



## Permitting for Environmental Results (PER)

# NPDES Profile: Arkansas

### PROGRAM RESPONSIBILITY

**State of Arkansas:** NPDES authority for base program, general permitting, federal facilities, and pretreatment

**EPA Region 6:** NPDES authority for biosolids

### Program Integrity Profile

This profile characterizes key components of the National Pollutant Discharge Elimination System (NPDES) program, including program administration and implementation, environmental outcomes, enforcement, and compliance. EPA considers profiles to be an initial screen of NPDES permitting, water quality, enforcement, and compliance programs based on self-evaluations by the States and a review of national data. EPA will use the profiles to identify program strengths and opportunities for enhancements. For more information please contact Arkansas Department of Environmental Quality, Mo Shaffii (Permits), (501) 682-0616, or Steve Drown (Enforcement), (501) 682-0655; or contact EPA Region 6, Monica Burrell (Permits), (214) 665-7530, or Vivian Hare (Enforcement), (214) 665-6477.

## Section I. Program Administration

### 1. Resources and Overall Program Management

#### The State of Arkansas:

The NPDES Program in Arkansas is administered by the Arkansas Department of Environmental Quality (ADEQ). The Arkansas program was authorized on November 1, 1986, and amended January 30, 1995. ADEQ is responsible for the NPDES program, including the federal facilities, general permits, and pretreatment programs, but has not received authorization for the sludge (biosolids) program. ADEQ's NPDES program is housed in the Water Division, which recently underwent a reorganization. (See organization chart at the end of this profile.) The text of this profile refers to the branches as they operated during the period discussed, and therefore the names of the branches differ from those on the organization chart. As of July 9, 2004, the Water Division is responsible for approximately 113 major facilities and 702 minor facilities with individual permits and approximately 337 facilities covered under 10 non-stormwater general permits. The Division is responsible for 454 industrial facilities and 360 publically owned treatment works (POTWs), all covered by individual permits. In addition, it is responsible for 1,660 industrial facilities covered under stormwater general permits for industrial activities and 716 construction activities covered under construction stormwater general permits. The Division also oversees pretreatment program implementation for 277 significant industrial users (SIUs) and is responsible for permitting approximately 2,100 concentrated animal feeding operations (CAFOs).

The State program is currently funded through State appropriations, permit application fees, and Clean Water Act section 106 grants from EPA. ADEQ administers the program with approximately \$1.7

million, of which approximately \$1.1 million comes from federal funds and \$0.6 million from State funds. The program is administered through the use of 55 full-time equivalents (FTEs) in five areas—management, permits, planning, enforcement, and inspections.

ADEQ's NPDES program staff has been generally stable over the past few years. During the last 2 years changes have been made in the Water Division Chief and the Permits Branch Chief.

A total of 14 full-time employees are in ADEQ's NPDES Enforcement Program and now report directly to the Assistant Chief of the Water Division. This is due to the recent change of personnel in the Water Division Chief and Assistant Chief positions, and a reorganization of the Water Division. The reorganization eliminated the position of NPDES Supervisor. There is now a supervisor for NPDES Permits and a separate supervisor for NPDES Enforcement. These changes are reflected on the organization chart at the end of this document. The organization chart is also available on ADEQ's Web site at <http://www.adeq.state.ar.us>.

The ADEQ Legal Division provides support for the Enforcement Division regarding compliance with the State and federal laws in enforcement activities. The Division pursues formal enforcement cases, usually through consent administrative order, and represents the Department when necessary. Formal enforcement cases have increased significantly because of more aggressive efforts by the Department, fewer referrals to EPA, and recent State statutory authority to impose stiffer penalties.

Training programs are in place for all ADEQ, Water Division, staff. Inspectors attend the EPA NPDES Inspector Training Workshop, and additional training is available for job-related needs and personal goals. Permit writers receive training in all aspects of the NPDES permit program, including the regulatory framework of the NPDES program, permitting process, application process, technology-based effluent limits, water quality-based effluent limits, special conditions, and administrative process. NPDES permit writers are cross-trained in the stormwater program, the Water Quality Planning Branch, laboratory procedures, and the inspection process. New staff members are trained in a variety of ways, including mentoring, Water Division permit writer training manual, EPA NPDES Permit Writers' Training Course, and wastewater licensing courses. All staff responsible for developing water quality-based permit conditions (including those for whole effluent toxicity [WET]) are trained in the reasonable potential determination process, which assesses the reasonable potential to cause or contribute to a violation of water quality standards. Several NPDES Permits Branch staff members hold wastewater licenses and are either registered Professional Engineers or Engineers in Training.

