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The full text of certain NPDES permits and the associated fact sheets has been made available to provide online access to this public information. EPA is making permits and fact sheets available electronically to provide convenient access for interested public parties and as a reference for permit writers. The ownership of these documents lies with the permitting authority, typically a State with an authorized NPDES program.

While EPA makes every effort to ensure that this web site remains current and contains the final version of the active permit, we cannot guarantee it is so. For example, there may be some delay in posting modifications made after a permit is issued. Also note that not all active permits are currently available electronically. Only permits and fact sheets for which the full text has been provided to Headquarters by the permitting authority may be made available. Headquarters has requested the full text only for permits as they are issued or reissued, beginning November 1, 2002.

Please contact the appropriate permitting authority (either a State or EPA Regional office) prior to acting on this information to ensure you have the most up-to-date permit and/or fact sheet. EPA recognizes the official version of a permit or fact sheet to be the version designated as such and appropriately stored by the respective permitting authority.

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**FACT SHEET
AND SUPPLEMENTARY INFORMATION
FOR DRAFT GENERAL PERMIT ARR150000
STORM WATER RUNOFF ASSOCIATED WITH CONSTRUCTION SITES
IN ARKANSAS**

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1. **BACKGROUND**

- a. Note

This general permit became effective on July 1, 1998 and expired on June 30, 2003.

- b. General Permits

The State of Arkansas has been authorized by the U. S. Environmental Protection Agency to administer the National Pollutant Discharge Elimination System (NPDES) Program in Arkansas, including the issuance of general permits to categories of dischargers under the provisions of 40 CFR 122.28, as adopted by reference in ADEQ Regulation No. 6. Under this authority, ADEQ may issue a single general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures. Specifically, ADEQ is authorized to issue a general NPDES permit if there are a number of point sources operating in a geographic area that:

1. involve the same or substantially similar types of operations;
2. discharge the same types of wastes;

3. require the same effluent limitations or operating conditions;
4. require the same or similar monitoring requirements; and
5. in the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

As in the case of individual permits, violation of any condition of a general permit constitutes a violation of the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended) and subjects the discharger to the penalties specified therein. Upon promulgation of the final general permit for this type discharge, owners/operators qualified for coverage must follow the following notification requirements:

1. Medium and Large Construction Sites: Owners/operators must notify the Department at least two (2) weeks in advance of the commencement of construction activities of their intent to discharge under the terms of this permit.
2. Small Construction Sites: Owners/operators are allowed automatic permit authorization through the use of a permit by rule approach.

2. **Legal Basis**

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States in the absence of authorizing permits. CWA section 402, 33 U.S.C. 1342, authorizes EPA to issue National Discharge Elimination System (NPDES) permits allowing discharges on condition they will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314 and 1341). Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) meet standards reflecting levels of technological capability, (2) comply with EPA-approved state water quality standards and (3) comply with other state requirements adopted under authority retained by states under CWA 510, 33 U.S.C. 1370.

The Agency may issue "general permits" applicable to a class of similar dischargers within a discreet geographical area. See *NRDC v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977) and 40 CFR 122.28. Issuance of such permits is not controlled by the procedural rules EPA uses for individual permits, but is instead subject to section 4 of the Administrative Procedure Act (APA), 5 U.S.C. 553, as supplemented by EPA regulations; e.g., 40 CFR 124.58. EPA must, however, comply with the substantive requirements of the CWA without regard to whether it is issuing an individual or general NPDES permit.

a. NPDES

National guidelines establishing BPT, BCT and BAT standards have not been promulgated for storm water discharges from construction activities. In accordance with 40 CFR 122.44(k) and 40 CFR 122.44 (s), the general permit includes requirements for the development and implementation of Storm Water Pollution Prevention Plans (SWPPPs) along with Best Management Practices (BMPs).

3. **Regulatory Background**

The federal storm water regulations contained in 40 CFR 122.26 require NPDES permit coverage for small (1 – 5 acre) and large (greater than 5 acre) construction sites.

4. **Permit Coverage**

Facilities covered by this general permit include those facilities which engage in construction activities greater than 1 acre in size.

This general permit shall not apply to activities:

1. That originate from the site after construction activities have been completed and the site has undergone final stabilization.
 2. Discharges that are mixed with sources of non-storm water.
 3. Storm water discharges from construction sites that the Director has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard.
 4. Storm water discharges from construction sites if the discharge or clearing activities are likely to adversely affect a listed endangered or threatened species or its critical habitat.
 5. Discharges which are not in compliance with the Endangered Species Act (ESA).
- a. Notice of Intent (NOI) to be Covered

1. Medium and Large Construction Sites (greater than 5 acres)

Written notification from new dischargers shall be submitted to the Department by certified mail at least 2 weeks prior to the proposed discharge. Unless the applicant is notified otherwise by the Director within 2 weeks of submission of the above notification, authority to discharge under this general permit will become effective.

