunicipal domestic sewage treatment works shall not exceed seventy-five percent (75%) of that nonmunicipal domestic sewage treatment facility's initial trust fund contribution fee;

(b) If the Director of the Arkansas Department of Environmental Quality determines that a nonmunicipal domestic sewage treatment works is in a state of chronic noncompliance, that nonmunicipal domestic sewage treatment works shall not receive reimbursement from the Nonmunicipal Domestic Sewage Treatment Works Trust Fund; and

(c) The department shall reimburse a nonmunicipal domestic sewage treatment works based on a pro rata share of each submitted request compared to the total remaining funding available if there are insufficient moneys available in a fiscal year to make reimbursements for all submitted requests under this subsection after:

(1) Deducting the moneys required to make payments to third-party contractors hired by the department from the fund;

(2) Calculating the total remaining funding available; and

(3) Allocating the moneys available for reimbursement to each applicant for reimbursement.

(vi) The Arkansas Pollution Control and Ecology Commission may promulgate regulations to implement this subsection.

(C) The trust fund contribution fee required under this subdivision (b)(4):

(i) May be collected in conjunction with any other permit fees;

(ii) Shall be paid before a permit is issued or renewed; and

(iii) Shall be deposited into the fund.

(D) If the total amount in the fund equals or exceeds two million one hundred thousand dollars (\$2,100,000), additional trust fund contribution fees shall not be collected by the department until the total amount of the fund equals or is less than one million five hundred thousand dollars (\$1,500,000), at which time the collection of required trust fund contribution fees shall resume.

(5)

(A) A permittee is responsible for ensuring that the required trust fund contribution fee is received by the department by the due date determined by the department.

(B) If the department does not timely receive the required trust fund contribution fees for a nonmunicipal domestic sewage treatment works, the department may initiate procedures to suspend or revoke the permit under which the nonmunicipal domestic sewage treatment works is operated.

(C) A permit applicant's or permit transfer applicant's failure to pay the required trust fund contribution fee assessed by the department under this section is:

(i) Grounds for denying the permit or the permit transfer; and

(ii) A violation of this chapter and subjects the applicant to the penalties described in § 8-4-103.

(6) Sanctions for violating this subsection may include without limitation civil penalties and suspension or revocation of a permit.

(7) The department may seek cost recovery from an owner or operator and reimbursement to the fund of any moneys expended under this section, including without limitation the institution of a civil action against the owner or operator.

(8) The department shall not directly operate or be responsible for the operation of a nonmunicipal domestic sewage treatment works.

(9)

(A) The director or the director's designee may send a signed statement to each water service provider that serves all or a portion of the service area of a nonmunicipal domestic sewage treatment works certifying that the director finds that the nonmunicipal domestic sewage treatment works:

(i) Is the subject of an enforcement action by the department;

(ii) Has not complied with the requirements of this section, including payment of the nonmunicipal domestic sewage treatment works trust fund contribution; or

(iii) Otherwise failed to comply with its permit.

(B) The department shall include a legal description of the service area for the nonmunicipal domestic sewage treatment works with the signed statement under subdivision (b)(9)(A) of this section.

(C) Upon receipt of a signed statement that includes a legal description of the service area for the nonmunicipal domestic sewage treatment works, the water service provider shall not establish new connections or initiate service to existing connections for water service in the service area of the nonmunicipal domestic sewage treatment works as defined by the legal description.

(D) If the director or the director's designated representative finds that the nonmunicipal domestic sewage treatment works is no longer subject to an enforcement action or has remedied the noncompliance that formed the basis for the signed statement under subdivision (b)(9)(A) of this section, the director or the director's designated representative shall send a signed statement of the finding to each water service provider that received the prior statement.

(E) Upon receipt of the signed statement required under subdivision (b)(9)(D) of this section, the water service provider may resume installation of new connections or resume initiation of service to existing connections for water service.

(c)

(1)

(A)

(i) All facilities that engage in land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations shall be closed in a manner that ensures protection of human health and the environment.

(ii) As used in this subsection, "land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations" means land farming through the controlled and repeated application of drilling fluids to a soil surface or the



practice of receiving and storing said fluids from offsite for waste management.

(iii) Surface facilities associated with Class II injection wells are specifically excluded from the requirements of this subsection.

(iv) Land applications at the drilling or exploration site that are authorized under any general permit issued by the department are excluded from the requirements of this subsection.

(B) By October 1, 2009, each existing permitted facility regulated under this subsection shall submit to the department the following:

(i) A plan to close the permitted facility and make any site restoration deemed necessary by the department;

(ii) A detailed cost estimate to close and restore the permitted facility that meets the requirements of this subsection and is approved by the department; and

(iii) A financial mechanism that demonstrates to the department's satisfaction the permittee's financial ability to ensure adequate closure and any necessary restoration of the permitted facility in accordance with the requirements of this subsection.

(C) The department shall not issue, modify, or renew a permit for facilities regulated under this subsection without the permit applicant first demonstrating to the department's satisfaction the applicant's financial ability to ensure adequate closure and any necessary restoration of the permitted facility in accordance with the requirements of this subsection.

(D)

(i) The amount of any financial assurance required under this subsection shall be equal to or greater than the detailed cost estimate for a third party to close the permitted facility in accordance with closure plans approved by the department.

(ii) The detailed cost estimate shall be prepared by an independent professional consultant.

(iii) On or before August 15 of each year, a permittee shall submit to the department for approval a detailed cost estimate to close and restore the permitted facility in accordance with closure plans that have been approved by the department.

(E)

(i) For new permits, the applicant shall submit to the department for approval a detailed cost estimate to close and restore the facility based on the proposed operation and capacity of the facility from the date the permit is issued through the following October 1.

(ii) For renewal or modification applications, the permittee shall submit to the department for approval a detailed cost estimate to close and restore the permitted facility based on closure plans that have been approved by the department.

(F)

(i) For each permit, the financial assurance mechanism shall be renewed on October 1 of each year.

(ii) For each permit, documentation that the required financial assurance mechanism has been renewed beginning October 1 of that year shall be received by the department by September 15 of each year or the department shall initiate procedures to:

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

(b)

(1) Suspend or revoke the permit under which the facility is operated.

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

(iii) The permittee is responsible for ensuring that documentation of annual renewal is received by the department by its due date.

(2) The permittee or applicant shall demonstrate financial ability to adequately close or restore the land application or storage facility by:

(A) Obtaining insurance that specifically covers closure and restoration costs;

(B) Obtaining a letter of credit;

(C) Obtaining a bond or other surety instrument;

(D) Creating a trust fund or an escrow account;

(E) Combining any of the instruments in subdivisions (c)(2)(A)-(D) of this section; or

(F) Any other financial instrument approved by the director.

(3) A financial instrument required by this subsection shall:

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

(B) Provide that the financial instrument cannot be canceled without sixty (60) days' prior written notice addressed to the department's legal division chief as evidenced by a signed, certified mail with a return receipt request; and

(C) Be reviewed by the department upon receipt of the cancellation notice to determine whether to initiate procedures to revoke or suspend the facility's permit and whether to initiate procedures to take possession of the funds guaranteed by the financial assurance mechanism.

(4) Before the department may release a financial assurance mechanism, the department shall receive a certification by a professional engineer that the permitted facility has been closed and restored in accordance with closure plans that have been approved by the department.

(5) The department is not responsible for the operation, closure, or restoration of a facility regulated under this subsection.

(d)

(1) When an application for the issuance of a new permit or a major modification of an existing permit is filed with the department, the department shall cause notice of the application to be published in a newspaper of general circulation in the county in which the proposed facility is to be located.

(2) The notice required by subdivision (d)(1) of this section shall advise that any interested person may request a public hearing on the permit application by giving the department a written request within ten (10) days of the publication of the notice.

(3)

(A) If the department determines that a hearing is necessary or desires such a hearing, the department shall schedule a public hearing.

(B)

(i) If the department schedules a public hearing, the department shall notify the applicant and all persons who have submitted comments of the date, time, and place of the public hearing.

(ii) The notice shall be provided using one (1) of the following methods based on the contact information available for the applicant or the person and the director's discretion:

(a) First class mail; or

(b) Email.

(e)

(1)

(A) Whenever the department proposes to grant or deny any permit application, it shall cause notice of its proposed action to be published in either:

(i) A newspaper of general circulation in the county in which the facility that is the subject of the application is located; or

(ii) In the case of a statewide permit, in a newspaper of general circulation in the state.

(B) The notice shall afford any interested party thirty (30) calendar days in which to submit comments on the proposed permit action.

(C)

(i) At the conclusion of the public comment period, the department shall provide a final written permitting decision regarding the permit application.

