



MARILYN EDWARDS
County Judge

280 North College, Suite 500
Fayetteville, AR 72701

WASHINGTON COUNTY, ARKANSAS
County Courthouse

January 31, 2014

MEETING OF THE
WASHINGTON COUNTY QUORUM COURT
COUNTY SERVICES COMMITTEE

Monday, February 3, 2014
5:30 p.m.
Washington County Quorum Court Room

AGENDA

1. Call to Order.
2. Adoption of Agenda.
3. Report from the Washington County Planning Office. County Planning Director Juliet Richey will update the Committee on activities of the County Planning Board during the past month.
4. Review of An Ordinance Amending Washington County Code 11-99.1 Regarding Community Sewer Systems. This item is being brought to the Committee by JP Butch Pond at the request of the Assistant Grant Administrator Renee Biby. (4.1-4.3)
5. Review of An Ordinance Withdrawing From Interlocal Agreements With The City Of Fayetteville And The City Of Farmington And Terminating Such. This item is being brought to the Committee by JP Butch Pond at the request of the Assistant Grant Administrator Renee Biby. (5.1)
6. Update from the Washington County IT Office. County IT Director John Adams will update the Committee on activities of the Office.
7. Other Business.
8. Public Comment.
9. Adjournment.

/ji

ORDINANCE NO. 2014-_____

**BE IT ORDAINED BY THE QUORUM COURT
OF THE COUNTY OF WASHINGTON,
STATE OF ARKANSAS, AN ORDINANCE
TO BE ENTITLED:**

**AN ORDINANCE AMENDING WASHINGTON
COUNTY CODE 11-99.1 REGARDING COMMUNITY
SEWER SYSTEMS.**

WHEREAS, at the beginning of 2005 the County enacted ordinances regulating community sewer systems due to rapid growth and lack of state regulation; and,

WHEREAS, the Rural Development Authority was authorized to promulgate regulations regarding such; and,

WHEREAS, said power was later conferred upon the County Judge; and,

WHEREAS, the State of Arkansas has implemented laws and regulations regarding these types of systems such that there is no longer a need for the County to extensively regulate said systems, except to set standards in certain areas.

**NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM
COURT OF WASHINGTON COUNTY, ARKANSAS:**

ARTICLE 1. Washington County Code 11-99.1 is hereby amended to read as follows:

ARTICLE 2. This ordinance shall be effective upon passage as to the unincorporated portions of the County. Said ordinance will become effective as to the Cities of Fayetteville and Farmington upon termination of the Interlocal Agreements with said cities.

Sec. 11-99.1. - Community sewer systems.

(1) "Community sewer systems" also known as "decentralized sewer systems" are defined as follows: Any system serving two (2) or more individual lots for the collection and disposal of domestic or industrial wastewater of a liquid nature, including various devices for the collection, conveyance and treatment of the treated wastewater effluent and the monitoring of the affected groundwater quality and the management of the associated solid waste byproducts (sewage and sludge).

~~(a) Community sewer systems are also defined as more than one (1) septic system that utilizes a common area for lateral lines and/or utilizes a common area for the alternate area as required by the Health Department.~~

(2) To ensure compatibility in the event of annexation, all community sewer systems located within two miles of any incorporated city shall be designed as a "gravity flow" system, or designed in such a way that said system is compatible with the system of the city most likely to annex the area where the system is located. The Public Utility Coordinator shall make this determination after consulting with the cities involved.

(a) Gravity flow means water or waste water flowing through a higher elevation to a lower elevation due to the force of gravity without aid of individual lot interceptor tanks. This shall not exclude lift stations.

~~The responsible management entity (RME) as defined and determined by the County Judge of Washington County shall comply with the rules and regulations of the Arkansas State Health Department and the Arkansas Department of Environmental Quality.~~

(3) All community sewer systems shall contain a SCADA (Supervisory and Data Acquisition) system as follows:

(a) Automatic call-out or text to emergency contact number during alarm event.

~~The RME shall charge a sufficient rate or fee that includes reserves for operation and maintenance, emergencies, and capital improvements; the County Judge is hereby authorized to promulgate rules and regulations concerning such, and is also given the authority to administer all other terms of this Ordinance; and promulgate any additional regulations it deems necessary.~~

(4) Prior to construction plan approval proof of application from the Arkansas Department of Environmental Quality showing a permit has been applied for and is deemed Administratively Complete shall be submitted to the Public Utility Coordinator.

(5) Prior to receiving Final Plat approval proof of the operation permit from the Arkansas Department of Environmental Quality shall be submitted to the Public Utility Coordinator.

