

Arkansas Pollution Control and Ecology Commission

Regulation No. 9, Fee Regulation

As adopted by the Arkansas Pollution Control and Ecology Commission
June 22, 2012 effective July 9, 2012.

Approved by EPA April 30, 2015 (80 FR 24216) effective June 29, 2015 (ARd19),
Regulations.gov document EPA-R06-OAR-2015-0054-0004 [AR019.04]

Struck-out text not in SIP

Outline

Chapter 1 Title

Chapter 2 Definitions

The following definitions do not relate to the air program and
are not approved into the SIP: "Category", "Certificate", "Confined
Animal Operation", "Discretionary Major Facility", "Evaluation",
"Laboratory", "Major Municipal Facility", "Non-Municipal Major Facility",
"Parameter", and "Program".

Chapter 3 Permit Fee Payment

Chapter 5 Air Permit Fees

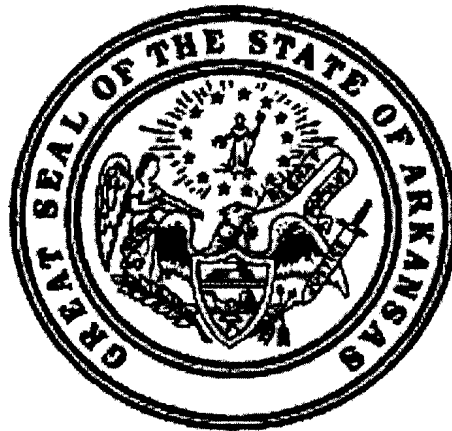
Chapter 9 Administrative Procedures

*****end outline AR Reg 9 ARd19*****v6b****

*** AR Reg 9 *** ARd19 *** EPA-R06-OAR-2015-0054 *** AR019 *** v6b ***

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

Regulation No. 9



BY _____

SECRETARY OF STATE
STATE OF ARKANSAS

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Fee Regulation

Adopted by the PC&E Commission June 22, 2012

**REGULATION NO. 9
FEE REGULATION
TABLE OF CONTENTS**

CHAPTER 1: TITLE	1-1
Reg.9.101 Title	1-1
Reg.9.102 Purpose	1-1
Reg.9.103 Applicability	1-1
Reg.9.104 Severability	1-1
CHAPTER 2: DEFINITIONS	2-1
CHAPTER 3: PERMIT FEE PAYMENT	3-1
Reg.9.301 Permit Fee Payment	3-1
Reg.9.302 Refunds	3-2
CHAPTER 4: WATER PERMIT FEES	4-1
 Reg.9.401 Maximum Water Permit Fees	4-1
 Reg.9.402 General Provisions	4-1
 Reg.9.403 Fees for Permits Issued Under the National Pollutant Discharge Elimination System (NPDES) Permits	4-2
 Reg.9.404 General Permits	4-5
 Reg.9.405 Fees for Non-NPDES Permits	4-5
 Reg.9.406 Fees for Underground Injection Control (UIC) Permits (Injection well classifications are defined in 40 CFR 144.6.)	4-6
 Reg.9.407 Administrative Permit Amendments	4-7
CHAPTER 5: AIR PERMIT FEES	5-1
Reg.9.501 Applicability	5-1
Reg.9.502 Terms Used in Fee Formulas	5-1
Reg.9.503 Initial Fees	5-1
Reg.9.504 Annual Fees	5-2
Reg.9.505 Modification Fees	5-2
Reg.9.506 Administrative Permit Amendments and Renewal Permits	5-3
Reg.9.507 General Permits	5-3
Reg.9.508 Permit Fees for Certain Small Businesses Subject to Part 70 Permitting Requirements	5-3
CHAPTER 6: SOLID WASTE PERMIT FEES	6-1
 Reg.9.601 Maximum Amount of Solid Waste Permit Fee Collections	6-1
 Reg.9.602 Fee Categories	6-1
 Reg.9.603 Initial Fees	6-1
 Reg.9.604 Annual Fees	6-2
 Reg.9.605 Modification Fees	6-2
 Reg.9.606 Permit Transfer Fees	6-2
 Reg.9.607 Post-Closure Fees	6-2
 Reg.9.608 Administrative Permit Amendments	6-2
 Reg.9.609 General Permits	6-3
CHAPTER 7: VARIANCES OR INTERIM AUTHORITY REQUESTS	7-1
 Reg.9.701 Processing Fee	7-1
 Reg.9.702 Fees Non-Refundable	7-1