(ii) The final written permitting decision shall be published on the department's website.

(iii) The department shall provide the applicant the final permitting decision using one (1) of the following methods based on the contact information available and the director's discretion:

(a) First class mail; or

(b) Email.

(iv) The department shall provide notice of the final permitting decision to all persons who have submitted comments using one (1) of the following methods based on the contact information available and the director's discretion:

(a) First class mail; or

(b) Email.

(2)

(A)

(i) The department's final decision shall include a response to each issue raised in any public comments received during the public comment period. The response shall manifest reasoned consideration of the issues raised by the public comments and shall be supported by appropriate legal, scientific, or practical reasons for accepting or rejecting the substance of the comment in the department's permitting decision.

(ii) For the purposes of this section, response to comments by the department should serve the roles of both developing the record for possible judicial review of an individual permitting action and as a record for the public's review of the department's technical and legal interpretations on long-range regulatory issues.

(iii) Nothing in this section, however, shall be construed as limiting the department's authority to raise all relevant issues of regulatory concern upon adjudicatory review of the commission of a particular permitting action.

(B)

(i) In the case of any discharge limit, emission limit, environmental standard, analytical method, or monitoring requirements, the record of the proposed action and the response shall include a written explanation of the rationale for the proposal, demonstrating that any technical requirements or standards are based upon generally accepted scientific knowledge and engineering practices.

(ii) For any standard or requirement that is identical to an applicable regulation, this demonstration may be satisfied by reference to the regulation. In all other cases, the department must provide its own justification with appropriate reference to the scientific and engineering literature or written studies conducted by the department.

(f)

(1) All costs of publication of notices of applications and notices of proposals to grant permits under this section shall be the responsibility of the applicant.

(2) All costs of publication of notices of proposals to deny a permit under this section shall be the responsibility of the department.

(3) Any moneys received under this subsection shall be classified as refunds to expenditures.

(g) Only those persons that submit comments on the record during the public comment period and the applicant shall have standing to appeal the decision of the department to the commission.

(h)

(1) Permits for the discharge of pollutants into the waters of the state or for the prevention of pollution of the waters of the state shall remain freely transferable if the applicant for the transfer:

(A) Notifies the director at least thirty (30) days in advance of the proposed transfer date;

(B) Submits a disclosure statement as required under § 8-1-106;

(C) Provides any replacement financial assurance required under this section; and

(D) Ensures that all past and currently due annual permit fees and the trust fund contribution fees for the nonmunicipal domestic sewage treatment works have been paid.

(2) Only the reasons stated in §§ 8-1-103(4), 8-1-106(b)(1), 8-1-106(c), and this section constitute grounds for denial of a transfer.

(3) The permit is automatically transferred to the new permittee unless the director denies the request within thirty (30) days of the receipt of the disclosure statement.

(i) In the event of voluminous comments, including without limitation a petition, the department may require the designation of a representative to accept any notices required by this section.

(j) The notice provisions of subsections (d) and (e) of this section do not apply to permit transfers or minor modifications of existing permits.

(k) This section in no way restricts local and county government entities from enacting more stringent ordinances regulating nonmunicipal domestic treatment sewage systems in Arkansas.

(l) The commission may promulgate rules to establish a permit-by-rule. A permit-by-rule is subject to the public notice requirements and procedural provisions under § 8-4-202 et seq. but is not subject to the public notice requirements and procedural provisions under this section and §§ 8-4-204 and 8-4-205.

(m)

(1)

(A)

(i) The department may issue general permits under subsection (a) of this section.

(ii) A general permit is a statewide permit for a category of facilities or sources that:

(a) Involve the same or substantially similar types of operations or activities;

(b) Discharge or release the same type of wastes or engage in the same type of disposal practices;

(c) Require the same limitations, operating conditions, or standards;

(d) Require the same or similar monitoring requirements; and

(e) In the opinion of the director, may be regulated under a general permit.

(B)

(i) Facilities or sources eligible to construct or operate under a general permit may obtain coverage by submitting a notice of intent to the department.

(ii) The director may require a person who has been granted coverage under a general permit to apply for and obtain an individual permit.

(2)

(A) A general permit is subject to the public notice requirements for statewide permits and the procedures under subsection (e) of this section.

(B) The department shall pay the costs of publication of notice of a draft permitting decision to issue a general permit.

(C) General permit coverage is not transferable unless the general permit provides for transfer.

(3)

(A)

(i) Before the submittal to public comment of a general permit that has not been previously issued, the department shall consider the economic impact and environmental benefit of the general permit and its terms and conditions upon the people of the State of Arkansas, including those entities that may apply for coverage under the general permit.

(ii) This requirement does not apply to general permits or terms or conditions that adopt the language of state or federal statutes or regulations without substantive change.

(B) If the terms and conditions of a previously issued general permit are revised upon renewal, the economic impact and environmental benefit of only the proposed changes shall be considered.

(C) A general permit for which costs are specifically prohibited from being considered by state or federal law or regulation is exempt from the requirements of this subsection.

(D) The department may rely upon readily available information for its consideration of the economic impact and environmental benefit of the general permit and its terms and conditions.



(4)

(A) Only those persons that submit comments on the record during the public comment period shall have standing to appeal the decision of the department to the commission.

(B) The final permitting decision of the department on the general permit is subject to a hearing before the commission under §§ 8-4-205, 8-4-212, 8-4-213, 8-4-214, and the administrative procedures promulgated by the commission.

(5)

(A)

(i) When a general permit includes an expiration date later than July 1, 2012, the department shall publish the notice of intent to renew or not renew the general permit at least three hundred sixty-five (365) days before the expiration of the general permit.

(ii) When a general permit includes an expiration date earlier than July 1, 2012, the department shall publish the notice of intent to renew or not renew the general permit as soon as reasonably possible.

(B) The department shall publish its final permitting decision to renew or not renew the general permit at least one hundred eighty (180) days before the expiration date of the general permit.

(C) If the general permit expires before the final decision to renew or not renew the general permit, the terms and conditions of the general permit shall remain in effect, and all persons who obtained coverage under the general permit before its expiration shall retain coverage under the general permit until there has been a final permit decision on the general permit.

(D) In the event the department makes a decision to not renew the general permit, existing coverage under the general permit shall continue under the terms of the expired permit until a final decision is reached for an individual permit.

(6)

(A) If a general permit is appealed and the general permit expires before the final decision by the director or by the commission to renew or not renew the general permit, the terms and conditions of the general permit shall remain in effect.

(B) All persons who obtained coverage under the general permit before its expiration shall retain coverage under the general permit until there has been a final administrative decision on the general permit.

(C) The director shall not approve new coverage under an expired general permit for any facility for which a notice of intent was not filed before expiration of the general permit.

(n)

(1) When an application for the issuance of a new permit for a liquid animal waste system or a modification of an existing permit for a liquid animal waste system is filed, the department shall give notice of its proposed action in accordance with subdivision (e)(1)(A) of this section within one hundred twenty (120) days of receipt of the application.

(2)

(A) At the conclusion of the public comment period, the department shall announce in writing within sixty (60) days its final decision regarding the permit application in accordance with subdivision (e)(2)(A) of this section.

(B) For a modification that the department considers to be minor in nature, the department shall make its final decision regarding the permit application within thirty (30) days after receipt of the application.

(3) An applicant may waive in writing to the department the timeliness requirement under subdivisions (n)(1) and (2) of this section.

(o)

(1) If an application for modification of an existing state permit for a liquid animal waste management system is filed with the department, only those permit conditions subject to the modification are open for review.

(2)

(A) Except as provided in subdivision (o)(2)(B) of this section, an existing state permit for a liquid animal waste management system that is in good standing is not subject to review or third-party appeal for siting or location issues that were not raised during the applicable review or appeal period at the time of permit issuance.

(B) Subdivision (o)(2)(A) of this section does not limit the authority of the department to address or enforce a violation of permit conditions or applicable law.

**8-6-1801. Management plan – Substitution.**

If the Arkansas Department of Environmental Quality requires a person to obtain an animal waste management plan, including a permit application, prepared by a professional engineer as defined in § 17-30-101, the person may substitute a plan prepared under the supervision of a professional engineer employed by one (1) of the following agencies:

- (1) A conservation district;
- (2) The Arkansas Natural Resources Commission;
- (3) The United States Natural Resources Conservation Service; or
- (4) The University of Arkansas Cooperative Extension Service.

**Reg. 5.101 Title.**

The following rules and regulations of the Arkansas Pollution Control and Ecology Commission adopted pursuant to the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. § 8-4-101 et seq., shall be known as Regulation No. 5, Liquid Animal Waste Management Systems.

