

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

RULE NO.9 FEE RULE



Approved by the Arkansas Pollution Control and Ecology Commission
September 22, 2017

TABLE OF CONTENTS

CHAPTER 1 : TITLE	1-1
Rule 9.101 Title	1-1
Rule 9.102 Purpose	1-1
Rule 9.103 Applicability	1-1
Rule 9.104 Severability	1-1
CHAPTER 2 : DEFINITIONS	2-1
CHAPTER 3 : PERMIT FEE PAYMENT	3-1
Rule 9.301 Permit Fee Payment	3-1
Rule 9.302 Refunds	3-2
CHAPTER 4 : WATER PERMIT FEES AND TRUST FUND CONTRIBUTION FEE.....	4-1
Rule 9.401 Maximum Water Permit Fees	4-1
Rule 9.402 General Provisions	4-1
Rule 9.403 Fees for Permits Issued Under the National Pollutant Discharge Elimination System (NPDES) Permits	4-2
Rule 9.404 General Permits	4-5
Rule 9.405 Fees for Non-NPDES Permits	4-6
Rule 9.406 Fees for Underground Injection Control (UIC) Permits (Injection well classifications are defined in 40 C.F.R. § 144.6.)	4-7
Rule 9.407 Nonmunicipal Domestic Sewage Treatment Works Trust Fund Contribution Fee	4-7
Rule 9.408 Administrative Permit Amendments	4-7
CHAPTER 5 : AIR PERMIT FEES	5-1
Rule 9.501 Applicability	5-1
Rule 9.502 Terms Used in Fee Formulas	5-1
Rule 9.503 Initial Fees	5-1
Rule 9.504 Annual Fees	5-2
Rule 9.505 Modification Fees	5-2
Rule 9.506 Administrative Permit Amendments and Renewal Permits	5-3
Rule 9.507 General Permits	5-3
Rule 9.508 Permit Fees for Certain Small Businesses Subject to Part 70 Permitting Requirements	5-3
CHAPTER 6 : SOLID WASTE PERMIT FEES	6-1
Rule 9.601 Maximum Amount of Solid Waste Permit Fee Collections	6-1
Rule 9.602 Fee Categories	6-1
Rule 9.603 Initial Fees	6-1
Rule 9.604 Annual Fees	6-2
Rule 9.605 Modification Fees	6-2
Rule 9.606 Permit Transfer Fees	6-2
Rule 9.607 Post Closure Fees	6-2
Rule 9.608 Administrative Permit Amendments	6-2
Rule 9.609 General Permits	6-3
CHAPTER 7 : VARIANCES OR INTERIM AUTHORITY REQUESTS	7-1
Rule 9.701 Processing Fee	7-1
Rule 9.702 Fees Non-Refundable	7-1
CHAPTER 8 : LABORATORY CERTIFICATION FEE PROGRAM	8-1

Rule 9.801	Laboratory Certification Fees.....	8-1
Rule 9.802	Laboratory Certification Travel Fees	8-1
Rule 9.803	Failure to pay Laboratory Certification Fees	8-1
CHAPTER 9 : ADMINISTRATIVE PROCEDURES		9-1
Rule 9.901	Division Review of Fees	9-1
Rule 9.902	Appeals.....	9-1
Rule 9.903	Effective Date.....	9-1

CHAPTER 1 : TITLE

Rule 9.101 Title

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

Rule 9.102 Purpose

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

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

Rule 9.103 Applicability

Permit fees established by this rule 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 Division (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” are exempt from this rule until such time that the facility submits an application for an individual permit within each applicable permit category.

Laboratory certification fees established by this rule shall be applicable to all laboratories certified by the Division. 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.

Rule 9.104 Severability

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

CHAPTER 2 : DEFINITIONS

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

“Administrative Permit Amendment” means a minor change or permit revision that is not typically considered a permit modification, as defined by applicable statutes or rules, or a minor modification that does not require public notice and opportunity for comment. For example, typographical corrections or revisions, or other changes initiated by the Division, 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 Rules 18, 19, and 26. The Director, in his or her 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 that use 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.

“Division” means the Division of Environmental Quality (DEQ) or its successor.