CHAPTER 8: LABORATORY CERTIFICATION FEE PROGRAM	8-1
Reg.9.801 Laboratory Certification Fees	8-1
Reg.9.802 Laboratory Certification Travel Fees	8-1
Reg.9.803 Failure to pay Laboratory Certification Fees	8-1
CHAPTER 9: ADMINISTRATIVE PROCEDURES	9-1
Reg.9.901 Department Review of Fees	9-1
Reg.9.902 Appeals	9-1
Reg.9.903 Effective Date	9-1

CHAPTER 1: TITLE

Reg.9.101 Title

This regulation shall be known by and may be cited by the short title “Regulation No. 9: Fees.”

Reg.9.102 Purpose

It is the purpose of this regulation to develop and implement a system of fees for permits issued by the Arkansas Department of Environmental Quality pursuant to the provisions of the Water and Air Pollution Control Act (Act 472 of 1949, as amended, A.C.A. §8-4-101 et seq.) or the Solid Waste Management Act (Act 237 of 1971, as amended, A.C.A. §8-6-201 et seq.). Act 817 of 1983, as amended, Act 1254 of 1993, as amended, and Act 1052 of 1999 (A.C.A. § 8-1-101 et seq.) authorize the collection and enforcement of these fees and authorize their use to defray the costs of operating the Department.

It is also the purpose of this regulation to assess reasonable fees to establish and to administer the State Environmental Laboratory Certification Program Act (Act 876 of 1985, as amended, A.C.A. § 8-2-201 et seq.)

Reg.9.103 Applicability

Permit fees established by this regulation shall be applicable to all water permits, including no-discharge and closed system permits, issued under the provisions of the Water and Air Pollution Control Act, as amended, all air permits issued under the Water and Air Pollution Control Act, as amended, or any federal water or air permit program where permitting authority has been delegated to the Department (unless fees for such a program are otherwise provided by law), and all solid waste disposal permits issued under the provisions of the Solid Waste Management Act, as amended, and the Solid Waste Management Code. Facilities operating under the provisions of the “Permits by Rule” or “Authorization by Rule” will be exempted from this regulation until such time that the facility submits an application for an individual permit within each applicable permit category.

Laboratory certification fees established by this regulation shall be applicable to all laboratories certified by the Department. The fees include, but are not limited to, the reasonable costs of administering the provisions of the program and the reasonable administrative costs of initial issuance, initial certificate, renewed certificates, and the expenses associated with conducting evaluations.

Reg.9.104 Severability

If any provision of this Regulation or the application thereof to any person or circumstance is held invalid, such invalidity shall not effect other provisions or applications of this Regulation which can be given effect without the invalid portion or application, and to this end the provisions of this Regulation are declared to be severable.

CHAPTER 2: DEFINITIONS

All terms used in this regulation, unless the context otherwise requires, or unless specifically defined in the enabling legislation or in federal regulations adopted by reference for program management, shall have their usual meaning. In addition, for purposes of this regulation, the following definitions apply:

“Administrative Permit Amendment” means a minor change or permit revision which is not typically considered a permit modification, as defined by applicable statutes or regulations, or a minor modification which does not require public notice and opportunity for comment. For example, typographical corrections or revisions, or other changes initiated by the Department, might be considered administrative permit amendments. Some minor changes requested by the permittee may also qualify as administrative permit amendments. For purposes of Chapter 5, administrative permit amendments are defined in Regulations 18, 19, and 26. The Director, in his discretion, may decide whether a revision would be considered an administrative amendment. No fee will be charged for administrative permit amendments.

“Annual Fee” means the fee required to be submitted upon the facility-specific annual invoice date for a permit issued pursuant to the Water and Air Pollution Control Act, as amended, or the Solid Waste Management Act, as amended.

~~**“Category”** means one type of laboratory test or group of laboratory tests for similar materials or classes of materials or which utilize similar methods or related methods.~~

~~**“Certificate”** means the annual document showing those parameters for which a laboratory has received certification. The annual period begins at receipt of fee payments or at the expiration of a current certificate.~~

“Commission” means the Arkansas Pollution Control and Ecology Commission.

~~**“Confined Animal Operation”** means any lot or facility where livestock or fowl 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 any significant portion of the lot or facility.~~

“Department” means the Arkansas Department of Environmental Quality (ADEQ) or its successor.