NPDES Section and Water Quality Section staff work closely together. The Water Division plans to hire another engineer to work on modeling, Total Maximum Daily Loads (TMDLs), technical assistance, water quality surveys, and the like under the supervision of the Chief of the Water Division.

#### EPA Region 6:

Overall: The NPDES permitting and enforcement authority for biosolids is EPA Region 6. Under title 40 of the Code of Federal Regulations (CFR), parts 501 and 503, sludge management requirements are self-implementing. If a sludge permit is proposed, NPDES permitting and enforcement actions are closely coordinated with the State. The two primary divisions within EPA Region 6 responsible for the sludge portion of the NPDES program in Arkansas are the Water Quality Protection Division and the

Compliance Assurance and Enforcement Division. Because EPA Region 6 has authority for only a small portion of the water program, FTEs are provided on an as-needed basis to address biosolids.

## 2. State Program Assistance

ADEQ submitted a draft application to assume the NPDES sludge management authority in calendar year 2000; however, it did not submit a formal application. ADEQ indicated no interest in assuming the sludge permitting program at this time due to a lack of funding and many unresolved issues about the 40 CFR part 503 program. EPA Region 6 will continue to offer assistance to ADEQ if the Department chooses to pursue assumption of the NPDES sludge (biosolids) program in the future.

## 3. EPA Activities in Indian Country

### EPA Region 6:

Not applicable because there are no federally recognized Indian Tribes in Arkansas.

## 4. Legal Authorities

*EPA is conducting a comprehensive review of the State's legal authorities. This review has not yet been completed. As a result, EPA is reserving this section of the profile; when the legal reviews are complete, EPA will update profiles to include the results of the reviews.*

## 5. Public Participation

*An evaluation of the State's legal authorities regarding public participation will be included in the legal authority review. As noted above, the legal authority review section of this profile is reserved pending completion of the legal authority review.*

### The State of Arkansas:

ADEQ defines the public as an "individual, association, partnership, corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof." ADEQ's public participation policy encourages public participation in, and knowledge of, its decision-making process. ADEQ strives to continuously improve the public participation process. In addition to the requirements under the federal Clean Water Act, ADEQ Regulation No. 8, Administrative Procedures, and the Continuing Planning Process provide the framework for public participation.

Public involvement is provided through the following key elements: public notices, public comments, public hearings and meetings, ADEQ Web site at <http://www.adeg.state.ar.us>, and other public outreach.

Public Notice: Fact sheets outline the derivation of the permit limits. All proposed NPDES permits are sent to public notice. The permit writer's name, address, and telephone number are included in the public notice and fact sheet so the public can obtain further information or provide written comments about the proposed permit action.

As part of the public notice process, ADEQ also maintains a mailing list of parties that have requested copies of proposed NPDES permits, fact sheets, or public notice documents. The information is sent to the interested parties by email (when available) or by direct mailings. Those parties may include municipal, State, and federal entities; special interest groups; and concerned citizens.

Permits: Draft permits that have been sent to public notice may be viewed by the public on ADEQ's Web site at [http://www.adeq.state.ar.us/water/branch\\_npdes/pn\\_permits/pnpermits.asp](http://www.adeq.state.ar.us/water/branch_npdes/pn_permits/pnpermits.asp).

Public Comment: All applications for issuance or modification receive an initial public comment period of 10 days, and all draft permits (issuance, modification, renewal, revoke/reissue, termination) receive a public comment period of at least 30 days following legal public notice of the proposed action.

During the comment period, any interested person may request a public hearing by filing a written request, which must state the issues to be raised. A public hearing will be held if ADEQ finds a significant degree of public interest. Any interested person who has submitted comments may appeal a final decision by ADEQ in accordance with ADEQ Regulation No. 8 (Administrative Procedures).

Public Hearings and Public Meetings: If a public hearing is requested during the public comment period, ADEQ may hold a public meeting when that option is more likely to provide meaningful public participation and is generally agreed to by the parties involved. A public meeting is less formal than a public hearing and provides a better opportunity for dialogue on the issues. A public meeting or hearing with the permit decisionmaker is held when there are substantial and relevant issues following public participation on a permit.

Public meetings are informal information meetings that are usually chaired by the Water Division Chief or Assistant Chief. The permit writer and staff from Public Outreach also participate in the public meetings. Public meetings may be conducted at any stage in the development of an NPDES permit. Generally, the meeting is held near the proposed discharge site to facilitate participation by affected parties. Background material is presented at the meeting by ADEQ staff or the permit applicant, followed by a question-and-answer session on the issues. Any persons wishing to submit written or oral comments on the draft permit are allowed to do so during the public meeting. These comments will be addressed at the issuance of the final permit.