“Director” means the Director of the Division of Environmental Quality or his or her 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 is designated as a major permittee by the Division or the U.S. Environmental Protection Agency (EPA). Such facilities are assigned a 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 rule, 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 rules and regulations, and the facilities or operations are under the supervision of a single plant manager/superintendent.

“Initial Fee” means the fee that 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 that must be received by the Division before a permit is issued.

“Issue Date” means the date the Division 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 Division 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 rule. The fee may vary if the permit modification or renewal is considered to be a minor or major modification, as defined in applicable statutes or rules, 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 Division may designate an NPDES permittee as a “discretionary major” facility. Once an MRAT for a major facility is calculated and approved by EPA, the Division 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 C.F.R. § 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 C.F.R. § Part 70.

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

“Q” or “Quantity” means the permitted flow expressed in million gallons per day (mgd), as used in formulas for calculating Water Permit Fees under Chapter 4.

“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 rules, or otherwise determined by the Director.

CHAPTER 3 : PERMIT FEE PAYMENT

Rule 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 Division 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 Division for deposit in the State Treasury. The permit shall not be issued until the fee is received by the Division.

(C) Annual Fee Payment

Annual fees shall be due forty-five (45) days after the first day of the month that 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 shall 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 that are not in operation unless the 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 rules. Continued failure or refusal to pay the required fees after a reasonable notice shall constitute grounds for legal action by the Division that may result in revocation of the permit. When payment of fees is made by check that is subsequently returned due to insufficient funds, all review work on the particular application shall 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 Division 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 Division 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

Rule 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 rule is refundable if the request for the permit action for which the fee was submitted is withdrawn by the applicant before the final permit decision. The Director has the discretion to retain as much of the above-cited forty percent (40%) as he or she determines is necessary to cover the reasonable administrative and technical review costs incurred in the review process.

**CHAPTER 4 : WATER PERMIT FEES AND TRUST FUND
CONTRIBUTION FEE**

WATER PERMIT FEES. The permit fee schedule in Rule 9.401 — 9-406 applies to the affected water permit programs in the state of Arkansas.

Rule 9.401 Maximum Water Permit Fees

The following maximum fees for water permits, including construction permits and initial, annual, renewal and modified permits, shall apply to each permit issued by the Division. Actual permit fees shall be calculated and assessed in accordance with the provisions of this section.

(A) Construction Permits

Construction permits issued pursuant to the Water and Air Pollution Control Act, as amended, for construction, alteration, or modification, or any combination thereof, of a treatment system shall not exceed \$500 per permit.

(B) NPDES and UIC Program Permits

Permits issued under the National Pollutant Discharge Elimination System (NPDES) and the Underground Injection Control (UIC) Programs.

- (1) Initial and Annual \$30,000
- (2) Modification of Permit
 - (a) Major Modification \$10,000
 - (b) Minor Modification* \$1,000

NOTE: *Minor modifications for NPDES and UIC permits are restricted to those as defined in 40 C.F.R. §§ 122.63 and 144.41, respectively.

(C) Non-NPDES “No-Discharge” Permits..... \$500

(D) Short Term Activity Authorizations

Fees for Short Term Activity Authorizations under the provisions of Rule No. 2: Water Quality Standards shall not exceed \$200.

Rule 9.402 General Provisions

(A) Construction Permits

All applicants for construction permits required by Ark. Code Ann. § 8-4-217(b) shall be assessed a fee that shall not exceed \$500 for each permit or modification thereto, except that liquid animal waste management systems shall be assessed a fee of \$200 for each permit or modification thereto. Construction permit fees shall be in addition to any water permit fees required in Rule 9.403, Rule 9.404, and Rule 9.405 below.

(B) Permit Fees

Permit fees (initial, annual, or modification) shall be required for each water permit, as described below.