2. Small Construction Sites (1 – 5 acres)

In accordance with 40 CFR 122.28(b)(2)(v), the facility may discharge under this general permit without submitting a NOI. In making the determination that a NOI is inappropriate for small construction activities, the Director considered the short-term nature of small construction activities, the number of construction sites that will be authorized, and the administrative burden on both the ADEQ and the regulated community. The Director also considered the nature and type of proposed discharges authorized under the general permit, the expected potential for toxic and conventional pollutants, and the expected volumes. The requirements and conditions of the general permit are appropriate to control the discharges from small construction sites authorized under the general permit and to protect water quality. The administrative burden on the permittee to submit

an NOI and on the ADEQ to respond to the NOI, would be excessive and not directly necessary to control these discharges.

b. Individual Permits

The ADEQ may consider the issuance of individual permits according to the criteria in 40 CFR 122.28(b)(2). These criteria include:

1. the discharge(s) is a significant contributor of pollution,
2. the discharger is not in compliance with the terms and conditions of the general permit,
3. a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source,
4. effluent limitation guidelines are subsequently promulgated for the point sources covered by the general permit,
5. a Water Quality Management Plan containing requirements applicable to such point sources is approved, or
6. the requirements listed in 40 CFR 122.28(a) and identified in the previous paragraphs are not met.

5. **Discharge Characterization**

a. Storm Water Runoff

Due to soil disturbing activities, storm water runoff from construction sites have the potential to be heavily laden with silt, sediment, and debris. This runoff is then discharged to creeks, rivers, lakes, ponds, municipal storm water drainage systems, etc.

6. **Best Conventional Pollutant Control Technology (BCT) and Best Available Technology Economically Achievable (BAT)**

National guidelines establishing BPT, BCT and BAT standards have not been promulgated for storm water discharges from construction activities. In accordance with 40 CFR 122.44(k) and 40 CFR 122.44 (s), the general permit includes requirements for the development and implementation of Storm Water Pollution Prevention Plans (SWPPPs) along with Best Management Practices (BMPs).

7. **Water Quality Requirements**

In accordance with 40 CFR 122.44(d), the general permit must include any requirements necessary to achieve State Water Quality Standards as established under Section 303 of the Clean Water Act. Discussed below is the requirements based on State Water Quality Standards.

- a. Discharges to waters for which there is a total maximum daily load (TMDL) allocation are not eligible for coverage under this permit unless you develop and

certify a storm water pollution prevention plan (SWPPP) that is consistent with the assumptions and requirements in the approved TMDL. To be eligible for coverage under this general permit, operators must incorporate into their SWPPP any conditions applicable to their discharges necessary for consistency with the assumptions and requirements of the TMDL within any timeframes established in the TMDL. If a specific numeric wasteload allocation has been established that would apply to the project's discharges, the operator must incorporate that allocation into its SWPPP and implement necessary steps to meet that allocation.

- b. Discharges that the Department, prior to authorization under this permit, determines will cause, have the reasonable potential to cause, or contribute to an excursion above any applicable water quality standard. Where such a determination is made prior to authorization, the Department may notify you that an individual permit application is necessary in accordance with Part I.B.4. However, the Department may authorize coverage under this permit after inclusion of appropriate controls and implementation procedures in the SWPPP designed to bring the discharge into compliance with water quality standards.

8. **Permit Limits and Basis**

Numeric discharge limits are not imposed by this general permit. The permit language is included to ensure that those seeking coverage under this general permit select, install, implement, and maintain BMPs at their construction site that will be adequate and sufficient to meet water quality standards for all pollutants of concern. Based on EPA's 1996 Interim Permitting Approach for Water Quality-Based Effluent Limitations in Storm Water Permits (EPA 833-D-96-001), the ADEQ has determined that BMPs, when properly selected, installed, implemented, and maintained do provide effluent quality that can meet WQS.

9. **Monitoring**

Monitoring requirements are not imposed by this general permit in accordance with the storm water federal regulations contained in 40 CFR 122.26.

10. **Other Conditions**

a. Geographic Area and Covered Facilities

The general permit, when issued, will authorize storm water discharges from construction activities throughout the State of Arkansas to all receiving waters. The permit will be applicable only to facilities which have direct discharges to waters of the State and are therefore subject to the requirements of Section 301 and 402 of the Clean Water Act.

b. Eligibility and Authorization

Owners and operators engaged in construction activity greater than 1 acre in size in the State of Arkansas are eligible for coverage under this general permit.

c. Expiration Date

This general permit will expire 5 years from the effective date of the permit.

11. **Public Comment Period**

The Director, ADEQ, has tentatively decided to issue a general NPDES permit for storm water discharges from construction activities subject to certain standards, prohibitions, and other conditions necessary to carry out the provisions of federal and state laws. The draft general permit ARR150000 covers facilities located in the state of Arkansas. Among other documents, the administrative record consists of the draft general permit and a fact sheet describing the reasons for the conditions of the draft general permit.