**Reg. 5.102 Purpose.**

The purpose of this regulation is to establish the minimum qualifications, standards and procedures for issuance of permits for confined animal operations using liquid animal waste management systems within the state and for the issuance of permits for land application sites within the state. This regulation provides management, operational and maintenance procedures necessary to prevent point source pollution and minimize nonpoint source pollution to the waters of the state and control to the degree practicable the generation of offensive odors by regulated confined animal operations. The siting and separation requirements set forth in this regulation are intended to protect water quality, to protect public health, and to abate odor. In order to minimize odor, the Arkansas Pollution Control and Ecology Commission's policy is to encourage permittees to adopt a good neighbor policy and consider the use of chemical or biological additives or other best management practices in the operation of liquid animal waste management systems.

**Reg. 5.103 Applicability.**

The provisions of this regulation are applicable to the operation of hog, poultry or dairy farms or other confined animal operations using liquid animal waste management systems.

**Reg. 5.104 Policy for Compliance.**

It shall be the policy of the Department to provide a reasonable time for holders of existing permits to comply with new or revised provisions of this regulation. Holders of existing permits shall achieve compliance with this regulation at the earliest practicable time, not to exceed five years from the effective date of the regulation.

**Reg. 5.105 Exemption.**

Any confined animal operation using a liquid waste disposal system shall be exempt from the requirements of this regulation if the owner or operator obtains and maintains active coverage under either an National Pollutant Discharge Elimination System individual or general permit for discharges from a concentrated animal feeding operation.

**Reg. 5.201 Definitions.**

The following definitions shall apply:

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.

Best Management Practices means schedules of activities, prohibited activities, maintenance procedures and management practices that prevent or reduce pollution of the waters of the state as set forth in this regulation and the General Permit.

Commission means the Arkansas Pollution Control and Ecology Commission  
Confined Animal Operation means any lot or facility where livestock, fowl, or other animals have been, are or will be stabled or confined and fed or maintained and where crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over significant portions of the lot or facility.

Concentrated animal feeding operation (CAFO) means an AFO that is defined as a Large CAFO or as a Medium CAFO pursuant to 40 CFR 122.23, or that is

designated as a CAFO in accordance with 40 CFR 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 or his/her designated representative.

Liquid Animal Waste Management System means any system used for the collection, storage, distribution or disposal of animal waste in liquid form generated by a confined animal operation.

Site Management Plan means a plan prepared by the United States Department of Agriculture Natural Resource Conservation Service, an Arkansas Natural Resources Commission water quality technician, Certified Nutrient Management Planner, the University of Arkansas Cooperative Extension Service, or a professional engineer registered in the state of Arkansas which includes a detailed map of the land application site showing all buffer zones, a description of the land use and the crops grown on the site, and a land use agreement if the site is not owned by the permittee. In Nutrient Surplus Areas designated by Ark. Code Ann. § 15-20-1104, persons drafting nutrient management plans must be certified by the Arkansas Natural Resource Commission in accordance with Ark. Code Ann. § 15-20-1106 and Arkansas Natural Resources Commission Title 20, "Rules Governing the Arkansas Nutrient Management Planner Certification Program."

Waste Management Plan means a plan prepared by the United States Department of Agriculture Natural Resource Conservation Service, an Arkansas Natural Resources Commission water quality technician, the University of Arkansas Cooperative Extension Service, or a professional engineer registered in the state of Arkansas detailing the management and disposal of liquid wastes generated in a confined animal operation. In Nutrient Surplus Areas designated by Ark. Code Ann. § 15-20-1104, persons drafting nutrient management plans must be certified by the Arkansas Natural Resource Commission in accordance with Ark. Code Ann. § 15-20-1106 and Arkansas Natural Resources Commission Title 20, "Rules Governing the Arkansas Nutrient Management Planner Certification Program."

Waters of the state means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of this state as defined by the Act.

Unless manifestly inconsistent with this regulation, other words and phrases used in this regulation shall have the same meaning as used in the Act.

**Reg. 5.301 Requirements for a Permit.**

No confined animal operation using a liquid animal waste disposal system shall be constructed or operated unless the owner has first obtained a permit from the Department.

**Reg. 5.302 Permit Application Process.**

(A) Application and permitting procedures for new or major modifications as described in Reg. 5.305 shall comply with the Arkansas Pollution Control and Ecology Commission Regulation No. 8, Administrative Procedures. The Department shall provide a copy of the public notice or similar written notification of the operation to the county quorum court or, if located within an area zoned by a city, the city zoning authority. Applications for a permit under this regulation shall be made on forms provided by the Department. An applicant for a new or modification of an existing liquid animal waste disposal permit shall make a reasonable effort to notify all adjacent land owners that a complete application for a liquid animal waste disposal permit is on file with the Department. This notice shall also contain the permittee's name, mailing address, type of permit action, type of facility, size of facility and location. The land owners shall be notified at the same time that the permit application is submitted to the Department. The applicant must provide a copy of the letter sent to each adjacent land owner with the application. Any appeal rights are governed by the provisions of Regulation No. 8.

**Reg. 5.303 Prohibition.**

The operator of a confined animal operation constructed and operated as authorized by permit in accordance with the provisions of this regulation shall not allow or cause a point source discharge from any part of the liquid animal waste management system.

**Reg. 5.405 Waste Management Plan.**

(A) The waste management plan shall be developed in accordance with Reg. 5.402 and shall address the timing of land application of wastes with respect to the nutrient uptake cycle of the vegetation found on the land application site(s) and, to the extent practicable, shall include measures to minimize off-site obnoxious and offensive odors.

(B) All permitted facilities must have a waste management plan for the farm and a site management plan for each land application site prepared by a professional engineer registered in the state of Arkansas, the United States Department of Agriculture Natural Resource Conservation Service, the University of Arkansas Cooperative Extension Service, Certified Nutrient Management Planner, or a water quality technician of the Arkansas Natural Resources Commission and approved by the Department. The Department shall require proof of land ownership or of contractual agreements for use of the land as a land application site.

(C) The facility waste management plan shall be reviewed annually by the operator. An updated waste management plan shall be submitted to ADEQ the Department when significant changes are made or as required by the Department. The updated waste management plan shall include the soils analysis sampled and analyzed per Reg. 5.407(C).

**Reg. 5.406 Land Application Requirements.**

(A) Waste/wastewater shall be evenly distributed over application sites at the rates specified in site management plans.

(B) Land application of waste/wastewater shall not be undertaken when soil is saturated, frozen, covered with ice or snow, or when significant precipitation is reasonably anticipated in the next twenty-four hours.

(C) Waste/wastewater shall not be applied on slopes with a grade of more than fifteen percent (15%) or in any manner that will allow waste to enter waters of the State or to run onto adjacent property without the written consent of the affected adjacent property owner.

(D) Application of waste/wastewater shall not be made within 100 feet of streams including intermittent streams, ponds, lakes, springs, sinkholes, rock outcrops, wells and water supplies; or 300 feet of extraordinary resource waters as defined by the Arkansas Pollution Control and Ecology Commission Regulation No. 2. Buffer distances for streams, ponds and lakes shall be measured from the ordinary high water mark. The Department may require additional buffer distances deemed necessary to protect the waters of the state.

(E) Application of waste/wastewater shall not be made within 50 feet of property lines or 500 feet of neighboring occupied buildings existing as of the date of the permit. The restrictions regarding property lines or neighboring occupied buildings shall not apply if the adjoining property is also approved as a land application site under a permit issued by the Department or if the adjoining property owner consents in writing.

(F) Application of waste/wastewater shall not be made in areas where the land application of waste/wastewater is prohibited by Arkansas Department of Health regulations for the protection of public water supplies.

**Reg. 5.407 Record Keeping Requirements.**

(A) Records shall be kept of all waste/wastewater applied. These records shall be kept in sufficient detail to determine the application rate. A daily log shall be kept of all land applied waste/wastewater when applying. The log should include date, weight and/or volume, field identification and the acreage over which the waste/wastewater was spread.

All records and logs shall be kept at the facility and provided to the Department upon request.

(B) A representative sample of the waste/wastewater to be land applied shall be collected periodically, at a minimum of once each year, and analyzed for the following parameters: pH, Total Nitrogen, Potassium, Total Phosphorous, Soluble Phosphorous and percent solids. The Department may require more frequent testing deemed necessary to protect waters of the state.

(C) The soils of each field where liquid animal waste has been land applied shall be sampled and analyzed at least once every five (5) years for the following parameters: pH, Potassium, Phosphorous and Nitrates. The soils analysis shall be submitted with the updated Waste Management Plan required in Reg. 5.405 (C).