~~The RME shall within ninety (90) days from the date of this article report to the County Judge the following:~~

~~(a) The name and location of the land development to be served by said system and the type of system that is being utilized;~~

~~(b) The number of lots or units if applicable to be served by said system;~~

- ~~(c) — The rate or fee that will be charged to the property owner or user to be served by said system.~~
 - ~~(d) — The amount of reserves that will be built into any rate or fee along with evidence indicating how these reserves are adequate and appropriate to provide long term sustainable system performance and compliance with permits;~~
 - ~~(e) — The legal entity that will own and retain the services of the licensed operator of the system and the exact name, address and phone number of said entity and operator;~~
 - ~~(f) — A copy of the contract to be executed for the operation of the system;~~
 - ~~(g) — Plans to enforce and collect the rate or fee to be charged; and~~
 - ~~(h) — Any other matter deemed relevant by the County Judge.~~
- ~~(5) — The RME shall report to the County Judge, upon request, any matters relevant to the operation of said system including, but not limited to operation and maintenance issues, environmental issues, financial matters, customer service issues, and any other matter deemed relevant by the County Judge. A bond in an amount to be determined by the County Judge shall be posted, by the RME to ensure compliance with this section and any regulations promulgated hereto.~~
- ~~(6) — This Ordinance shall be applicable throughout the unincorporated area of the County including the extra territorial growth area of any incorporated City. This Ordinance shall not be applicable in the event any such system is or becomes owned, maintained, or operated by an incorporated city or other public entity. In the event that an incorporated city or other public entity enacts ordinances or rules and regulations concerning said systems, then the more stringent provisions shall apply.~~
- ~~(7) — A violation of this section or any regulation promulgated hereto by the County Judge shall be enforceable by appropriate civil action by the County Judge. Such civil remedy shall include but is not limited to injunctive relief, civil sanctions, removal of the RME, the owner, and/or the operator from operating or in any other manner managing said system; attorneys fees and any other costs related to any civil action.~~
- ~~(8) — This section does not authorize the County, any County Department, Board, or Commission to take ownership, permanently or temporarily, or to take over operation or maintenance of any such system.~~
- ~~(9) — No land development that will utilize a Community Sewer System may receive final approval until the following information has been supplied to the Public Utility Coordinator on behalf of the County Judge:~~

- ~~(a) The name and location of the land development to be served by said system and the type of system that is being utilized;~~
 - ~~(b) The number of lots or units if applicable to be served by said system;~~
 - ~~(c) The rate or fee that will be charged to the property owner or user served by said system;~~
 - ~~(d) The amount of reserves that will be built into any rate or fee along with evidence indicating how these reserves are adequate and appropriate to provide long term sustainable system performance and compliance with permits;~~
 - ~~(e) The legal entity that will own and retain the services of the licensed operator of the system and the exact name, address and phone number of said entity and operator;~~
 - ~~(f) A copy of the contract to be executed for the operation of the system;~~
 - ~~(g) Plans to enforce and collect the rate or fee to be charged; and~~
 - ~~(h) Any other matter deemed relevant by the Public Utility Coordinator.~~
- ~~(10) The Public Utility Coordinator shall participate in all plat reviews and sign the final plat indicating compliance with this section.~~
- ~~(11) This section is hereby amended to also be applicable to any such system located within the corporate limits of any incorporated city upon execution of an interlocal agreement that addresses the financial responsibilities of the parties to said agreement.~~

MARILYN EDWARDS, County Judge

DATE

BECKY LEWALLEN, County Clerk

Sponsor: _____ Butch Pond
Date of Passage: _____
Votes For: _____ Votes Against: _____
Abstention: _____ Absent: _____



MARILYN EDWARDS
County Judge

280 North College, Suite 500
Fayetteville, AR 72701

WASHINGTON COUNTY, ARKANSAS
County Courthouse

Memo

To: Washington County Quorum Court
From: Renee Biby, Assistant Grants Administrator/Public Utility Coordinator
CC: Marilyn Edwards, County Judge
Date: 1/28/2014
Re: Community Sewer Systems

In 2006 the Quorum Court adopted an ordinance to regulate community sewer systems. Since that time, the Arkansas Department of Health and the Arkansas Department of Environmental Quality have adopted very similar, yet more stringent, regulations.

After reviewing the regulations of these two state agencies, along with legislation that has been recently passed, I believe at this time the County's financial requirements should be repealed.