Public hearings are formal meetings for taking testimony for the record. Staff may provide clarification of the issues but do not respond to the public testimony. The public hearing is usually held near the proposed discharge site and is chaired by a hearing officer. The hearing is recorded, and a summary is prepared for the record. Procedural requirements for public hearings are outlined in Regulation No. 8.

ADEQ Web site: <http://www.adeq.state.ar.us>: The public has access to a vast amount of information on the State's Web site. Information on the Web includes an employee directory and organization charts, printable copies of regulations and application forms, general permits and notices of intent (NOIs), news releases, public notices, searchable databases, and links for the public to use to request additional information or file a complaint. All draft and final permits as of July 2004 are available on the Web site at <http://www.adeq.state.ar.us/water>.

The searchable databases contain information on wastewater treatment facilities that have applied for NPDES permits in the State of Arkansas. The files are sorted alphabetically by facility name and NPDES permit number. In addition, the State's Web site provides links to an NPDES facility address list, an NPDES tracking event list, and a list of inactive/terminated permits. The information on the Web site is updated monthly.

The Facility Address List contains a printout of the primary administrative mailing addresses for active permits issued under the NPDES program in the State of Arkansas. The list contains the issue date of the current permit, the name and phone number of the cognizant official for the facility (if available), the average flow rate for the facility in millions of gallons per day (MGD), the county in which the facility is located, the Standard Industrial Classification (SIC) code for the facility, type of facility, and whether the facility is a major or a minor contributor. The NPDES Tracking Event List contains permit events data for active facilities that have applied for an NPDES permit in the State of Arkansas. The Inactive/Terminated Permits List contains inactive NPDES permits that have been terminated, cancelled, or voided.

All documents are subject to full disclosure except those determined to be confidential, if they are part of litigation or information entitled to protection as trade secrets of the applicant in accordance with 40 CFR 122.7 (adopted by reference in ADEQ's Regulation No. 6).

Final permits in 2004 can be viewed by the public on ADEQ's Web site at [http://www.adeq.state.ar.us/water/branch\\_npdes/finalpermits/finalpermits.asp](http://www.adeq.state.ar.us/water/branch_npdes/finalpermits/finalpermits.asp). A list of permits will be displayed. The list can be sorted by name or permit number by clicking on the respective down arrow. Clicking on an underlined permit number displays an Adobe Acrobat version of the permit and a corresponding fact sheet or statement of basis.

General permit information can be found on ADEQ's Web site at <http://www.adeq.state.ar.us/home/pdssql/pds.asp>.

Compliance and Enforcement: ADEQ publishes public monthly notices about enforcement actions it has taken. This list may contain consent administrative orders (CAOs), amendments to CAOs, notices of violation (NOVs), default administrative orders, and permit appeal resolutions that are going to public notice. They can be found on ADEQ's Web site at [http://www.adeq.state.ar.us/poa/pa/pn\\_enf.asp](http://www.adeq.state.ar.us/poa/pa/pn_enf.asp). Notices are posted in order of the notice date; the most recent notices appear at the top of the list.

The CAOs and NOVs are available to be viewed or searched from the Legal Division's CAO/NOV Online Searchable Database, including PDF copies of the actual CAOs and NOVs as they become available. The CAO/NOV database can be viewed on ADEQ's Web site at [http://www.adeq.state.ar.us/legal/cao\\_info.asp](http://www.adeq.state.ar.us/legal/cao_info.asp). At this time the CAO/NOV database cannot be searched by NPDES permit number. It is searchable by facility name, county, Legal Information System (LIS) number, or Arkansas Facility Identification Number (AFIN). There is an effort under way to replace the CAO/NOV database with a more useful system. Once the correct permit has been found, clicking on the LIS number brings up a copy of an executed CAO, CAO amendment, or NOV.

The availability of inspections for NPDES permit facilities is being developed as a subsystem of the Permit Data System (PDS) and should offer the public access to inspection information sometime in the future.

Information regarding “Pretreatment Regulated Industries/Facilities” is also maintained on the ADDAXES Web site at [http://www.adeq.state.ar.us/water/branch\\_npdes/pretreatment/industrial\\_users.asp](http://www.adeq.state.ar.us/water/branch_npdes/pretreatment/industrial_users.asp).