(D) Unless specified otherwise, methods and timing of sampling and analysis described in this Section shall be in accordance with the University of Arkansas Cooperative Extension Service guidelines.

(E) Annual reports for the previous calendar year shall be submitted to the Department prior to May 30 of each year which must include the following: waste/wastewater analyses conducted under Reg. 5.407(B), locations, volumes, and nitrogen application rates for the previous year; methods of application; and types of crops grown on each land application site. Reports must be submitted on forms provided by the Department.

#### **Reg. 5.601 Permit for Land Application Site Only.**

A separate permit may be issued for a land application site if the operator submits an application which includes a site management plan for the land application site and a plan detailing nutrient application rates; the timing of waste application with respect to the nutrient uptake cycle of the vegetation found on the land application site(s); and waste storage and distribution method(s) prepared in accordance with the requirements of this regulation. The applicant for such a permit shall notify the Department of any contractual agreement for the use of the land as a land application site by submitting a copy of the agreement. Records of waste/wastewater application shall be kept as specified in Reg. 5.407 and shall include information regarding the source of the waste, including location and permit number if applicable. Sampling, analysis and annual reporting as specified in Reg. 5.407 are required.

#### **Reg. 5.901 Buffalo National River Watershed.**

(A) The following definitions apply to Reg. 5.901:

(1) The "Buffalo National River Watershed" is the area within United States Geologic Service Hydrologic Unit Code 11010005.



(2) "Coverage" means a notice of coverage issued pursuant to a National Pollution Discharge Elimination System general permit and Regulation No. 6.

(B) The Director shall not issue a permit pursuant to Regulation No. 5 for a Confined Animal Operation in the Buffalo National River Watershed with:

(1) 750 or more swine weighing 55 pounds or more; or

(2) 3,000 or more swine weighing less than 55 pounds.

(C) Reg. 5.901(B) does not prohibit the Director from:

(1) Issuing a permit renewal or modification for a Confined Animal Operation in the Buffalo National River Watershed with an active permit as of the effective date of this regulation; or

(2) Issuing a new Regulation No. 5 permit for a facility which holds an active Regulation No. 6 permit or coverage as of the effective date of this regulation.

(D) A permit renewal, permit modification, or new permit issued pursuant to Reg. 5.901(C) shall not increase the number of swine permitted at a facility.

(E) Five years from the effective date of this regulation the Director shall initiate rulemaking to either delete this paragraph, Reg. 5.901(E), or delete the entirety of Reg. 5.901.

**4) Ark. Code Ann. §§ 8-4-201, 202, 208; 014 04 CARR 6.101—.104, .106, 6.201, .207, 6.601, .602**

**8-4-201. Powers and duties of department and commission generally.**

(a) The Arkansas Department of Environmental Quality or its successor is given and charged with the following powers and duties:

(1) Enforcement of Laws. To administer and enforce all laws and regulations relating to the pollution of any waters of the state;

(2) Investigations and Surveys.

(A) To investigate the extent, character, and effect of the pollution of the waters of this state; and

(B) To conduct investigations, research, surveys, and studies and gather data and information necessary or desirable in the administration or enforcement of pollution laws;

(3) Program. To prepare a comprehensive program for the elimination or reduction of the pollution of the waters of this state, including application for and delegation of federal regulatory programs; and

(4) Plans of Disposal Systems. To require to be submitted and to approve plans and specifications for disposal systems, or any part of them, and to inspect the construction thereof for compliance with the approved plans thereof.

(b) The Arkansas Pollution Control and Ecology Commission is given and charged with the following powers and duties:

(1)

(A) Promulgation of rules and regulations, including water quality standards and the classification of the waters of the state and moratoriums or suspensions of the processing of types or categories of permits, implementing the substantive statutes charged to the department for administration.

(B) In promulgation of such rules and regulations, prior to the submittal to public comment and review of any rule, regulation, or change to any rule or regulation that is more stringent than federal requirements, the commission shall duly consider the economic impact and the environmental benefit of such rule or regulation on the people of the State of Arkansas, including those entities that will be subject to the regulation.

(C) The commission shall promptly initiate rulemaking proceedings to further implement the analysis required under subdivision (b)(1)(B) of this section.

(D) The extent of the analysis required under subdivision (b)(1)(B) of this section shall be defined in the commission's rulemaking required under subdivision (b)(1)(C) of this section. It will include a written report that shall be available for public review along with the proposed rule in the public comment period.

(E) Upon completion of the public comment period, the commission shall compile a rulemaking record or response to comments demonstrating a reasoned evaluation of the relative impact and benefits of the more stringent regulation;

- (2) Promulgation of rules, regulations, and procedures not otherwise governed by applicable law that the commission deems necessary to secure public participation in environmental decision-making processes;
- (3) Promulgation of rules and regulations governing administrative procedures for challenging or contesting department actions;
- (4) In the case of permitting or grants decisions, provide the right to appeal a permitting or grants decision rendered by the Director of the Arkansas Department of Environmental Quality or his or her delegatee;
- (5) In the case of an administrative enforcement or emergency action, provide the right to contest any such action initiated by the director;
- (6) Instruct the director to prepare such reports or perform such studies or investigations as will advance the cause of environmental protection in the state;
- (7) Make recommendations to the director regarding overall policy and administration of the department, provided, however, that the director shall always remain within the plenary authority of the Governor; and
- (8) Upon a majority vote, initiate review of any director's decision.

**8-4-202. Rules and regulations.**

- (a) The Arkansas Pollution Control and Ecology Commission is given and charged with the power and duty to adopt, modify, or repeal, after notice and public hearings, rules and regulations implementing or effectuating the powers and duties of the Arkansas Department of Environmental Quality and the commission under this chapter.
- (b) Without limiting the generality of this authority, these rules and regulations may, among other things, prescribe:
  - (1) Effluent standards specifying the maximum amounts or concentrations and the physical, thermal, chemical, biological, and radioactive nature of the contaminants that may be discharged into the waters of this state or into publicly owned treatment facilities;
  - (2) Requirements and standards for equipment and procedures for monitoring contaminant discharges at their sources, including publicly owned treatment facilities and industrial discharges into such facilities, the collection of samples, and the collection, reporting, and retention of data resulting from such monitoring; and
  - (3) Water quality standards, performance standards, and pretreatment standards.

(c)

(1) Any person shall have the right to petition the commission for the issuance, amendment, or repeal of any rule or regulation. Within sixty (60) days from the date of the submission of a petition, the commission shall either institute rulemaking proceedings or give the petitioner written notice denying the petition, together with a written statement setting out the reasons for denial.

(2) In the event the petition is denied, the decision of the commission will be deemed a final order subject to appeal as provided in subdivision (d)(5) of this section.

(3) The record for appeal in a petition denial shall consist of the petition for rulemaking filed with the commission, the commission's written statement setting out the reasons for denial, and any document referenced therein.

(d)

(1)

(A) Before the adoption, amendment, or repeal of any rule or regulation or before suspending the processing of a type or category of permits or the declaration of a moratorium on a type or category of permits, the commission shall give at least thirty (30) days' notice of its intended action.

(B) The notice shall include:

(i) A statement of the substance of the intended action;

(ii) A description of the subjects and issues involved; and

(iii) The time, place, and manner in which interested persons may make comments.

(C) The notice shall be mailed or emailed to all persons who have requested advance notice of rulemaking proceedings.

(D) The notice shall also be published at least two (2) times in newspapers having a general statewide circulation and in the appropriate industry, trade, or professional publications the commission may select.

(2)

(A) All interested parties shall be afforded a reasonable opportunity to:

(i) Submit written data, information, views, opinions, and arguments; and

(ii) Make oral statements concerning the proposed rule, regulation, suspension, or moratorium prior to a decision being rendered by the commission.

(B) All written material, photographs, published material, and electronic media received by the commission shall be preserved and, along with a record of all oral comments made at any public hearing, shall become an element of the record of rulemaking.

(C) Any person who considers himself or herself injured in his or her person, business, or property by final agency action under this section shall be entitled to judicial review of the action under this section.

(3)

(A) If, in response to comments, the commission amends a proposed regulation to the extent that the rule would have an effect not previously expressed in the notice required by subdivision (d)(1) of this section, the commission shall provide another adequate public notice.

(B) Subdivision (d)(3)(A) of this section shall not, however, require a second public notice if the final regulation is a logical outgrowth of the regulation proposed in the prior notice.

(4) The commission shall compile and maintain a record of rule-making that shall contain:

(A)

(i) A copy of all notices described in this subsection and a concise general statement of the basis and purpose of the proposed rule, which shall include a written explanation of the necessity of the regulation and a demonstration that any technical regulation or technical standard is based on generally accepted scientific knowledge and engineering practices.