(C) Inactive Status Fees

The owner or operator of a hog farm that has been issued a permit under Rule No. 5, Liquid Animal Waste Management Systems, shall not pay an annual fee if the permit is placed on inactive status by the Division. An NPDES or non-NPDES permit may be placed on inactive status if the owner's or operator's contract with the integrator has been terminated by the integrator. To obtain inactive status, the owner or operator must submit a written request to the Division seeking inactive status and provide the Division with a copy of the integrator's letter terminating the contract. The Division shall notify the owner or operator that the permit has been placed on inactive status. The owner or operator shall not pay an annual fee during the time the permit is on inactive status. A permit that is placed on inactive status may remain on inactive status for a maximum of two (2) years following the date of contract termination. The owner or operator must comply with all permit conditions in order for the permit to remain on inactive status. Failure to comply with permit condition may result in the possible repayment of the annual fees, in addition to any assessed penalties. If the permit has not been reactivated at the end of the two (2) year period, the owner or operator must file a closure plan with the Division. The owner or operator must reactivate the permit if the owner or operator begins operating the hog farm and shall notify the Division within thirty (30) days after the owner or operator begins operating the hog farm that the permit is being reactivated.

Rule 9.403 Fees for Permits Issued Under the National Pollutant Discharge Elimination System (NPDES) Permits.

(A) Non-Municipal Major Facilities

(1) All facilities classified as Non-Municipal Major Facilities, as defined in Chapter 2, with a Major/Minor Permit Rating (MRAT) equal to or greater than 100, except for Discretionary Major Facilities [see Rule 9.403(A)(2)], are subject to fees as follows:

- (a) Initial Fee..... \$15,000
- (b) Annual Fee..... \$15,000
- (c) Modification Fee
 - (i) Major..... \$5,000
 - (ii) Minor*..... \$1,000

(2) Non-Municipal Major Facilities with MRAT less than 100 and Discretionary Major Facilities are subject to fees as follows:

- (a) Initial Fee..... \$11,000
- (b) Annual Fee..... \$11,000
- (c) Modification Fee
 - (i) Major..... \$5,000
 - (ii) Minor*..... \$1,000

(B) Major Municipal Facilities

All Major Municipal Facilities, as defined in Chapter 2, are subject to fees as follows:

(1) Initial and annual fees shall be calculated as follows:

$$\text{Fee} = \$5,000 + (900 \times (Q-1))$$

(2) Modification Fee

- (a) Major..... \$5,000
- (b) Minor*..... \$1,000

(C) Minor Municipal and Minor Non-Municipal Domestic Facilities

(1) Facilities without toxics, priority pollutants, or hazardous substances, as defined in 40 C.F.R. § 122, Appendix D, Tables II, III, and V, or Whole Effluent Toxicity (WET) limits, limited in the permit:

(a) Initial and annual fees shall be calculated as follows:

$$\text{Fee} = \$200 + (5600 \times Q)$$

with Maximum Fee = \$5,800

(b) Modification Fee

- (i) Major..... \$2,000
- (ii) Minor*..... \$1,000

(2) Facilities with toxics, priority pollutants or hazardous substances, as defined in 40 C.F.R. § 122, Appendix D, Tables II, III and V, or Whole Effluent Toxicity (WET) limits, limited in the permit:

(a) Initial and annual fees shall be calculated as follows:

$$\text{Fee} = \$200 + (21500 \times Q)$$

with Maximum Fee = \$15,000

- (b) Modification Fee
 - (i) Major..... \$2,000
 - (ii) Minor*..... \$1,000

(3) Facilities with toxic pollutants based solely on a Total Maximum Daily Load (TMDL), limited in the permit:

- (a) Initial and annual fees shall be calculated as follows:

Fee = \$200 + (5600 X Q)
with Maximum Fee = \$5,800

- (b) Modification Fee
 - (i) Major..... \$2,000
 - (ii) Minor*..... \$1,000

(D) Non-Municipal Minor Facilities

Non-Municipal Minor Facilities with MRAT less than 80 are subject to fees as follows:

- (a) Initial and annual fees shall be calculated as follows:

Fee = \$200 + 5600 X Q
with Maximum Fee = \$10,000

- (b) Modification Fee
 - (i) Major.....\$2,000
 - (ii) Minor.....\$1,000

(E) Non-contact cooling water (including discharges from power plants not subject to fees described in Rule 9.403(A) above) and non-contaminated storm water discharges:

- (1) Initial and annual fees shall be calculated as follows:

Fee = \$200 + (700 X Q)
with Maximum Fee = \$10,000

- (2) Modification Fee
 - (a) Major..... \$2,000
 - (b) Minor*..... \$1,000

- (F) Aquatic animal production facilities (fish hatcheries, etc.) with flow-through systems shall be subject to the following fees:
- (1) Initial and Annual Fees..... \$2,500
 - (2) Modification
 - (a) Major..... \$2,000
 - (b) Minor*..... \$ 500
- (G) Variable Discharge (i.e., storm water and land clearing not addressed in Rule 9.403(C), aggregate facilities, mining, etc.)
- (1) Initial and Annual \$ 300
 - (2) Modification (Major and Minor)..... \$ 300

NOTE: *Minor modifications to NPDES permits are restricted to those defined in 40 C.F.R. § 122.63

Rule 9.404 General Permits

- (A) In lieu of the fee schedules described above, and except as provided in Rule 9.404(B) below, permittees authorized to discharge wastewater under a Water Division general permit issued by the Division shall be subject to an initial fee and an annual fee as described below. The initial fee shall be remitted with the Notice of Intent (NOI) for coverage under the applicable general permit. Until a Notice of Termination (NOT) is submitted to and approved by the Division, the Permittee shall be billed annually thereafter by the Division on the anniversary date of coverage. When general permits are revised, an additional initial fee is not required to be submitted if the currently permitted facility has maintained coverage under the existing general permit.

General Permit Number & Name	
ARG160000 (Sanitary Landfill Runoff)	\$400
ARG550000 (Individual Treatment Unit)	\$200
ARG640000 (Water Plant Backwash Filters)	\$400
ARG670000 (Pipeline Hydrostatic Testing)	\$200
ARG750000 (Car/Truck Wash Facilities)	\$200
ARG790000 (Ground Water Clean-up)	\$500
ARR000000 (Storm Water - Mfg)	\$200
ARR150000 (Storm Water- Construction)	\$200
ARR040000 (Storm Water – MS4 Phase II)	\$200
ARG500000 (Aggregate Facilities)	\$200
00000-WG-LA (Land Application of Drilling Fluids)	\$500
0000-WG-CW (Carwash)	\$200
0000-WG-WR (Wastewater Treatment Plant Residuals)	\$500
0000-WG-SW (Salt Water Disposal)	\$250
0000-WG-AW (Confined Animal)	\$200

- (B) Homeowners covered under general permit ARG550000 (Individual Treatment Units) are exempt from fees required herein.
- (C) Miscellaneous general permits not specifically mentioned above that are issued by the Water Division shall be subject to an initial fee not to exceed \$500 and an annual fee not to exceed \$500.

Rule 9.405 Fees for Non-NPDES Permits.

- (A) Salt Water Disposal
 - (1) Initial Fee \$250
 - (2) Annual Fee..... \$250
 - (3) Modification Fee * \$250

- (B) Confined Animal and Small Commercial Septic Tank Systems (<5000 gallons per day (gpd))
 - (1) Initial Fee \$200
 - (2) Annual Fee..... \$200
 - (3) Modification Fee..... \$200

- (C) Commercial or industrial (non-agricultural, non-UIC, commercial septic tank systems) (> 5000 gallons per day (gpd))
 - (1) Initial Fee \$500
 - (2) Annual Fee \$500
 - (3) Modification Fee * \$500

- (D) Industrial sludge application (i.e. food processing, reserve pit, hatchery systems, etc.)
 - (1) Initial Fee \$500
 - (2) Annual Fee..... \$500
 - (3) Modification Fee * \$500

- (E) Publicly Owned Treatment Works (POTW) Non-NPDES with Land Application of Wastewater
 - (1) Initial Fee.....\$500
 - (2) Annual Fee.....\$500
 - (3) Modification Fee *\$500

NOTE: *Defined as a ten percent (10%) or greater change in application or storage volumes or a change in the method of application or disposal

Rule 9.406 Fees for Underground Injection Control (UIC) Permits (Injection well classifications are defined in 40 C.F.R. § 144.6.)