PCS Compliance Data: EPA’s Enforcement and Compliance History Online (ECHO) database is at <http://www.epa.gov/echo/>. The NPDES data on the ECHO site are derived from EPA’s Permit Compliance System (PCS) database.

PCS Permit Data: Permit facility data can be viewed or downloaded by the public through ADEQ’s Web site at [http://www.adeq.state.ar.us/water/branch\\_npdes/data/npdes\\_data.htm](http://www.adeq.state.ar.us/water/branch_npdes/data/npdes_data.htm).

The NPDES Data Files Web page contains online searchable databases and downloadable files generated at the National Computer Center using PCS.

Public and FOI: ADEQ maintains current and accurate files and records in central records that are open and accessible to the public. All permit records, fact sheets, permits, enforcement actions, NOIs, notices of termination (NOTs), compliance reports, noncompliance reports, correspondence, and technical backup are available for review. All of these documents are subject to full disclosure except those determined to be confidential, if they are part of information entitled to protection as trade secrets of the applicant in accordance with 40 CFR 122.7, adopted by reference in ADEQ Regulation No. 6. The public may contact ADEQ Records under the Arkansas Freedom of Information Act of 1967 for review of the above records.

ADEQ defines the public as “an individual, association, partnership, corporation, municipality, State, Federal, or Tribal agency, or an agency or employee thereof.” ADEQ’s public participation policy encourages public participation in, and knowledge of, its decisionmaking process. ADEQ strives to continuously improve the public participation process. In addition to the requirements under the federal Clean Water Act, ADEQ Regulation No. 8, Administrative Procedures, and the Continuing Planning Process provide the framework for public participation.

Public involvement is provided through the following key elements: public notices, public comments, public hearings and meetings, the ADEQ Web site at <http://www.adeq.state.ar.us>, and other public outreach. Under the Arkansas Freedom of Information Act of 1967, the public may request any public information for review and records and must be made available immediately unless they are in active use or storage, in which case they must be made available within 3 working days of the request. Requests for personnel records and employee evaluation records must be acted upon within 24 hours of the custodian’s receipt of the request, at which time the custodian must advise the requester whether the information is exempted or not, and the requester or subject of the request may immediately seek an attorney general’s opinion on the Department’s decision. The attorney general has 3 working days after the receipt of the request to issue an opinion.

Some individual NPDES permits and fact sheets issued by the State may also be accessed through EPA's Web site. Instructions for accessing these documents are available at <http://www.epa.gov/npdes/permitdocuments>.

#### EPA Region 6:

For issuance of sludge permits in the State of Arkansas, EPA Region 6 would follow the public participation procedures outlined in 40 CFR part 124, subpart A.

## **6. Permit Issuance Management Strategy**

#### The State of Arkansas:

ADEQ administers all point source pollution control programs except the biosolids (sludge) program. For the past 4 years, ADEQ has issued permits at a rate that allows it to maintain a permit issuance rate for all permits of over 90%. Arkansas was Region 6's first State to meet the National Backlog Reduction Goals of 10% for both major and minor permits. ADEQ continues to issue permits at a rate that enables it to maintain the national goals.

ADEQ does not use a watershed approach when issuing permits or a water quality-based trading program. ADEQ has expressed interest in receiving information regarding watershed permitting and may consider such a program in the future.

ADEQ places priority on the issuance and reissuance of permits within 180 days from receipt of an application.

New industrial permits are ranked in accordance with the EPA guidance document, "NPDES Permit Rating Sheet." This worksheet classifies permits as either major or minor. Permits are prioritized in accordance with general policies found in Arkansas's Continuous Planning Process. The general priorities for NPDES permit issuance are as follows:

- New major facilities
- "Carry over" major facilities
- Expiring major facilities
- New minor facilities
- Expiring minor facilities
- Modifications of active permits

To improve permit efficiency and quality, ADEQ has increased the use of general permits, permit templates, flowcharts, checklists, and outside resources. ADEQ is responsible for approximately 337 facilities covered under 10 non-stormwater general permits; 1,660 industrial facilities covered under a stormwater general permit for industrial activities; and 716 construction activities covered under construction stormwater general permits. Arkansas has one major facility with a permit expired for more

than 10 years. This permit is being developed. The percentage of major facilities covered by current permits is 93.8%, and 95.6% of minor facilities are covered by current individual permits or general permits. Authorizations under general permits can be issued in less time than individual permits, enabling the State to spend more time on the more complex permits.