(ii) For any standard or regulation that is identical to a regulation promulgated by the United States Environmental Protection Agency, this portion of the record may be satisfied by reference to the Code of Federal Regulations.

(iii) In all other cases, the department must provide its own justification with appropriate references to the scientific and

engineering literature or written studies conducted by the department;

(B) Copies of all written material, photographs, published materials, electronic media, and the record of all oral comments received by the commission during the public comment period and hearings; and

(C) A responsive summary that groups public comments into similar categories and explains why the commission accepted or rejected the rationale of each category.

(5)

(A) The decisions of the commission with regard to this section are final and may be judicially appealed to the appropriate circuit court as provided in § 8-4-222 within thirty (30) days after filing with the office of the Secretary of State by persons that have standing as set out in subdivision (d)(2) of this section.

(B) The record for review shall consist of a copy of the regulation and the record of rulemaking described in subdivision (d)(4) of this section.

(C) Rule changes, suspensions, or moratoria on types of categories of permits adopted by the commission shall be stayed and not take effect during the pendency of the appeal, except as specified in subsection (e) of this section.

(e)

(1) If the commission determines that imminent peril to the public health, safety, or welfare requires immediate change in the rules or immediate suspension or moratorium on categories or types of permits, it may, after documenting the facts and reasons, declare an emergency and implement emergency rules, regulations, suspensions, or moratoria.

(2) No rule, regulation, suspension, or moratorium adopted under an emergency declaration shall be effective for longer than one hundred eighty (180) days.

(3) The imminent loss of federal funding, certification, or authorization for any program administered by the department shall establish a prima facie case of imminent peril to the public health, safety, or welfare.

**8-4-208. State water pollution control agency – Administration of permit program generally.**

(a) The Arkansas Department of Environmental Quality is authorized, subject to the approval of the Governor, to administer on behalf of the state its own permit program for discharges into navigable waters within its jurisdiction in lieu of that of the United States Environmental Protection Agency. The department is also authorized to submit to the Administrator of the United States Environmental Protection Agency for approval a full and complete description of the program which the department proposes to establish and administer under state law, as provided by § 402(b) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1342(b). To that end, the department and the Arkansas Pollution Control and Ecology Commission are vested with all necessary authority and power to meet the requirements of § 402(b) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1342(b), and the guidelines promulgated by the United States Environmental Protection Agency pursuant to § 304(h)(2) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1314(h), to engage in an approved continuing planning process under § 303(e) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1313(e), and to perform any and all acts necessary to carry out the purposes and requirements of the Federal Water Pollution Control Act Amendments of 1972 relating to this state's participation in the National Pollutant Discharge Elimination System established under the Federal Water Pollution Control Act Amendments of 1972, subject to all restrictions contained in the Federal Water Pollution Control Act Amendments of 1972 and guidelines.

(b) The department shall further have the authority to accept a delegation of authority from the Administrator of the United States Environmental Protection Agency under the Federal Water Pollution Control Act Amendments of 1972 and to exercise and enforce the authority delegated.

(c) Any public hearing that may be held by the Director of the Arkansas Department of Environmental Quality preliminary to acting on a permit application as required by the Federal Water Pollution Control Act Amendments of 1972 and guidelines, unless otherwise designated in the notice of hearing, shall be for informational purposes only and shall not be deemed a hearing before the commission within the meaning of § 8-4-205. No appeal may be taken therefrom.

#### **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 Archaeobacteria; 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 FFDCFA, 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 FFDCFA, 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 FFDCFA, 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(1); 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.6.106 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.

#### **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.6.207 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.

**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.

**Reg. 6.602 Buffalo National River Watershed.**

(A) The following definitions apply to Reg. 6.602:

(1) The "Buffalo National River Watershed" is the area within United States Geologic Service Hydrologic Unit Code 11010005.

(2) "Coverage" means a notice of coverage issued pursuant to a general permit.

(B) The Director shall not issue a permit or coverage pursuant to Regulation No. 6 for a CAFO in the Buffalo National River Watershed with:

(1) 750 or more swine weighing 55 pounds or more; or

(2) 3,000 or more swine weighing less than 55 pounds.

(C) Reg. 6.602(B) does not prohibit the Director from:

(1) Issuing a permit or coverage renewal or modification for a CAFO in the Buffalo National River Watershed with an active permit or coverage as of the effective date of this regulation; or

(2) Issuing a new Regulation No. 6 permit or coverage for a facility which holds an active Regulation No. 5 permit as of the effective date of this regulation.

(D) A permit or coverage renewal, modification, or new permit or coverage issued pursuant to Reg. 6.602(C) shall not increase the number of swine permitted at a facility.

(E) Five years from the effective date of this regulation the Director shall initiate rulemaking to either delete this paragraph, Reg. 6.602(E), or delete the entirety of Reg. 6.602.

**5) Ark. Code Ann. §§ 15-20-1001—1004, 1006, 1008; 138 00 CARR 2001.1, .3, 2002.1—.5, 2003.1—.5, 2004.1, .2, 2005.1, 2006.1, .2**

**15-20-1001. Title.**

This subchapter shall be known and may be cited as the "Arkansas Soil Nutrient Management Planner and Applicator Certification Act".

**15-20-1002. Legislative intent.**

The General Assembly finds that:

- (1) Proper application of nutrients is necessary for maximum soil fertility and proper plant growth;
- (2) Failure to properly apply nutrients to soil may result in a waste of a valuable resource and may negatively impact waters within the state;
- (3) Persons developing soil nutrient plans or applying nutrients to soil should have certain knowledge, skills, and abilities to ensure the proper use of soil nutrients; and
- (4) A certification system must be developed to determine that persons certified have the knowledge, skill, and abilities to properly develop nutrient management plans or properly apply soil nutrients.

**15-20-1003. Definitions.**

As used in this subchapter:

- (1) "Commission" means the Arkansas Natural Resources Commission;
- (2) "Crop" means any vegetative cover;
- (3) "Executive director" means the Executive Director of the Arkansas Natural Resources Commission;
- (4) "Litter" means byproducts associated with the confinement of livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof;
- (5) "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and poultry;
- (6)
  - (A) "Nutrient" means a substance or recognized plant nutrient, element, or compound that is used or sold for its plant-nutritive content or its claimed nutritive value.



(B) "Nutrient" includes litter, compost as fertilizer, commercially manufactured chemical or organic fertilizers, sewage sludge, or combinations thereof;

(7) "Nutrient application" means the process by which humans apply nutrients to soil or associated crops;

(8) "Nutrient applicator" means any person who applies nutrients to soil or associated crops;

(9) "Nutrient management plan" means any plan prepared to assist landowners and operators in the proper management and utilization of nutrient sources for maximum soil fertility and protection of the waters within the state;

(10)

(A) "Nutrient surplus area" means the:

(i) Illinois River watershed, included within Benton, Crawford, and Washington counties;

(ii) Spavinaw Creek watershed, included within Benton County;

(iii) Honey Creek watershed, included within Benton County;

(iv) Little Sugar Creek watershed, included within Benton County;

(v) Upper Arkansas River watershed, which includes Lee Creek within Crawford and Washington counties and Massard Creek within Sebastian County;

(vi) Poteau River watershed, included within Polk, Scott, and Sebastian counties;

(vii) Mountain Fork of the Little River watershed, included within Polk County; and

(viii) Upper White River watershed above its confluence with the Crooked Creek.

(B) No additional areas may be added unless the areas are added as nutrient surplus areas pursuant to the Arkansas Soil Nutrient Application and Poultry Litter Utilization Act, § 15-20-1101 et seq.;

(11) "Person" means any natural person; and

(12) "Waters within the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, including surface and underground, natural or artificial, and public or private, that are contained within, flow through, or border upon this state or any portion of the state.

**15-20-1004. Nutrient planner program.**

(a) The Arkansas Natural Resources Commission shall develop and implement a nutrient management education, training, and certification program to certify the minimal competence and knowledge of a person preparing a nutrient management plan.

(b)

(1) The planner certification program is voluntary for planners who develop nutrient management plans outside nutrient surplus areas.

(2) The commission may not require a nutrient planner to become certified unless the planner intends to develop nutrient management plans for areas within nutrient surplus areas or the nutrient management plans or the components of the nutrient management plans are to be paid, in whole or part, by federal or state funds.