- (A) Class I, III and IV
 - (1) Initial Fee.....\$15,000
 - (2) Annual Fee.....\$15,000
 - (3) Modification Fee*
 - (a) Major.....\$10,000
 - (b) Minor*.....\$1,000

NOTE: *Minor modifications are limited to those actions defined in 40 C.F.R. § 144.41.

- (B) Class V
 - (1) Initial Fee.....\$500
 - (2) Annual Fee.....\$500
 - (3) Modification Fee.....\$500

Rule 9.407 Nonmunicipal Domestic Sewage Treatment Works Trust Fund Contribution Fee.

(A) A Nonmunicipal Domestic Sewage Treatment Work is required to pay a trust fund contribution fee for the Nonmunicipal Domestic Sewage Treatment Works Trust Fund.

(B) The trust fund contribution fee shall be assessed in accordance with Ark. Code Ann. § 8-4-203(b).

Rule 9.408 Administrative Permit Amendments

There shall be no fee charged for minor water permit modifications involving only administrative amendments or revisions to a permit. For purposes of this Chapter, minor modifications are restricted to those defined in 40 C.F.R. § 122.63 or 40 C.F.R. § 144.41. The Director, in his or her discretion, may decide whether a minor modification is considered to be an administrative amendment.

CHAPTER 5 : AIR PERMIT FEES

AIR PERMIT FEES.

Rule 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.

Rule 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 Rule 9.901 of this rule, 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.

Rule 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 Division Rule #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 that 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.

Rule 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.

Rule 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.

Rule 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 Rule 26: Arkansas Operating Air Permit Program, Rule 19: State Implementation Plan for Air Pollution Control, or Rule 18: Arkansas Air Pollution Control Code, as applicable.

Rule 9.507 General Permits

- (A) In lieu of the fees schedules above, and except as provided in Rule 9.507(B) below, sources that qualify for a General Air Permit issued pursuant to APC&EC Rules 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 Division, 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 shall 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.

Rule 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 Rule 9.508(B), the Director shall calculate the fee as if the source is a non-Part 70 source.

CHAPTER 6 : SOLID WASTE PERMIT FEES

SOLID WASTE PERMIT FEES.

Rule 9.601 Maximum Amount of Solid Waste Permit Fee Collections

In accordance with Ark. Code Ann. § 8-1-103, the total amount of fees for solid waste management facility permits shall be calculated to generate revenues in any fiscal year not to exceed 4.25 times the total amount collected from Class 1 and Class 3 landfills in fiscal year 1992-93, provided that the total fee revenues cannot exceed one and one-quarter (1.25) times the total amount collected from solid waste permit fees in fiscal year 1994-95. Further, if the amount of permit fees levied on or received from permit holders exceed the amount specified above in a fiscal year, the over-collections may be retained by the Division to be used to reduce permit fees in subsequent years by relative amounts.

Rule 9.602 Fee Categories

Separate fees for the Initial fees (Pre-Application and Application), Annual Fees, Modification Fees, Permit Transfer Fees, and Post Closure Fees will be assessed for each applicable permit category. For purposes of assessing fees, permit categories include the following types of solid waste management facilities: Class 1, Class 3C (Commercial), Class 3N (Non-Commercial), Class 3T (Tire), and Class 4 Landfills; Transfer Stations, Composting Facilities and Solid Waste Material Recovery Facilities; provided, however, fees for a Solid Waste Material Recovery Facility will not be assessed where limited recycling and material recovery activities occur at a Transfer Station site. Solid waste management facilities, subject to the permit fees as set forth in this rule, are further defined and regulated under Rule No. 22: Solid Waste Management.

Rule 9.603 Initial Fees

Due to the unique requirements for a preliminary site survey (pre-site), which may include a geotechnical site review, of a proposed solid waste management facility prior to the submission of a permit application, the initial fee for solid waste permits is composed of two parts, i.e., (A) the pre-application fee, and (B) the application fee. The pre-application fee will help to recover the costs of the preliminary engineering site survey conducted by the various regulating agencies in association with this Division. This pre-site fee shall be nonrefundable and shall be paid prior to conducting the pre-site investigation. Upon a finding of site suitability based on the pre-site investigation, or at the owner's risk if the site is judged to be unsuitable and the owner continues to seek a permit for the site, the initial fee shall be paid as specified in Chapter 3. These fees are applicable to all types of facilities permitted under the Solid Waste Management Act, as amended, and any rules promulgated thereto.