“Director” means the Director of the Arkansas Department of Environmental Quality or his designated representative.

~~**“Discretionary Major Facility”** means an industrial facility discharging wastewater under the terms of a National Pollutant Discharge Elimination System (NPDES) permit that does not meet the numerical rating criteria as an NPDES non-municipal major facility, but which is designated as a major permittee by the Department or the U.S. Environmental Protection Agency (EPA). Such facilities are assigned an Major Rating Code (MRAT) greater than 500.~~

“EPA” means the United States Environmental Protection Agency.

~~**“Evaluation”** means a review of the quality control and quality assurance procedures, records keeping, reporting procedures, methodology, and analytical techniques of a laboratory for measuring or establishing specific parameters.~~

“Facility” means an activity or operation within a specific geographical location including property contiguous thereto. A facility may consist of several manufacturing, treatment, storage, or disposal operational units. For purposes of this permit fee regulation, a facility shall be considered to be all property, facilities, or operations owned, leased, or operated by a single entity, whether a municipal, county, or state government, corporation, partnership, or proprietorship in the same geographical area, forming an integral part of the same activity or operation, whether or not such activity lies within the boundaries of the city or county. For purposes of permit fee assessment only, such property, facilities, or operations shall be considered as a single facility if they are regulated by a common state or federal permit within each permit category, or in the future such consolidation of multiple permits can be realized within the scope of applicable permitting regulations, and the facilities or operations are under the supervision of a single plant manager/superintendent.

“Initial Fee” means the fee which is required by law to be submitted with all applications for permits issued pursuant to the Water and Air Pollution Control Act, as amended, and the Solid Waste Management Act, as amended, and which must be received by the Department prior to the issuance of such a permit.

“Issue Date” means the date the Department signed the permit.

~~**“Laboratory”** means any facility that performs analyses to determine the chemical, physical, or biological properties of air, water, solid waste, hazardous waste, wastewater, soil or subsoil materials, or any other analyses related to environmental quality evaluations.~~

~~**“Major Municipal Facility”** means a publicly owned treatment works (POTW) with a design flow or daily average flow of 1.0 million gallons per day (mgd) or greater, or a POTW designated as a major facility by the Department or EPA.~~

“Modification Fee” means that fee required by law to be submitted for modification of any existing or future permit required by the Water and Air Pollution Control Act, as amended, or the Solid Waste Management Act, as amended, such modification being either at the request of the permittee or as required by law or regulation. The fee may vary depending upon whether the permit modification or renewal is considered to be a minor or major modification, as defined in applicable statutes or regulations, or otherwise determined by the Director.

~~**“Non-Municipal Major Facility”** means a facility subject to the National Pollution Discharge Elimination System (NPDES) whose status is determined following completion of an NPDES Permit Rating Worksheet (current version) in which points are allocated on the basis of toxic pollutant potential, permitted flow or the ratio of wastewater to stream flow volume, conventional pollutants mass loadings, public health impacts (including proximity to drinking water supplies and potential for human health toxicity), and water quality factors. Additional~~

~~points can be assessed for certain steam electric power plants or for separate storm sewers serving a population greater than 100,000. The total points accumulated is known as the Major Rating Code or MRAT, which is the numeric total of ranking points assigned to non-municipal facilities and used to delineate them as a major or minor facility. Currently, a facility with an MRAT of eighty (80) points or more is designated as a “non-municipal major” facility. Additionally, EPA or the Department may designate an NPDES permittee as a “discretionary major” facility. Once an MRAT for a major facility is calculated and approved by EPA, the Department may recommend increases or decreases to an MRAT, but only EPA is authorized to change an individual permittee’s MRAT or designation as a “major” facility.~~

“Non-Part 70 Permit” means an air permit that is issued pursuant to a regulation other than Part 70 of Title 40 of the Code of Federal Regulations (40 CFR Part 70).

~~**“Parameter”** means the characteristic or characteristics of a laboratory sample determined by an analytic laboratory testing procedure.~~

“Part 70 Permit” means an air permit that is issued pursuant to 40 CFR Part 70.

~~**“Program”** means the Arkansas State Environmental Laboratory Certification Program.~~

“Renewal Permit” means a permit issued to a facility upon expiration of an existing permit. A modification fee may be assessed, depending upon whether the renewal is considered to be a minor or major modification, as defined in applicable statutes or regulations, or otherwise determined by the Director.