(c) The commission shall promulgate regulations that:

(1) Specify qualifications and standards for a person to be deemed competent in nutrient management plan preparation and provide for the issuance of documentation of certification to the person;

(2) Specify the conditions under which a certification issued may be suspended or revoked;

(3) Establish fees to be paid by a person enrolling in the training and certification programs;

(4) Provide for the performance of other duties and the exercise of other powers by the Executive Director of the Arkansas Natural Resources Commission as may be necessary to provide for the training and certification of a person preparing nutrient management plans; and

(5) Give due consideration to relevant existing agricultural or other certification programs.

**15-20-1006. Procedure.**

(a) The process for the development of regulations and the imposition of administrative penalties shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Any records collected by the Arkansas Natural Resources Commission in furtherance of this subchapter that contain information about a specific nutrient management plan or specific nutrient application shall not be made public record.

#### **15-20-1008. Administrative penalties.**

(a) The Arkansas Natural Resources Commission may impose administrative penalties not to exceed one thousand dollars (\$1,000) per violation against any person violating this subchapter or regulations adopted pursuant to this subchapter.

(b) The commission or the Executive Director of the Arkansas Natural Resources Commission may issue subpoenas under § 15-22-208.

(c) If a person against whom an administrative penalty has been imposed by the commission as authorized in this section fails to pay the penalty to the commission, the commission may file an action to collect the administrative penalty in the circuit court of the county in which the person resides.

#### **Section 2001.1 Purpose.**

A. These rules govern the Commission's Nutrient Management Planner Certification Program for individuals who prepare nutrient management plans.

B. Planners prepare nutrient management plans to indicate how nutrients should be applied to fields and other land for crop production while protecting ground water and surface water from excessive nutrient enrichment.

C. Plans contain operating procedures based on expected crop type, existing nutrient levels in the soil, organic residuals, optimum timing and placement of nutrients, environmental resource protection, and agronomic practices such as liming, tillage, and crop rotation.

D. The Commission shall certify the competence of individuals to prepare these plans and determine information to be contained in nutrient management plans. The training provided by the Commission or its delegate shall at a minimum meet the United States Department of Agriculture Natural Resource Conservation Service conservation practice standards for Arkansas. To maintain certification, certified nutrient planners must develop plans in accord with certified nutrient planner training.

E. The Commission shall issue certificates of competence to certified nutrient planners.

### **Section 2001.3 Definitions.**

A. "Administrative consent order" means a legal agreement signed by the Director and a certified nutrient planner.

B. "Arkansas Phosphorus Index" means the risk-based assessment tool referenced in nutrient management plans developed to govern the terms and conditions under which nutrients may be land-applied See P. A. Moore, A. N. Sharpley, W. Delp, B. Haggard, T. Daniel, K. VanDevender, A. Baber, and M. Daniels; The Revised Phosphorus Index (2009).

1. Any nutrient management plan drafted or revised pursuant to the Arkansas Phosphorus Index effective at the time of its drafting or revision will not be deemed out of compliance for failure to use the current index until five years have passed since the plan was drafted or revised

2. However, any updates to that nutrient management plan within that five-year period must be conducted in a compliance with the index effective at the time of update

C. "Certified nutrient planner" means a person who has been certified by the Commission as competent to develop nutrient management plans.

D. "Commission" means the Arkansas Natural Resources Commission as described in Ark. Code Ann. §15-20-201, et seq.

E. "Conservation District" means a district created under the Conservation Districts Law, Ark. Code Ann. §14-125-101, et seq.

F. "Delegate" means a person or entity appointed by the Director to function in a specific capacity in furtherance of this program and may be another agency, commission, organization, or company, whether public or private.

G. "Director" means the Executive Director of the Arkansas Natural Resources Commission

H. "Litter" means byproducts associated with the confinement of livestock, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof.

I. "Livestock" means animals kept or raised for use or pleasure, especially farm animals kept for use and profit, including horses, cattle, swine, and poultry.

J. "Nutrient" means a substance or recognized plant nutrient, element, or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes substances found in, but is not limited to, Litter, compost as fertilizer,

commercially manufactured chemical or organic fertilizers, sewage sludge, or combinations thereof.

K. "Nutrient management plan" means a documented record of how nutrients will be managed on a nutrient management unit prepared in accordance with United States Department of Agriculture Natural Resources Conservation Service conservation practice standards for Arkansas to guide and assist landowners and operators in the use of fertilizers, litter, sewage sludges, compost and other nutrient sources for soil fertility and protection of the waters within the state.

L. "Poultry" means chickens, turkeys, ducks, geese and any other domesticated birds.

M. "Returning Military Veteran" means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.

N. "Warning letter" means a written description signed by the Director of a violation of this Title and the necessary corrective action. A warning letter cannot be used to assess civil penalties, is not appealable to the Commission, and is not final agency action.

#### **Section 2002.1 Eligibility for Certification.**

A. An applicant may obtain certification by satisfying all of the following requirements:

1. Satisfactorily completing and submitting to the Commission an application form;
2. Attending the certified nutrient planner training course provided by the commission or its delegate;
3. Obtaining a passing score on the certified nutrient planner examination administered by the Commission or its delegate;
4. Submitting a \$ 100.00 certification fee; and
5. Submitting a \$ 25.00 testing fee.

B. Anyone initially certified or in the process of certification by the Natural Resources Conservation Service (NRCS) as a nutrient management planner prior to the effective date of these rules who provides acceptable proof of certification to the Commission will be recognized as certified under this Title without further testing or training and may have certification fees waived by the Director. Persons initially certified by the NRCS must still attain required continuing education credit to be recertified under this Title.

#### **Section 2002.2 Review of Application.**

A. The application and supporting documentation to obtain certification will be reviewed by the Commission. The Commission will inform the applicant in writing if it determines that the application is incomplete and will specify why the application is incomplete. When a completed application, supplemental application, or requested information is returned, the Commission will continue action on the application.

### **Section 2002.3 Training Course.**

The Commission or its delegate will periodically provide a certified nutrient planner training session on concepts supporting and related to nutrient management plan development prior to scheduled examinations.

### **Section 2002.4 Examination.**

A. The Commission or its delegate shall administer certified nutrient planner certification examinations at least once per year for a \$ 25.00 examination fee that must be paid prior to sitting for the test. The Commission may limit the number of applicants taking the examination based upon available examination space.

B. The Commission shall establish a passing score for the examination based on the Commission's determination of the level of examination performance required to show minimal, acceptable competence.

C. If an applicant does not achieve a passing score on the examination, he or she may retake the examination at the next scheduled time. An applicant may retake the examination one time with no additional charge by resubmitting the application for certification.

D. All applications must be received ten days prior to the examination date set by the Commission.

E. An applicant who is unable to take an examination at the scheduled time shall notify the Commission at least five days prior to the date and time of the examination. The applicant will be rescheduled for the next examination. Failure to timely notify the Commission may require the applicant to submit new testing fees.

### **Section 2002.5 Notification of Results.**

A. Each applicant shall be notified of results in writing within sixty days of the completion of the examination and shall also receive notice of whether certification has been approved.

B. An applicant denied certification for a reason other than test failure may request review of the decision pursuant to Commission Rules, Title I, Rules of Organization and General Operation of the Arkansas Natural Resources Commission.

### **Section 2003.1 Term of Certification.**

A. Certification shall be valid for a period of five years and will automatically expire on January 1 of the fifth year following certification if the certificate holder fails to properly renew certification.

B. Following the expiration of a certificate, reinstatement may be accomplished only by reapplication and compliance with all requirements, including the examination unless waived by the Commission for good cause.

C. Certification held by an active duty military service member or the spouse of an active duty military service member deployed outside the State of Arkansas shall not expire until one hundred eighty (180) days following the active duty military service member's or the spouse's return from active deployment.

### **Section 2003.2 Renewal of Certification.**

A. A certified nutrient planner must renew certification prior to the certificate's expiration date by complying with all of the following requirements:

1. Submission of the renewal application form;
2. Payment of a \$ 100 renewal fee to the Commission; and
3. Completion of at least four (hours of continuing education pre-approved by the Commission within the last five years.

B. If the certified nutrient planner has knowingly violated Commission rules or refused to pay fines assessed by the Commission, the Commission may choose not to renew certification.

### **Section 2003.3 Requirement to Keep Current Address on File.**

A. A certified nutrient planner is required to provide the Commission with current address and other requested contact information within fifteen working days of change so that the Commission can advise him or her of updates to law and rules as well as provide notice of complaints and hearings.

B. Service of notice sent by mail will be addressed to the most recent address on file with the Commission. Registered or certified Mail sent with proper postage and to the last known address that is returned unclaimed shall be considered adequate notification of notice served.

C. Failure to update Commission staff with current address may be considered refusal to accept mail which is a violation of this Title and could result in disciplinary action.