**Table 1: Percentage of Facilities Covered by Current Permits in Arkansas**

	2000	Nat'l Avg.	2001	Nat'l Avg.	2002	Nat'l Avg.	2003	Nat'l Avg.
Major Facilities	80	74%	85.6	76%	93.8%	83%	92%	84%
Minor Facilities Covered by Individual Permits	91.7	69%	93	73%	97.2%	79%	98.6%	81%
Minor Facilities Covered by Individual or Non-Stormwater General Permits	N/A	N/A	N/A	N/A	94.7%	85%	95.5%	86%

Source: PCS, 12/31/00; 12/31/01; 12/31/02; 12/31/03. (The values in the National Data Sources column of the Management Report, measures #19 and #20, are PCS data as of 6/30/04.)

EPA Region 6:

Permit Backlog Reduction/Quality: Currently, there are no sludge permits in the State of Arkansas, but Region 6 might consider issuing a general permit in the future. At this time, this factor of permitting does not contribute to the regional permit backlog statistics.

**7. Data Management**

The State of Arkansas:

ADEQ personnel maintain the portion of PCS for program areas authorized by EPA. The senior program analyst is an active participant on the PCS user workgroups, particularly those related to design and implementation of the modernized system. He is the primary point of contact for ADEQ on the Integrated Compliance Information System (ICIS) Phase II PCS Modernization Data Migration Workgroup. ADEQ uses PCS directly to enter all data except measurement and violation data (discharge monitoring reports, or DMRs), data for facilities covered under the NPDES general permits, file fixes, and mass data updates. These data are entered by batch. In addition, ADEQ is developing a multimedia integrated information system (IIS).

PCS is the primary data system that ADEQ uses to manage its NPDES program. The permit, enforcement, and inspection data for all majors and minors are entered into PCS. No data regarding CAFOs or stormwater are entered into PCS at this time due to lack of resources. In addition, no data are entered into PCS for combined sewer overflows (CSOs) because there are none in Arkansas. In-house Access and Excel databases are maintained for tracking additional pretreatment data, CAFO information, and stormwater inspection information.



Ninety-nine percent of all Water Enforcement National Database (WENDB) data elements are entered into PCS. Sludge data elements are not entered because ADEQ has not been authorized to administer the part 503 (biosolids) program. Enforcement action penalty class and date of final order data are not entered because they do not apply to State enforcement actions. ADEQ collects latitude and longitude data for facilities, permits, and complaint sites. At this time, ADEQ's geographic information system (GIS) data are not being entered into PCS.

Arkansas has the highest overall data completeness rates in the country for the facility data elements tracked for the EPA PCS data quality improvement project. These include latitude and longitude data for 96.5% of pipes at both major and minor facilities, and 90% or better completeness rates for all but two data elements tracked for this project.

Data in PCS reflect the information in the NPDES files that are kept in central records. If there are any discrepancies between PCS and in-house database information, it will be handled on a case-by-case basis with changes made as necessary in conformity with the legal documentation.

Facility, permit, compliance, and enforcement data are components of the IIS. The PDS is the core of the IIS. It contains the basic facility and permit information regarding entities of interest to ADEQ, such as basic facility information, invoicing and billing information, mailing and contact information, GIS location information, and historical SIC code information. PDS also contains data on complaints and tracks responses to complaints, and an inspection component is under development. Some PDS information is available for access through ADEQ's Web site (<http://www.adeq.state.ar.us/default.htm>) under "On-line Searchable Databases," "Permitted Facilities Data."

Data regarding State enforcement actions, violations, and penalties are stored in the CAO/NOV database maintained by ADEQ's Legal Division. This database is linked to PDS.

The latitude, longitude, and associated metadata are entered into PCS based on section B of the "ADEQ NPDES Form 1 Permit Application," as reviewed and deemed complete and accurate by the permit engineer, and the final permit document. (See "NPDES Forms ... ADEQ Application Form 1" on the "Water Permit Forms and Instructions" page of the ADEQ Web site at [http://www.adeq.state.ar.us/water/forms\\_inst.htm#ADEQ](http://www.adeq.state.ar.us/water/forms_inst.htm#ADEQ).) Currently, the ADEQ NPDES inspectors are gathering accurate and complete data using global positioning system (GPS) equipment during facility inspections.

Procedures are in place to ensure that documents are routed appropriately and that the process of data collection, preparation and entry, and error resolution is as consistent and efficient as possible. Quality control checks are in place at the different stages of document review and data entry, and upon update completion. PCS management provides quality control checks to ensure the accuracy and consistency of data coded and entered into PCS. The NPDES Enforcement Section has a technical assistance manager, a PCS senior programmer analyst, and a PCS coordinator, and each performs and oversees quality control functions for PCS data.