The administrative record is on file at the NPDES Branch, Arkansas Department of Environmental Quality, 8001 National Drive, Little Rock, Arkansas 72209, and may be inspected and copied at any time between 8:30 a.m. and 4:00 p.m., Monday through Friday. Copies of the draft general permit and other available information may be obtained by contacting ADEQ, NPDES Section at the above address. There is a charge of \$0.25 per copy sheet.

Interested persons may submit comments on the draft general permit and administrative record to the Director at the above address no later than 30 days from the last date of publication. The purpose of this Public Notice is to receive comments from interested persons on this draft general permit. All persons who believe that any of the conditions of the draft general permit is not appropriate, or that the tentative decision to issue the draft general permit is not appropriate, have an obligation to raise all reasonably ascertainable issues and submit all arguments and factual grounds supporting their position, including all supporting material, by the close of the comment period. All supporting material shall be included in full and may not be incorporated by reference, unless they are already a part of the administrative record or consist of State or Federal regulations, EPA documents of general applicability, or other generally available reference materials.

During the public comment period, any interested person may request a public hearing. A request for a public hearing shall be in writing and shall state the nature of the issue proposed to be raised in the hearing.

The Director will consider the issuance of the final general permit following any public hearing and the close of the comment period. All comments timely submitted by interested persons in response to this notice and statements and other evidence properly submitted at any public hearings, will be considered by the Director in his final decision.

Any person who submits timely written comments will receive notice of the Director's final decision. Further information concerning the Department's permitting procedures may be found in 40 CFR Part 124, as adopted by reference in ADEQ Regulation No. 6, and other provisions of Regulation No. 6.

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Interested persons may submit comments on the draft general permit and administrative record to the Director at the above address no later than 30 calendar days following the date of publication. The purpose of this Public Notice is to receive comments from interested persons on this draft general permit. All persons who believe that any of the conditions of the draft general permit is not appropriate, or that the tentative decision to issue the draft general permit is not appropriate, have an obligation to raise all reasonably ascertainable issues and submit all arguments and factual grounds supporting their position, including all supporting material, by the close of the comment period. All supporting material shall be included in full and may not be incorporated by reference, unless they are already a part of the administrative record or consist of State or Federal regulations, EPA documents of general applicability, or other generally available reference materials.

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Any person who submits timely written comments will receive notice of the Director's final decision. Further information concerning the Department's permitting procedures may be found in 40 CFR Part 124, as adopted by reference in ADEQ Regulation No. 6, and other provisions of Regulation No. 6.

This is to give notice that the Arkansas Department of Environmental Quality has developed a Draft Permit for **Owners/Operators Engaged in Construction Activity Greater than One (1) Acre in Size Located within the State of Arkansas** under the National Pollutant Discharge Elimination System and the Arkansas Water and Air Pollution Control Act. Development of the draft permit was based on a preliminary staff review.

Owners/operators engaged in construction activity located within the State of Arkansas requesting coverage will be authorized to discharge to all receiving waters, as set forth in General Permit ARR150000. All receiving waters are a water of the United States classified for raw water source for public, industrial, and agricultural water supplies, propagation of desirable species of fish and other aquatic life, and other compatible uses.

Following are changes proposed from the previously issued permit:

1. The permit has been modified to reflect the Storm Water Phase II requirements for small construction sites.
2. A requirement for large construction sites to submit Storm Water Pollution Prevention Plans

- (SWPPPs) for review has been added to Part I.B.7.a.ii.
3. The time frame between submittal of the Notice of Intent (NOI) and permit authorization has been changed from 48 hours to 2 weeks following submittal.
 4. Modified the general permit number from ARR10A000 to ARR150000.
 5. Revised the permit language in Part II.B.4, Continuation of the Expired General Permit, to include the language contained in the EPA Region VI Construction General Permit.

The permit will become effective following the 30 day public comment period, unless:

1. Comments are received that prolong the issuance of the general permit.
2. A public hearing is held requiring delay of the effective date.

The ADEQ contact person for submitting written comments, requesting information regarding the draft permit, and/or obtaining copies of the permit and the Fact Sheet is:

NPDES Permits
Arkansas Department of Environmental Quality
8001 National Drive
Post Office Box 8913
Little Rock, Arkansas 72219-8913
Ph: (501) 682-0622
Fax: (501) 682-0910
Email: billings@adeq.state.ar.us

NPDES comments and public hearing procedures may be found at 40 CFR 124.10 and 124.12 (49 Federal Register 14264, April 1, 1983, as amended at 49 Federal Register 38051, September 26, 1984). The period during which written comments on the draft permit may be submitted extends for 30 days from the date of this notice. During the comment period, any interested person may request a public hearing by filing a written request which must state the issues to be raised. A public hearing will be held if ADEQ finds a significant degree of public interest.

ADEQ will notify the applicant, and each person who has submitted written comments or requested notice, of the final permit decision. A final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit. Any interested person who has submitted comments may appeal a final decision by ADEQ in accordance with the Arkansas Department of Environmental Quality Regulation No. 8 (Administrative Procedures).

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