#### **Section 2003.4 Continuing Education.**

A. A certified nutrient planner must have proof of four approved continuing education credits completed during the five previous years to renew his or her certification. Each continuing education credit refers to an hour of instruction, approved for credit by the Commission and designed to provide further knowledge of nutrient management planning.

B. A certified nutrient planner may either take continuing education courses provided by the Commission or pre-approved classes provided by third parties.

#### **Section 2003.5 Approval of Third Party Courses.**

A. Programs submitted for pre-approval shall be considered by the Commission only if the sponsor or attendee submits a written description. The description must include the names and qualifications of the presenters, the time and location, the proposed number of credits, and the program's objectives. Programs may be held within or outside the state, and must be related to Nutrient management planning or compliance with the Commission's Rules and other governmental and industry requirements. The Commission at its discretion may approve a course for credit after the course has taken place.

B. Program sponsors must provide written proof of attendance to attendees following each event and must provide the Commission with a list or lists of attendees by January 1 of each year. Certified nutrient planners are also responsible for obtaining proof of attendance and sending that proof into the Commission when certification is renewed.

#### **Section 2004.1 Maintaining Plans.**

A. The Commission may periodically inspect nutrient management plans prepared by certified nutrient planners and other records for compliance with this Title. A complete copy of each nutrient management plan prepared shall be made available for inspection by Commission personnel upon request.

B. The certified nutrient planner must also maintain a summary listing of all nutrient management plans prepared for each landowner or operator and the dates the plans were prepared or revised.

C. The records required by this section shall not be public records.

#### **Section 2004.2 Quarterly Activity Reports.**

A certified nutrient planner shall file a quarterly activity report with the Commission, containing the following information:

1. name and certificate number of the certified nutrient planner; and



2. number of nutrient management plans completed.

**Section 2005.1 Consideration of Military Training and Experience in Lieu of Experience or Education.**

When considering an application for licensure, the Commission shall:

- A. Consider whether or not the applicant's military training and experience is substantially similar to experience or education required for certification; and
- B. Accept the applicant's military training and experience in lieu of experience or education required for certification if the Commission determines the military training and experience is a satisfactory substitute for the experience or education required for certification.

**Section 2006.1 Fees.**

- A. Fees are non-refundable and shall not be prorated.
- B. The Commission will assess the following fees:
  1. Certification = \$ 100.00;
  2. Examination fee = \$ 25.00; and
  3. Re-certification = \$ 100.00.
- C. All fees collected by the Commission through any penalty assessed under this Title shall be deposited in the state treasury and shall be used to operate the programs administered by the Commission through Titles 19, 20, 21, and 22 of the Commission's rules.

**Section 2006.2 Review of Suspected Noncompliance**

- A. Upon complaint or suspicion of suspected violation of 2006.1, Commission or Conservation District staff may investigate and recommend disciplinary action to the Director.
  1. Anyone providing information to the Commission about a possible violation must provide a written complaint stating the complainant's legal name and current mailing and physical addresses. The complaint must be verified by the notarized signature of the complainant.
  2. Complaints are subject to the Freedom of Information Act, Ark. Code Ann. §§ 25-19-101 et seq.

B. After reviewing evidence provided to him or her regarding a possible violation, the Director will determine whether there is evidence that a violation has occurred. If the Director finds that a violation occurred, the Director may issue a Warning Letter or Administrative Consent Order to the alleged violator, stating the violation and the resulting corrective or disciplinary action. If an incomplete complaint is received or the Director finds that there is not sufficient evidence of a violation, the Director will inform the complainant and alleged violator in writing.

**6) Ark. Code Ann. §§ 15-20-901 et seq.; 138 00 CARR 1901.1—.3, 1902.1—.3, 1903.1—.3**

**15-20-901. Title.**

This subchapter shall be known and may be cited as the "Arkansas Poultry Feeding Operations Registration Act".

**15-20-902. Legislative intent.**

It is found by the General Assembly that:

- (1) Litter provides nutrients that are beneficial to plant growth;
- (2) The proper utilization of litter allows the addition of nutrients to the soil at a low cost;
- (3) Improper utilization may result in a buildup of nutrients in the soil and result in the nutrients' leaving the soil and entering the waters within the state;
- (4) In order to encourage the proper utilization of litter, litter sources must be located and the amount of litter produced in Arkansas quantified; and
- (5) It is necessary for poultry feeding operations to register annually with the Arkansas Natural Resources Commission.

**15-20-903. Definitions.**

As used in this subchapter:

- (1) "Commission" means the Arkansas Natural Resources Commission;
- (2) "Conservation district" means a conservation district created under the Conservation Districts Law, § 14-125-101 et seq.;

- (3) "Executive director" means the Executive Director of the Arkansas Natural Resources Commission;
- (4) "Land application" means the application of litter, in whole or in part, to land;
- (5) "Litter" means byproducts associated with the confinement of poultry, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof;
- (6) "Litter management system" means any method used to dispose or utilize litter;
- (7) "Person" means any individual, partnership, company, association, fiduciary, corporation, or any organized group of persons whether incorporated or not;
- (8) "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds;
- (9)
- (A) "Poultry feeding operation" means any lot or facility where two thousand five hundred (2,500) or more poultry are housed or confined and fed or maintained on any one (1) day in the preceding twelve-month period.
- (B) Multiple poultry houses within a reasonable proximity to one another under the control of one (1) owner shall be considered one (1) facility;
- (10) "Poultry processor" means an entity that processes poultry for commercial sale; and
- (11) "Waters within the state" means all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, that are contained within, flow through, or border upon this state or any portion of the state.

#### **15-20-904. Registration.**

- (a) The Arkansas Natural Resources Commission shall operate an annual registration program for the purpose of assembling and maintaining information on the number, composition, and practices of poultry feeding operations in the state.
- (b) All poultry feeding operations shall register annually with the commission.

(c) The commission shall promulgate regulations that require a poultry feeding operation to submit, at a time and in a manner determined by the commission, information regarding:

- (1) The number and kind of poultry housed or maintained in the poultry feeding operation;
- (2) The location of the poultry feeding operation;
- (3) The litter management system used;
- (4) The litter storage system used and the amount of litter stored;
- (5) The acreage owned or controlled by the poultry feeding operation and used for land application of litter;
- (6) The land application practices used by the poultry feeding operation and the amount of litter applied;
- (7) The amount of litter transferred or otherwise utilized by the poultry feeding operation and the type of transfer or utilization;
- (8) The poultry processor or processors with which the poultry feeding operation has contracted to provide poultry; and
- (9) Any other relevant information necessary to effect the purposes of this subchapter.

(d) Each poultry feeding operation required to register under this subchapter shall pay an annual fee of ten dollars (\$10.00) to the commission.

(e) All regulations shall be promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f)

- (1) Information collected about an individual poultry feeding operation shall not be a public record.
- (2) Compilation or summary information that prevents identification of individual poultry feeding operations shall be a public record.

(g) The commission may delegate portions of the annual registration program for implementation to the Executive Director of the Arkansas Natural Resources Commission or conservation districts, or both.

### **15-20-905. Enforcement.**

(a)

(1) Agents of the Arkansas Natural Resources Commission shall have the power to enter on private property to determine compliance with this subchapter.

(2)

(A) Entry shall not occur without prior notification of the owner, operator, or agent in charge of the property.

(B) Notice shall be given to the owner, operator, or agent in charge of the property at least seventy-two (72) hours before entry.

(3) Documentation of biosecurity measures taken and biosecurity certification received by an inspection agent of the Arkansas Natural Resources Commission or by a conservation district officer, including a biosecurity log book, shall be available to the owner upon request.

(4) Upon notice of disease outbreak by the Arkansas Livestock and Poultry Commission, inspection under this subchapter shall be automatically suspended until notification by the Arkansas Livestock and Poultry Commission that it is safe to resume inspections.

(b)

(1) The Arkansas Natural Resources Commission may impose administrative penalties not to exceed five hundred dollars (\$500) per violation against the owner of a poultry feeding operation that fails to comply with the requirements of this subchapter.

(2) The imposition of administrative penalties shall be conducted pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) If the person against whom an administrative penalty has been imposed by the Arkansas Natural Resources Commission under this section fails to pay the penalty to the Arkansas Natural Resources Commission, the Arkansas Natural Resources Commission may file an action to collect the administrative penalty in the circuit court of the county in which the poultry feeding operation is located.

### **15-20-906. Disposition of fees and penalties.**

(a) Fees paid and penalties collected shall be deposited into the Arkansas Water Development Fund and used in furtherance of the nutrient management program, including this subchapter, except that a portion of the fee may be retained by the

conservation districts if a portion of the program has been delegated to conservation districts.