ADEQ management and staff are dedicated to the following goals and strive to maintain a high quality of PCS data. The following are ADEQ's quality assurance (QA) goals for PCS:

- Ensure that data are reliable for use in environmental decisionmaking.
- Ensure integrity of data element definitions.
- Ensure consistency of data.
- Ensure that valid compliance/noncompliance statistics are reported to Headquarters, Congress, and the general public.
- Ensure that data are reliable for data integration efforts.
- Pinpoint areas where training efforts are necessary.
- Identify and report PCS software problems.
- Recommend changes to PCS software.

To meet these goals, ADEQ employs a number of specific quality assurance and quality control (QA/QC) measures, including the following:

- Reviewing draft NPDES permits and draft consent administrative orders (PCS personnel review for accuracy, completeness, consistency, and ability to code requirements to PCS and return to originator or supervisor for correction when necessary)
- Checking PCS update/audit reports and PCS retrieval printouts against coding forms and source documents (rejections and errors are researched and corrected by PCS personnel)
- Running specialized PCS QA/QC retrievals against the database (these retrievals are distributed to PCS personnel, NPDES enforcement personnel, and NPDES permit personnel for review and correction)
- Conducting administrative file reviews (comparing source documents with PCS printouts)

## **Section II. Program Implementation**

### **1. Permit Quality**

#### The State of Arkansas:

To improve permit efficiency and quality, ADEQ has increased the use of general permits, permit templates, flowcharts, checklists, and outside resources. ADEQ is responsible for approximately 337 facilities covered under 10 non-stormwater general permits. The Division is also responsible for 1,660 industrial facilities covered under stormwater general permits for industrial activities and 716 construction activities covered under construction stormwater general permits. Authorizations under these general permits can be issued in less time than individual permits, enabling the State to spend more time on the more complex permits.

In July 2002 an in-house Access database and permit templates were created to generate individual NPDES permits. In addition to this database, templates for permits, permit language, and correspondence were linked to the database for use by both engineers and support staff. This reduced the amount of time spent on data entry: data are entered only once into the database, and then all documents are created from the one source. This also increases consistency in permits because human error is reduced.

ADEQ has also implemented EPA Region 6's "Water Quality Assessment NPDES Permit Issuance Actions" flowchart to standardize, streamline, and define the process of NPDES permit issuance with common sense permitting, consistent with water quality programs and existing regulations.

In the past year ADEQ has implemented a checklist that compares information in the application, previous permit, and draft permit, which ensures consistency in the documents. Permit writers also use outside resources such as <http://www.topozone.com> to check the accuracy of permit coordinates and topographic maps.

Permit writers are paired for an initial peer review of permits before the draft is sent in-house for review. This has reduced minor errors in formatting and the like and allows senior staff to focus more time on reviewing the technical issues of the draft permits.

Several NPDES Permits Branch staff members hold wastewater licenses and are either registered Professional Engineers or Engineers in Training.

Over the past 2 years, efficiency in the permitting process has increased dramatically, as reflected in the decrease in backlog for the State. This allows Arkansas to maintain an average current permits rate of 90% or better.

Note: In developing the "Permit Quality" section of the program profile, State permits were not independently evaluated or compared to a national standard. Rather, the discussion is based primarily on an assessment of the QA/QC procedures established by Arkansas and routine permit quality reviews performed by EPA Region 6.

The State implements the WET program to meet the requirements established by EPA Region 6 and the State of Arkansas. NPDES permits issued by ADEQ require life-of-the-permit WET monitoring, including requirements to perform a toxicity reduction evaluation (TRE) where significant lethal effects (as compared to a control group) are demonstrated in two out of three tests performed over a 90-day period. Failure to perform either the WET monitoring or a required TRE is a violation of the permit. Where significant sublethal toxic effects (e.g., significantly impaired growth or reproduction) are demonstrated over a period of time, ADEQ may require a TRE. Based on the TRE study results, a WET limit may be required for lethal effects. To date, ADEQ, following EPA Region 6 standard practices, has not required WET limits for sublethal effects.

To ensure that water quality standards (WQS) for the protection of aquatic life are met, the State has designated staff to track violations and initiate enforcement on WET-related violations. Another staff person is responsible for permit development for the State of Arkansas, which includes tracking WET test results for facilities, TRE studies, and reviewing all new and renewed permits to ensure that the proper WET language is included in the permit. This person also addresses issues such as frequency of testing, use of proper species, and other requirements that may apply. ADEQ staff work together closely to ensure that all WET limits, compliance schedules, and concurrent testing requirements are addressed.