(A) Pre-Application Fees

- (1) Class 1, Class 3C, Class 3N, Class 3T\$2,000
- (2) Class 4\$1,000

(B)	Application Fees	
(1)	Class 1, Class 3C.....	\$10,000
(2)	Class 3N, Class 3T	\$5,000
(3)	Class 4	\$1,000
(4)	Transfer Stations, Composting, Material Recovery Facilities	\$900

Rule 9.604 Annual Fees

Annual Fees are payable in accordance with Chapter 3 and are assessed for each calendar year that the solid waste management facility is in operation. For all solid waste management facilities, subject to fees named herein, annual fees are assessed each calendar year until the solid waste management facility stops receiving waste and the Division places the facility in post-closure status under Rule No. 22: Solid Waste Management. No partial year refund of annual fees will be made.

(A)	Class 1	\$6,000
(B)	Class 3C	\$5,000
(C)	Class 3N, Class 3T.....	\$3,000
(D)	Class 4.....	\$500
(E)	Transfer Stations, Composting, Material Recovery Facilities	\$450

Rule 9.605 Modification Fees

(A)	Class 1 Major Modification	\$4,000
(B)	Class 1 Minor Modification	\$3,000
(C)	Class 3C, Class 3N, Class 3T.....	\$2,000
(D)	Class 4.....	\$1,000
(E)	Transfer Stations, Composting, Material Recovery Facilities	\$450

Rule 9.606 Permit Transfer Fees

(A)	Class 1, Class 3C, Class 3N, Class 3T, Class 4	\$1,000
(B)	Transfer Stations, Composting, Material Recovery Facilities	\$500

Rule 9.607 Post Closure Fees

Post Closure Fees are assessed annually throughout the post closure period for each permit category subject to post closure monitoring.

Class 1, Class 3C, Class 3N, Class 3T, Class 4	\$500
--	-------

Rule 9.608 Administrative Permit Amendments

For purposes of this Chapter, there shall be no fee charged for minor permit modifications involving only administrative permit amendments or corrections.

Rule 9.609 General Permits

- (A) In lieu of the fees schedules above in Rule 9.603 through Rule 9.606, solid waste management facility permit applicants that qualify for a General Solid Waste Permit shall be subject to an Initial Fee, an Annual Fee, a Modification Fee and a Permit Transfer Fee as described below:
- (1) An Initial Fee of \$900.00 shall be remitted with the Notice of Intent (NOI) for coverage under the applicable solid waste General Permit.
 - (2) Until the Permittee notifies the Division to terminate its solid waste General Permit and the permit is voided, the Permittee shall be billed an Annual Fee of \$450.00 annually thereafter on the anniversary date of coverage.
 - (3) An application for the modification of an existing solid waste General Permit shall be accompanied by a \$450.00 permit Modification Fee.
 - (4) An application for the transfer of an existing solid waste General Permit shall be accompanied by a \$450.00 permit Transfer Fee.
 - (5) When solid waste 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.

CHAPTER 7 : VARIANCES OR INTERIM AUTHORITY REQUESTS

Rule 9.701 Processing Fee

In accordance with Ark. Code Ann. § 8-4-230(a)(3), as amended, there may be an initial processing fee of two hundred dollars (\$200.00) assessed for all requests for variances from the requirements of any permit issued by the Division or any interim authority request to construct or operate during the permit application review and issuance process. The fee shall not be required for a request for an extension of any existing variance or interim authority.

Rule 9.702 Fees Non-Refundable

If a variance or interim authority request is denied, the processing fee is non-refundable.

CHAPTER 8 : LABORATORY CERTIFICATION FEE PROGRAM

Rule 9.801 Laboratory Certification Fees

All laboratory certificates previously issued under Regulation Number 13, Laboratory Certification Fee Regulation, shall remain in effect for the full period of time for which they were issued. Application for initial certificate and application for renewed certificate, whether issued under Regulation Number 13 or under Rule Number 9, shall comply with the requirements of Rule 9.801 through Rule 9.803 and other applicable requirements of Rule Number 9.