(b) Fees or penalties collected shall be cash funds when received by the Treasurer of State and shall not be deposited into or deemed to be a part of the State Treasury for the purposes of:

- (1) Arkansas Constitution, Article 5, § 29;
- (2) Arkansas Constitution, Article 16, § 12;
- (3) Arkansas Constitution, Amendment 20; or
- (4) Any other constitutional or statutory provision.

### **Section 1901.1 Purpose**

A. These rules govern the Commission's Poultry Feeding Operation Registration Program.

B. Poultry Feeding Operations are registered to locate Litter sources and estimate the amount of Litter produced.

C. The Arkansas Natural Resources Commission shall operate an annual registration program for the purpose of assembling and maintaining information on the number, composition, and practices of Poultry Feeding Operations in the state.

### **Section 1901.2 Enabling and Pertinent Legislation**

A. Arkansas Code Annotated §§ 15-20-201 et seq., "Arkansas Soil and Water Conservation Commission Act."

B. Ark. Code Ann. §§ 15-20-901 et seq., "Arkansas Poultry Feeding Operations Registration Act."

C. Ark. Code Ann. §§ 25-15-201 et seq., "Administrative Procedure Act."

### **Section 1901.3 Definitions**

The following definitions shall apply to all parts of this Title:

A. "Administrative Consent Order" means a legal agreement signed by the Director and the owner or operator of a Poultry Feeding Operation.

- B. "Commission" means the Arkansas Natural Resources Commission, as defined in Ark. Code Ann. §§ 15-20-201 et seq.
- C. "Conservation District" or "District" means a District created under the Conservation Districts Law, Ark. Code Ann. §§ 14-125-101 et seq.
- D. "Delegate" means a Person or entity appointed by the Director to function in a specific capacity in furtherance of this program and may be another agency, commission, organization, or company, whether public or private.
- E. "Director" means the Executive Director of the Arkansas Natural Resources Commission.
- F. "Land Application" means the application of Litter, in whole or in part, to land.
- G. "Litter" means byproducts associated with the confinement of Poultry, including excrement, feed wastes, bedding materials, composted carcasses, and any combinations thereof.
- H. "Litter Management System" means any method to dispose or use Litter.
- I. "Nutrient" means a substance or recognized plant Nutrient, element or compound, which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes substances found in, but is not limited to, livestock manure and Poultry Litter, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.
- J. "Permit" or "Permit Coverage" refers to an authorization to operate that is required by the Environmental Protection Agency's Concentrated Animal Feeding Operations (CAFO) program for Poultry Feeding Operations meeting the size thresholds listed on the Commission's registration form.
- K. "Person" means any individual, partnership, company, association, fiduciary, corporation, or any organized group of Persons whether incorporated or not.
- L. "Poultry" means chickens, turkeys, ducks, geese, and any other domesticated birds.
- M. "Poultry Feeding Operation" means any lot or facility where two thousand five hundred (2,500) or more Poultry are housed or confined and fed or maintained on any one day in the preceding twelve-month period. For the purposes of determining the number of animals at an operation, multiple Poultry houses under common ownership are considered to be a single Poultry Feeding Operation if they adjoin each other or if they share a common area or system for the disposal of wastes.

N. "Poultry Integrator" means an entity that processes Poultry for commercial sale.

O. "Warning Letter" means a written description signed by the Director of a violation of this Title and the necessary corrective action. A Warning Letter cannot be used to assess civil penalties, is not appealable to the Commission, and is not final agency action.

### **Section 1902.1 Applicability**

Persons in the state of Arkansas who own or operate **Poultry Feeding Operations** where 2,500 or more Poultry are housed or confined on any given day will be required to register annually with the Commission.

### **Section 1902.2 Registration Period**

A. All Poultry Feeding Operations shall register from January 1 to March 31 each year and facilities constructed after March 31 of any year shall register during the next available period of registration.

B. Effective March 31, 2005, all Poultry Feeding Operations shall register in the manner denoted below or be deemed out of compliance and subject to penalties set forth in these regulations.

C. Facilities must annually renew registration by submitting a renewal form and the annual fee.

### **Section 1902.3 Registration Information**

A. Operators shall submit to the Commission or Conservation Districts, on forms to be supplied by the Commission, the following information concerning the previous calendar year:

1. The number and type of birds housed or maintained by the operation;
2. The location of the operation by latitude and longitude and county, township, range, and section;
3. The business address of the owner of the facility;
4. The address of the facility if different from the owner's business address;
5. The type of waste handling system;
6. The type of Litter Management System used;



7. The type of Litter storage system used and the amount of Litter stored;
8. The method used for carcass disposal;
9. The acreage owned, controlled, or used by the Poultry Feeding Operation and used for Land Application of Litter;
10. Tons of Litter produced, removed, transferred or otherwise used by the Poultry Feeding Operation and the type of transfer or usage;
11. The Poultry Integrator or integrators with which the Poultry Feeding Operation has contracted to provide Poultry or Poultry Litter; and
12. Any other relevant information deemed necessary by the Commission.

B. The Conservation District office wherein the majority of the facility is located is available to assist the operator in filling out the registration form.

C. Conservation Districts will collect any fees accompanying the registration form and will deliver the fees to the appropriate agency or department, if applicable.

### **Section 1903.1 Noncompliance**

The registered owner must comply with all conditions of registration. It shall be a violation of Ark. Code Ann. §§ 15-20-901 et seq. and these rules for any Person to:

1. Provide misleading, false, or fraudulent registration information; or
  2. Fail to register annually or promptly provide any record or allow the Commission access to inspect any records required to be kept by these rules.
- Section 1903.2 Review of Suspected Noncompliance

A. Upon complaint or suspicion of suspected violation of 1903.1, Commission or Conservation District staff may investigate an owner or operator of a Poultry Feeding Operation and may recommend disciplinary action to the Director.

1. Entry shall not occur without prior notification of the owner, operator, or agent in charge of the property. Notice shall be given to the owner, operator, or agent at least seventy two (72) hours before entry
2. Documentation of bio-security measures taken and bio-security certification received by the Commission agent, including a bio-

security log book, shall be made available to the owner or Operator upon request.

B. Anyone providing information to the Commission about a possible violation must provide a written complaint stating the complainant's legal name and current mailing and physical addresses.

1. The complaint must be verified by the notarized signature of the complainant.

2. Complaints are subject to the Freedom of Information Act, Ark. Code Ann. §§ 25-19-101 et seq.

C. After reviewing evidence provided to him or her regarding a possible violation, the Director will determine whether there is evidence that a violation has occurred. If the Director finds that a violation occurred, the Director may issue a Warning Letter or Administrative Consent Order to the alleged violator, stating the violation and the resulting corrective or disciplinary action. If an incomplete complaint is received or the Director finds that there is not sufficient evidence of a violation, the Director will inform the complainant and alleged violator in writing.

### **Section 1903.3 Administrative Penalties**

A. Upon the first violation of these rules by an owner or operator within any one-year period, the owner or operator shall be issued a Warning Letter. For the second violation within any one-year period, the Director may assess not more than fifty dollars (\$ 50) in cumulative civil penalties. Upon the third violation within any one-year period, the Director may impose a penalty not to exceed five hundred dollars (\$ 500) for each violation of Ark. Code Ann. §§ 15-20-901 et seq. and this Title.

B. A Warning Letter or Administrative Consent Order may be served by certified mail, restricted delivery, return receipt requested to the address on file with the Commission or District or by any means sufficient for service of process in a civil court action.

C. The owner or operator may choose to sign an Administrative Consent Order and thereby agree to the penalties contained within the Order. The owner or operator will also be deemed to have consented to the Order if he or she fails to respond to the Commission in writing within thirty (30) days of receipt of the Administrative Consent Order and the Commission has proof that the owner or operator was served with the Administrative Consent Order.

D. If the owner or operator disputes that a violation occurred or believes the assessed penalty is too harsh, the owner or operator must respond to the Administrative Consent Order within thirty (30) days by requesting a hearing before the Commission. The hearing will be conducted in accordance with Commission rules, Title I. The Commission

has the burden of proving the alleged facts and violations of law stated in the Administrative Consent Order. The Commission and the Director may issue subpoenas to any witness requiring his or her attendance and testimony before the Commission as provided in Ark. Code Ann. § 15-22-208.

E. The Commission will not take final administrative action against Persons accused of violating this Title or Ark. Code Ann. §§ 15-20-901et seq. until the accused Person has executed an Administrative Consent Order or been given opportunity for a hearing to review the decision under Commission Rules, Title I, Rules of Organization and General Operation of the Arkansas Natural Resources Commission.