However, the County still has a vested interest in approving the types and quality of the systems to best serve the citizens who will be living in future developments. After meeting with the other Departments in the County and operators who are currently managing these systems, I believe the proposed ordinance will safeguard the County in the future, as well as lessen the burden on the existing Owners and Operators who are currently paying multiple governing agencies.

§ 8-4-203. Permits generally**Currentness**

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

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

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

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

(b)(1)(A)(i) The department shall not issue, modify, renew, or transfer a National Pollutant Discharge Elimination System permit or state permit for a nonmunicipal domestic sewage treatment works without the permit applicant first demonstrating to the department its financial ability to cover the estimated costs of operating and maintaining the nonmunicipal domestic sewage treatment works for a minimum period of five (5) years.

(ii) As used in this section, “nonmunicipal domestic sewage treatment works” means a device or system operated by an entity other than a city, town, county, or sewer improvement district that treats, in whole or in part, waste or wastewater from humans or household operations and must continuously operate to protect human health and the environment despite a permittee's failure to maintain or operate the nonmunicipal domestic sewage device or system.

(iii) State or federal facilities, schools, universities, and colleges are specifically exempted from the requirements of this section.

(iv) Each permit application for a nonmunicipal domestic sewage treatment works submitted under this section shall be accompanied by a cost estimate for a third party to operate and maintain the nonmunicipal domestic sewage treatment works each year for a period of five (5) years.

(v) A commercial nonmunicipal domestic sewage treatment works that does not include residential services is not required to post financial assurance under this section.

(B)(i) The department shall not issue, modify, renew, or transfer a National Pollutant Discharge Elimination System permit or a state permit for a nonmunicipal domestic sewage treatment works that proposes to use a new technology that, in the discretion of the department, cannot be verified to meet permit requirements without the applicant first demonstrating its financial ability

to replace the new technology with a nonmunicipal domestic sewage treatment works that uses technology acceptable to the department.

(ii) Each permit application for a nonmunicipal domestic sewage treatment works that proposes to use a new technology that in the discretion of the department cannot be verified to meet permit requirements shall be accompanied by a cost estimate to replace the proposed system with a nonmunicipal domestic sewage treatment works that uses technology acceptable to the department.

(2) The applicant's financial ability to operate and maintain the nonmunicipal domestic sewage treatment works for a period of five (5) years shall be demonstrated to the department by:

(A) Obtaining insurance that specifically covers operation and maintenance costs;

(B) Obtaining a letter of credit;

(C) Obtaining a surety bond;

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

(E) Using a combination of insurance, letter of credit, surety bond, trust fund, or escrow account.

(3) The financial assurance required under subdivision (b)(2) of this section shall:

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

(B) Provide that the financial instrument underlying the financial assurance cannot be cancelled without ninety (90) days prior written notice addressed to the department's legal division chief as evidenced by a signed notice sent by certified mail with a return receipt requested; and

(C) Be reviewed by the department upon receipt of the cancellation notice to determine whether to initiate procedures to:

(i) Revoke or suspend the permit for the nonmunicipal domestic sewage treatment works; and

(ii) Take possession of the funds guaranteed by the financial instrument underlying the financial assurance.

(4)(A) The owner or operator of a nonmunicipal domestic sewage treatment works shall establish and maintain financial assurance that demonstrates to the department's satisfaction the applicant's financial ability to ensure adequate operation and maintenance costs as required under subdivision (b)(2) of this section.

(B) Financial assurance shall provide that the department is the obligee or payee of the financial instrument underlying the financial assurance and shall otherwise comply with the regulations promulgated under this subchapter.

(C) The amount of financial assurance required under this subsection shall be equal to or greater than the detailed cost estimate for a third party to maintain and operate the permitted nonmunicipal domestic sewage treatment works in accordance with the permit and applicable regulations.

(D) The owner or operator shall provide continuous financial assurance for the operation and maintenance costs of a nonmunicipal domestic sewage treatment works until the department:

(i) Releases the owner or operator from the financial assurance requirements under this subchapter and the permit;

(ii) Approves the closure of the nonmunicipal domestic sewage treatment works;
or

(iii) Approves the transfer of a permit and the replacement financial assurance under subdivision (b)(9) of this section.

(5)(A) Operation and maintenance costs shall be updated with each permit renewal to account for inflation and the condition of the nonmunicipal domestic sewage treatment works.

(B) The updated operation and maintenance costs based on the condition of the nonmunicipal domestic sewage treatment works required under subdivision (b)(5)(A) of this section shall be provided in a report certified by a professional engineer registered in the State of Arkansas and submitted to the department with each permit renewal.