- (A) Initial certificate, including up to ten parameters\$500
- (B) Renewed certificate, including up to ten parameters\$500
- (C) For each parameter in addition to the first ten\$ 10
- (D) Each of the following categories:
 - (1) Dioxins and Furans\$ 50
 - (2) Herbicides\$ 50
 - (3) Volatile organics\$ 50
 - (4) Semivolatile organics.....\$ 50
 - (5) Pesticides and PCB's\$ 50
 - (6) Acute and/or Chronic Toxicity Testing\$250

Rule 9.802 Laboratory Certification Travel Fees

- (A) The Division will assess reasonable fees for the cost of all expenses incurred during the evaluation of certified laboratories. This includes without limitation the reasonable cost of travel and travel related expenses related to the evaluation.
- (B) The Division will submit an itemized invoice for the incurred expenses. Payment of the expenses is due within thirty (30) days from the date of the invoice for the expenses.

Rule 9.803 Failure to pay Laboratory Certification Fees

- (A) A laboratory that fails to remit payment of any fee assessed pursuant to this Chapter, including without limitation initial certificate, renewed certificate, fees for additional parameters; fees for categories, reasonable cost of travel, or travel related expenses shall be assessed a late payment charge of ten percent (10%) forty five (45) days after the invoice date.

- (B) A certified laboratory that refuses to pay fees upon reasonable notice will be subject to enforcement action that may include revocation of the certificate.

CHAPTER 9 : ADMINISTRATIVE PROCEDURES

Rule 9.901 Division Review of Fees

The Division shall undertake a biennial re-evaluation of the permit fee schedule as contained in this rule within sixty (60) days of receiving its approved budget for the next biennium. The evaluation shall reflect the current needs of the Division 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 Division.

Rule 9.902 Appeals

If any applicant/permittee disagrees with the Division's decision on an assessment of fees, the applicant/permittee may appeal the 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 Rule No. 8, Administrative Procedures.

Rule 9.903 Effective Date

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

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State
John Thurston
500 Woodlane, Suite 026
Little Rock, Arkansas 72201-1094
(501) 682-5070
www.sos.arkansas.gov



For Office
Use Only:

Effective Date _____ Code Number _____

Name of Agency Arkansas Pollution Control & Ecology Commission

Department Department of Energy and Environment

Contact Michael McAlister E-mail mcalister@adeq.state.ar.us Phone 501-682-0918

Statutory Authority for Promulgating Rules Act 704 of the 93rd General Assembly

Rule Title: Rule 9, " Fee Rule"

Intended Effective Date
(Check One)

Date

- | | | |
|--|---------------------------------------|-------------------|
| <input type="checkbox"/> Emergency (ACA 25-15-204) | Legal Notice Published | _____ |
| <input type="checkbox"/> 10 Days After Filing (ACA 25-15-204) | Final Date for Public Comment | _____ |
| <input type="checkbox"/> Other _____
(Must be more than 10 days after filing date.) | Reviewed by Legislative Council | _____ |
| | Adopted by State Agency | <u>12/03/2021</u> |

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Peter Alberg Peter.Alberg@adeq.state.ar.us 12/15/2021
Contact Person E-mail Address Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Charles Moulton
Signature

501-682-7890 moulton@adeq.state.ar.us
Phone Number E-mail Address

Administrative Law Judge
Title

12/13/2021
Date

2021 DEC 20 AM 10:27

ARKANSAS STATE LIBRARY **ARKANSAS STATE LIBRARY**



Agency Certification Form
For Depositing Rules
At the Arkansas State Library



DOCUMENT SERVICES, ARKANSAS STATE LIBRARY
900 West Capitol Avenue, Suite 100
Little Rock, AR 72201
501-682-2550
aslib-govdocs@ade.arkansas.gov

For Office Use Only

Classification Number:

Name of Agency:

Division/Department/Office:

Arkansas Pollution Control & Ecology Commiss

Department of Energy and Environment

Contact Person:

Telephone:

Michael McAlister

501-682-0918

Statutory Authority for Promulgating Rules:

Act 704 of the 93rd General Assembly

Title of Rule:

See attached index of rules amended.