All permits for major dischargers contain life-of-the-permit monitoring requirements for WET, including lethal and sublethal effects for two species (a vertebrate and an invertebrate). If no lethal or sublethal effects are demonstrated at or below the critical low flow dilution in any of the first four quarterly tests, the permittee may apply for a reduction in frequency to once per 6 months for the more sensitive species and once per year for the less sensitive species. This frequency applies until the permit expiration date or until a test fails for the lethality endpoint. If a test failure for lethality occurs, two retests are required during the next 2 months, and the facility must return to quarterly testing for the life of the permit for the affected test species. If sublethal effects are demonstrated during the first four quarterly tests, the facility must continue testing until it passes both the survival and sublethal test endpoints for four consecutive quarters.

Although Region 6 and its States do not have a schedule to begin requiring TREs and WET limits for sublethal effects, all permits now include a notice that the permitting authority may require a sublethal TRE if sublethal effects are demonstrated at a magnitude and frequency that indicate that a successful TRE can be performed.

WET limits for lethal effects are required on the basis of multiple test failures at or below the critical low flow dilution. A failure for lethality in a scheduled test and either of the two required retests triggers a 28-month TRE study, which is then followed by a compliance schedule, usually of 36 months' duration. If the TRE successfully identifies and confirms a particular toxicant, the permit may be modified to continue WET monitoring and incorporate a chemical-specific limit. If the toxicant is not clearly identified, confirmed, and an appropriate control found during the TRE, a WET limit is normally incorporated into the permit.

In cooperation with Region 6, ADEQ has presented comprehensive WET training to staff and treatment plant operators on several occasions. ADEQ recently used WET data to demonstrate the need for more stringent NPDES permit limits on ammonia to preclude ambient toxicity in waters of the State, resulting in a significant improvement in the protection afforded to aquatic life on a statewide basis.

To ensure permit quality, the Region conducts real-time reviews of a select sample of draft permits from ADEQ and all critical category permits. Critical category permits include permits that may have interstate water issues, endangered species concerns, or a high level of environmental concern. EPA also conducts real-time reviews of all general permits. Concerns raised by EPA during permit reviews must be resolved prior to permit issuance.

#### EPA Region 6:

To date, EPA Region 6 and its States have not required a predictive reasonable potential assessment for WET during permit development, nor have they required WET limits to protect against sublethal effects such as significant impairment to growth or reproductive ability. In 1990–1991, the Region was concerned that toxicant identification procedures were not adequately refined to result in successfully completing sublethal TREs on a consistent basis. Over time, significant advances in toxicant identification have improved success in this area. Region 6 has recently concurred on EPA draft national guidance documents that will establish a predictive Reasonable Potential (RP) approach and WET limits for sublethal effects. EPA Region 6 is developing a draft strategy to phase in implementation of these significant permitting changes. The final strategy will be developed in coordination between ADEQ and EPA Region 6.

There are no biosolids (sludge) permits in the State of Arkansas.

## **2. Pretreatment**

#### The State of Arkansas:

Pretreatment industrial user (IU) data are available through the “Pretreatment Regulated Industries/Facilities” database at [http://www.adeq.state.ar.us/water/branch\\_npdes/pretreatment/industrial\\_users.asp](http://www.adeq.state.ar.us/water/branch_npdes/pretreatment/industrial_users.asp).

ADEQ was authorized to implement the NPDES Pretreatment Program on November 1, 1986. The State has approved 24 pretreatment programs.

Regional oversight of the State’s program confirms that ADEQ pretreatment program activities are generally done quite well and cover a wide range of actions and responsibilities. Fundamental aspects include the Pretreatment Program Audits/Municipal Pollution Prevention Assessments; discussions with the POTWs with approved pretreatment programs and with industrial users of POTWs; and providing guidance to all individuals and groups involved with the pretreatment program.

The last on-site audit of the pretreatment program by EPA Region 6 enforcement was conducted during the review period of April 11–13, 2000. At that time a review was being initiated to improve ADEQ’s internal procedures for the routing and coding of pretreatment code sheets. The next audit will be conducted as part of the new State framework project.