(6)(A) If an owner or operator establishes a trust as financial assurance, the owner or operator shall either fully fund the trust or make payments into a trust fund.

(B)(i) If the owner or operator elects to make payments into a trust fund, the payments shall be made in equal monthly installments by the owner or operator.

(ii) The trust fund shall be fully funded within five (5) years of the issuance of the permit unless otherwise approved by the Director of the Arkansas Department of Environmental Quality.

(7)(A) The director may order that any financial assurance filed pursuant to this section be forfeited to the department if the director determines that the owner or operator has not adequately operated, maintained, or completed closure of the nonmunicipal domestic sewage treatment works.

(B) Following the determination of the director under subdivision (b)(7)(A) of this section, the department shall commence proceedings to collect on the financial assurance on which the department is the obligee or payee.

(C) For each permit, the financial instrument underlying the financial assurance shall be renewed or an alternate financial instrument shall be issued to maintain continuous financial assurance.

(D) If documentation of the renewed financial assurance or alternate financial assurance is not received by the department at least sixty (60) days before the expiration date of the existing financial instrument underlying the financial assurance, the department shall:

(i) Take possession of the funds guaranteed by the financial instrument underlying the financial assurance; and

(ii)(a) Initiate procedures to suspend or revoke the permit under which the nonmunicipal domestic sewage treatment works is operated.

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

(E) The permittee is responsible for ensuring that documentation of the financial assurance and all renewals of financial instruments underlying the financial assurance are received by the department by the due date.

(8) The department shall deposit all forfeited funds into the Water Performance Bond Fund.

(9)(A)(i) Existing responsibilities and financial instruments underlying the financial assurance remain in full force and effect, and a permit shall not be transferred until the proposed new owner or operator has filed and the department has approved the required replacement financial assurance in accordance with the requirements of this section and applicable regulations.

(ii) The department shall approve or deny the replacement financial assurance offered under subdivision (b)(9)(A)(i) of this section within thirty (30) days of receipt of the completed permit transfer request.

(B) The department shall release to the former owner, operator, or issuing institution, if appropriate, the financial assurance that the former owner or operator filed if the department does not:

(i) Object to the replacement financial assurance within thirty (30) days of receipt of the completed permit transfer request; and

(ii) Deny the permit transfer.

(C) A completed permit transfer request shall be submitted on the forms required by the department and shall include the following:

(i) A disclosure statement, unless the nonmunicipal domestic sewage treatment works is exempt under § 8-1-106 or an Arkansas Pollution Control and Ecology Commission rule; and

(ii) Acceptable replacement financial assurance.

(D) The new owner or operator is responsible for ensuring that the financial assurance meets all applicable requirements.

(10) The department may reduce or waive the amount of the required financial assurance if the permit applicant can demonstrate to the department's satisfaction that:

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

(i) Maintained the nonmunicipal domestic sewage treatment works in continuous operation;

(ii) Maintained the nonmunicipal domestic sewage treatment works in substantial compliance with the existing discharge permit issued by the department, which shall be demonstrated by submitting the following:

(a) All discharge monitoring reports;

(b) Evidence that the nonmunicipal domestic sewage treatment works has not exceeded the same permit effluent criteria in any two (2) consecutive monitoring periods during the previous three (3) years;

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

(d) Evidence that there have not been any administrative or judicial orders entered against the owner or operator for violations of state or federal environmental laws, rules, or regulations or permits issued by the department;

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

(iv)(a) Remained financially solvent, which shall be demonstrated by an independent certified public accountant's report on the examination of the owner's or operator's independently audited financial statements.

(b) The examination of financial statements under subdivision (b)(10)(A)(iv)(a) of this section shall be conducted in accordance with the American Institute of

Certified Public Accountants' Professional Standards, as they existed on January 1, 2013; and

(v) Operated the nonmunicipal domestic sewage treatment works to prevent the discharge of waterborne pollutants in unacceptable concentrations to the surface waters or groundwater of the state as defined in the permit or as defined in the state's water quality standards; or

(B)(i) For a new permit, that the reduction or waiver is necessary to accommodate important economic or social development in the area of the proposed nonmunicipal domestic sewage treatment works; and

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

(11) The department may withdraw a reduction or waiver granted under this subsection at any time in order to protect human health or the environment.

(12) The department shall not directly operate nor be responsible for the operation of a nonmunicipal domestic sewage treatment works.

(c)(1)(A)(i) All facilities that engage in land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations shall be closed in a manner that ensures protection of human health and the environment.