CHAPTER 3: PERMIT FEE PAYMENT

Reg.9.301 Permit Fee Payment

(A) Fee Calculation

The applicant may calculate the initial permit application fee or permit modification fee and include it with the permit application, or the applicant may request that the Department calculate the fee after reviewing the application and forward an invoice to the applicant for payment.

(B) Fee Payment

Applicable permit fees shall be paid by check or money order payable to the Department for deposit in the State Treasury. The permit will not be issued until such fee is received by the Department.

(C) Annual Fee Payment

Annual fees shall be due forty-five (45) days after the first day of the month in which the Permittee is billed for the required annual fee. Failure to receive this bill does not relieve the Permittee from liability for the annual fee, but late charges will not be assessed until forty-five (45) days after the Permittee has been notified that the annual fee is due. The Director may waive annual fees or a portion thereof, for new facilities which are not in operation, unless such waiver is otherwise prohibited by State or Federal law.

(D) Failure to Pay Annual Fees

A permitted facility failing or refusing to pay the annual fee in a timely manner shall be subject to a late payment charge as established in these regulations. Continued refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Department, which may result in revocation of the permit. When payment of fees is made by check which is subsequently returned due to insufficient funds, all review work on the particular application will immediately cease until the fee is paid in cash or by money order.

(E) First Annual Fee Payment

The annual fee shall be assessed upon the facility-specific annual invoice date. The Department shall credit the first annual fee, on a prorated basis, if the initial fee for the permit was assessed within 12 months of the first annual fee for the permit. The Department may credit the annual fee, on a prorated basis, if a modification fee for the permit was assessed within 12 months of the annual fee for the permit.

(F) Annual Fee Late Payment Charge

A late payment charge shall be assessed to facilities failing to pay the annual fee within forty-five (45) days of the billing date, and shall be assessed at the rate of ten percent (10%) of the annual fee.

LATE PAYMENT CHARGE = TEN PERCENT (10%) OF ANNUAL FEE

Reg.9.302 Refunds

Except for pre-site investigation fees and interim authority or variance application fees as described in Chapters 6 and 7, up to forty percent (40%) of a fee submitted pursuant to this regulation is refundable in the event that the request for the permit action for which the fee was submitted is withdrawn by the applicant prior to the final permit decision. The Director shall retain as much of the above-cited forty percent (40%) as he in his sole discretion, determines is necessary to cover the reasonable administrative and technical review costs incurred in the review process.

CHAPTER 5: AIR PERMIT FEES

AIR PERMIT FEES.

Reg.9.501 **Applicability**

The air permit fees contained in this section are applicable to (1) non-part 70 permits, (2) part 70 permits, and (3) general permits.

Reg.9.502 **Terms Used in Fee Formulas**

(A) **\$/ton factor** is \$16/ton until September, 1994, after which time it shall be increased annually by the percentage, if any, by which the federal Consumer Price Index exceeds that of the previous year. The Director may, after considering the factors contained in Reg.9.901 of this regulation, decide not to increase the \$/ton factor in a year when the fee fund has a balance greater than 150% of the amount of money expended from that fund in the previous year.

(B) **tons/year predominant air contaminant** is the permitted emission rate of the most predominant air contaminant (other than carbon monoxide, carbon dioxide and methane). The maximum value shall be no greater than 4,000 tons/year per facility.

(C) **tons/year chargeable emissions** is the sum of the permitted emission rates of all air contaminants (other than carbon monoxide, carbon dioxide and methane). The maximum value per air contaminant shall not exceed 4,000 tons/year per facility.

Reg.9.503 **Initial Fees**

Initial fees shall be assessed according to the following formulas:

(A) Non-part 70 permits

initial fee = \$/ton factor x tons/year predominant air contaminant

Provided, however, no initial fee shall be less than \$500 except for general permits issued to Non-part 70 sources.

(B) Part 70 permits

(1) Permits issued to part 70 sources already holding an active air permit not issued pursuant to Department Regulation #26:

initial fee = [\$/ton factor x tons/year chargeable emissions]

- amount of last annual air permit fee invoice

Provided, however, that no initial fee shall be less than \$1,000.