Rule Status	Date Adopted by Agency	Effective Date
Amended <input type="button" value="v"/> <small>(Use drop down to select different status)</small>	12/03/2021 <small>MM/DD/YYYY</small>	<input type="radio"/> 10 Days After Filing <input type="radio"/> Other: _____ <small>(if other, specify date)</small>

Rule above is proposed and will be replaced by final version

Financial and/or Fiscal Impact Statement Attached

Certification of Authorized Officer

I hereby certify that the attached rules were adopted in compliance with Act 434 of 1967 as amended.

Signature: Charles Montoya Date: 12/14/2021

Title: Administrative Law Judge

ARKANSAS POLLUTION CONTROL AND ECOLOGY

COMMISSION RULE AMENDMENTS INDEX

The following rules of the Arkansas Pollution Control and Ecology Commission have been amended following the expedited procedure of Act 704 of the 93rd General Assembly:

- a. Rule 1, "Prevention of Pollution by Oil Filed Waste";
- b. Rule 3, "Licensing of Wastewater Treatment Plant Operators";
- c. Rule 4, "Rule to Require a Disposal Permit for Real Estate Subdivisions in Proximity to Lakes and Streams";
- d. Rule 7, "Civil Penalties";
- e. Rule 9, "Fee Rule";
- f. Rule 11, "Rules for Solid Waste Disposal Fees; Landfill Post-Closure Trust Fund; Solid Waste Management and Recycling Fund Distribution; and Recycling Grant Programs";
- g. Rule 12, "Storage Tanks";
- h. Rule 15, "Arkansas Open-Cut Mining and Land Reclamation";
- i. Rule 17, "Arkansas Underground Injection Control Code";
- j. Rule 18, "Arkansas Air Pollution Control Code";
- k. Rule 20, "The Arkansas Surface Coal Mining and Reclamation Code";
- l. Rule 21, "Arkansas Asbestos Abatement Rule";
- m. Rule 22, "Solid Waste Management Rules";

- n. Rule 26, “Rules of the Arkansas Operating Air Permit Program”;
- o. Rule 28, “Rule of the State of Arkansas for County Recycling Programs”;
- p. Rule 29, “Arkansas Brownfield Redevelopment”;
- q. Rule 30, “Arkansas Remedial Action Trust Fund Hazardous Substances Site Priority List”;
- r. Rule 31, “Nonattainment New Source Review Requirements”;
- s. Rule 32, “Environmental Professional Certification”;
- t. Rule 33, “Motor Vehicle Racing Facility Rules”;
- u. Rule 34, “State Water Permit Rule”; and
- v. Rule 36, “Tire Accountability Program”.

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT: Approval
of Amendments to APC &
EC Rules**

Docket No. 21-003-MISC

MINUTE ORDER NO. 21- 18

Pursuant to Act 704 of the 93rd General Assembly, the Arkansas Pollution Control and Ecology Commission hereby grants and approves the Division of Environmental Quality's Motion to Approve Rule Amendments, and approves the amendments to rules which are specifically set forth and contained in the mark-up drafts of rules provided to the Commission with the above-referenced motion; that further, the Commission orders that the existing effective date of each rule shall remain the same and that no substantive changes to these rules are promulgated or intended by these amendments.

**THIS 3RD DAY OF DECEMBER, 2021, BY ORDER OF THE ARKANSAS
POLLUTION CONTROL AND ECOLOGY COMMISSION.**

COMMISSIONERS:

SUA S. Ausbrooks
L.B L. Bengal
CC C. Colclasure
JSF J. Fox
MMS M. Goggans
R. McMullen R. McMullen

D.A by M D. Melton
R.M R. Moss, Jr.
RR R. Reynolds
R. Roper R. Roper
D. Vandergriff D. Vandergriff
WWW W. Ward

CC by M SUBMITTED BY: Michael McAlister DATE PASSED: 12/03/21
R. Roper, Chair