(ii) As used in this subsection, "land application or storage of fluids generated or utilized during exploration or production phases of oil or gas operations" means land farming through the controlled and repeated application of drilling fluids to a soil surface or the practice of receiving and storing said fluids from offsite for waste management.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Obtaining a letter of credit;

(C) Obtaining a bond or other surety instrument;

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

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

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

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

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

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

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

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

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

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

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

(3) If the department determines that a hearing is necessary or desires such a hearing, the department shall schedule a public hearing and shall notify by first class mail the applicant and all persons that have submitted comments of the date, time, and place of the public hearing.

(e)(1)(A) Whenever the department proposes to grant or deny any permit application, it shall cause notice of its proposed action to be published in either:

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

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

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

(C) At the conclusion of the public comment period, the department shall announce in writing its final decision regarding the permit application.

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

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

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

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

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

reference to the scientific and engineering literature or written studies conducted by the department.

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

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

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

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

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

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

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

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

(2) Only the reasons stated in § 8-1-103(4), § 8-1-106(b)(1) and (c), and subdivision (b)(9) of this section constitute grounds for denial of a transfer.

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

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

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

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

(l) The commission may promulgate rules to establish a permit-by-rule. A permit-by-rule is subject to the public notice requirements and procedural provisions under § 8-4-202 et seq. but is not subject to the public notice requirements and procedural provisions under §§ 8-4-203 -- 8-4-205.

(m)(1)(A)(i) The department may issue general permits under subsection (a) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Credits

Acts of 1949, Act 472, § 3; Acts of 1961, Act 120, § 4; Acts of 1975, Act 743, § 4; Acts of 1979, Act 680, § 1; Acts of 1981, Act 826, § 1; Acts of 1993, Act 163, § 13; Acts of 1993, Act 165, § 13; Acts of 1995, Act 384, §§ 2, 3, 6 to 9; Acts of 1995, Act 895, § 2; Acts of 1997, Act 1219, § 5; Acts of 1997, Act 1312, § 1; Acts of 1999, Act 229, § 1, eff. July 30, 1999; Acts of 1999, Act 1164, § 20, eff. July 30, 1999; Acts of 2007, Act 832, § 1, eff. July 31, 2007; Acts of 2007, Act 1005, § 2, eff. July 31, 2007; Acts of 2009, Act 369, § 1, eff. March 10, 2009; Acts of 2009, Act 409, § 1, eff. July 31, 2009; Acts of 2011, Act 731, § 1, eff. July 27, 2011; Acts of 2013, Act 402, §§ 1, 2, eff. Aug. 16, 2013; Acts of 2013, Act 1127, § 2, eff. Aug. 16, 2013.

ORDINANCE NO. 2014-_____

BE IT ORDAINED BY THE QUORUM COURT OF THE COUNTY OF WASHINGTON, STATE OF ARKANSAS, AN ORDINANCE TO BE ENTITLED:

AN ORDINANCE WITHDRAWING FROM INTERLOCAL AGREEMENTS WITH THE CITY OF FAYETTEVILLE AND THE CITY OF FARMINGTON AND TERMINATING SUCH.

WHEREAS, Washington County, Arkansas and the City of Fayetteville, and the City of Farmington, entered into an Interlocal Agreement on December 13, 2005 and November 13, 2007 to oversee community sewer systems located within the city limits and within the growth area of the cities; and,

WHEREAS, the Arkansas Department of Environmental Quality has adopted rules and regulations that govern community sewer systems; and,

WHEREAS, the Arkansas Department of Health has adopted rules and regulations that govern community sewer systems; and,

WHEREAS, the Arkansas State Legislature has adopted legislation that governs community sewer systems; and,

WHEREAS, it appears that there is no longer a need for the County or the Cities to govern community sewer systems with such already being governed by two separate state agencies; and,

WHEREAS, said agreement provides that six months' notice must be given by the party desiring to terminate or withdraw from said agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF WASHINGTON COUNTY, ARKANSAS:

ARTICLE 1. That Washington County, Arkansas does hereby withdraw from and terminate said agreement, effective six months from the date of notice given by the County Judge, unless either city agrees to termination earlier.

ARTICLE 2. The Quorum Court hereby requests that the cities waive the six (6) month requirement due to the enactment of state laws and regulations.

ARTICLE 3. The County Judge is authorized to give written notice of this Ordinance to the Mayors of the City of Fayetteville and the City of Farmington.

MARILYN EDWARDS, County Judge

DATE

BECKY LEWALLEN, County Clerk

Sponsor: _____ Butch Pond

Date of Passage: _____

Votes For: _____ Votes Against: _____

Abstention: _____ Absent: _____