(2) Permits issued to part 70 sources which do not hold an active air permit:

initial fee = \$/ton factor x tons/year chargeable emissions

Provided, however, that no initial fee shall be less than the \$/ton factor x 100.

Reg.9.504 Annual Fees

Annual fees shall be assessed according to the following formulas:

- (A) Non-part 70 permits

annual fee = \$/ton factor x tons/year predominant air contaminant

Provided, however, that no annual fee shall be charged for a permit in which the tons/year predominant air contaminant is less than 10 tons/year.

- (B) Part 70 permits

annual fee = \$/ton factor x tons/year chargeable emissions

Provided, however, that no annual fee shall be less than the \$/ton factor x 100.

Reg.9.505 Modification Fees

Modification and renewal fees for air permits shall be assessed according to the following formulas:

- (A) Non-part 70 permits

modification fee = \$/ton factor x tons/year net emissions increase of predominant air contaminant

However, no modification fee shall be less than \$400, or more than the \$/ton factor x 4,000.

- (B) Part 70 permits

- (1) For each non-minor permit modification or each renewal permit involving a non-minor permit modification:

fee = \$/ton factor x tons/year net emission increase of chargeable emissions

However, no fee shall be less than \$1,000 or more than the \$/ton factor x 4,000.

- (2) \$500 for each minor permit modification or each renewal permit involving only a minor permit modification.

Reg.9.506 Administrative Permit Amendments and Renewal Permits

There shall be no fee charged for administrative permit amendments or renewal permits not involving a permit modification, as such are defined in Regulation 26: Arkansas Operating Air Permit Program, Regulation 19: State Implementation Plan for Air Pollution Control, or Regulation 18: Arkansas Air Pollution Control Code, as applicable.

Reg.9.507 General Permits

(A) In lieu of the fees schedules above, and except as provided in 9.507(B) below, sources which qualify for a General Air Permit issued pursuant to APC&EC Reg. Nos. 18, 19, or 26 shall be subject to an Initial Fee and Annual Fee as described below:

(1) The Initial Fee of \$200.00 shall be remitted with the Notice of Intent (NOI) for coverage under the applicable General Permit.

(2) Until a Notice of Termination (NOT) is submitted and approved by the Department, the Permittee shall be billed \$200.00 annually thereafter on the anniversary date of coverage.

(3) When general permits are revised, no additional initial fee will be required to be submitted if the currently permitted facility has maintained coverage under the existing general permit.

(B) The following General Permit holders shall not be assessed or billed an Annual Fee:

(1) Non-part 70 General Permits in which the tons/year predominant air contaminant is less than 10 tons per year.

Reg.9.508 Permit Fees for Certain Small Businesses Subject to Part 70 Permitting Requirements

(A) For purposes of this section, the term “small business stationary source” means a stationary source that :

- (1) is owned or operated by a person that employs 100 or fewer individuals
- (2) is a small business concern as defined in the federal Small Business Act (www.sba.gov);
- (3) is not a major stationary source;
- (4) is permitted to emit less than 50 tons per year of any regulated pollutant; and
- (5) is permitted to emit less than 75 tons per year of all regulated pollutants.

(B) Upon written request, the Director may reduce the Part 70 initial, Part 70 annual, or Part 70 modification fee for a small business stationary source if the source demonstrates to the satisfaction of the Director that they do not have the financial resources to pay the fee as calculated.

(C) When reducing permit fees in accordance with Reg.9.508(B), the Director shall calculate the fee as if the source is a non-Part 70 source.

CHAPTER 9: ADMINISTRATIVE PROCEDURES

Reg.9.901 Department Review of Fees

The Department shall undertake a biennial re-evaluation of the permit fee schedule as contained in this regulation within sixty (60) days of receiving its approved budget for the next biennium. The evaluation shall reflect the current needs of the Department to perform essential permitting, compliance, enforcement and monitoring activities; the resources available; the balance of the permit fee fund from the previous biennium; anticipated state and federal appropriations; status of delegation of federal programs; and any other factors deemed relevant to the study by the Department.

Reg.9.902 Appeals

If any applicant/permittee disagrees with the Department's decision on an assessment of fees, the applicant/permittee may appeal such decision in accordance with the applicable provisions of the Water and Air Pollution Control Act, the Solid Waste Management Act, the State Environmental Laboratory Certification Program Act, and Pollution Control and Ecology Commission Regulation No. 8, Administrative Procedures.

Reg.9.903 Effective Date

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