Arkansas has done an excellent job of identifying the significant industrial users (SIUs), including categorical industrial users (CIUs). The system and process of tracking known CIUs discharging to POTWs that are not required to have an approved pretreatment program is well established, and ADEQ’s computer system for this process is comprehensive. All SIUs discharging to POTWs with approved pretreatment programs have control mechanisms. Due to resource constraints, ADEQ (as the control authority) has not permitted any of the SIUs discharging to POTWs without approved

pretreatment programs. However, ADEQ has a memorandum of understanding with EPA Region 6 to give priority for permit issuance to any IU that potentially impacts water quality and/or the ability of the POTW to adequately treat its wastewater. The following is a summary of the types of users regulated under the pretreatment program:

- POTWs with approved pretreatment programs have issued permits to 115 CIUs. ADEQ has identified but not issued permits to 29 CIUs discharging to POTWs without approved pretreatment programs. However, ADEQ receives, tracks, and reviews compliance reports received from these industries. These two groups of CIUs total 144 CIUs.
- POTWs with approved pretreatment programs have issued permits to 162 SIUs that are not subject to the categorical pretreatment standards. ADEQ has identified at least 8 SIUs that are not subject to the categorical pretreatment standards discharging to POTWs without approved pretreatment programs, for an estimated total of 170 SIUs (non-categorical).
- In summary, Arkansas has a total of 314 SIUs discharging to POTWs with and without approved pretreatment programs. Thirty-seven SIUs discharging to POTWs without approved pretreatment programs are currently without control mechanisms (i.e., permits). There are 277 categorical and non-categorical SIUs discharging to approved pretreatment programs, all of which have control mechanisms.

ADEQ continually assesses POTWs regarding the potential need to develop a pretreatment program when preparing to reissue an NPDES permit. All major municipalities (and some minor municipalities with suspected SIUs) are required to submit SIU questionnaires. These questionnaires are reviewed by pretreatment personnel for possible follow-up for more comprehensive IU information. ADEQ also conducts an ongoing review (as time allows) of the "Arkansas Manufacturers Register," sorting by SIC codes and cross referencing to the effluent guidelines in 40 CFR Chapter I, Subchapter N. ADEQ maintains open communication with the public at large by phone and email, and with ADEQ's Hazardous Waste Division for potential SIUs. ADEQ has not determined a need to develop a new pretreatment program since 1993.

Of the 24 currently approved pretreatment programs in Arkansas, approximately 20%, or 5, are audited per year. During the auditing process, five contributing industries from each city are visited and provided technical guidance as needed. Under this method, the State audits 100% of the approved pretreatment programs every 5 years. The pretreatment program audits are conducted with skill and knowledge, and the reports are well written. The audit reports cover any deficiencies, recommendations to improve the program, and required modifications to the pretreatment program to bring it into compliance with the letter or intent of the pretreatment regulations (40 CFR part 403).

The goal is to meet a 60-day turnaround time to complete and transmit the audit report to the control authority after the field work is complete, but in no case later than the end of the quarter of the inspection year. With very few exceptions, Arkansas has met the 60-day goal. For those deficiencies that are not administrative in nature, the city is provided 30 days to address them with corrective actions. Progress reports from the city are due in the form of a compliance schedule with no longer than 90 days expiring between reports. To date, there have been no deficiencies that have taken longer than 90 days to resolve.

Pretreatment audit findings (deficiencies with respect to 40 CFR part 403, the State regulations, and/or the city's pretreatment program) are forwarded to the city, giving the city 30 days to address the deficiencies with proposed corrective actions. Because of effective oversight, most deficiencies are simply administrative in nature and are resolved within 30 days.

Annual reports are typically reviewed within the inspection quarter in which they are submitted. When there are deficiencies, the POTW is contacted to have simple corrections made immediately or, in the case of more significant problems, the POTW is given 30 days in which to submit corrections.

#### EPA Region 6:

Currently, there are no POTWs under EPA authority in Arkansas required to have a pretreatment program.

### **3. Concentrated Animal Feeding Operations**

#### The State of Arkansas:

In Arkansas all confined animal facilities with a liquid waste disposal system are required to obtain a State permit and a nutrient management plan, regardless of the number of animals.

In addition to the new CAFO regulations, the Arkansas Soil & Water Conservation Commission has new regulations that will require poultry operations located in designated watersheds to obtain a nutrient management plan.

Arkansas's CAFO program is consistent with EPA's 1970s CAFO regulations and effluent guidelines. Arkansas issued a statewide NPDES general permit for CAFOs in 1995 based on the federal CAFO regulations and guidelines. The 1995 general permit addressed some of the "nine minimum standards" contained in the new 2003 CAFO regulations, and the pollution prevention plan required by that permit contains many of the nutrient management plan elements listed in the new federal CAFO regulations. In March 2004 Arkansas incorporated the new CAFO regulations and effluent guidelines by reference into the State regulations. Arkansas has also adopted the Natural Resources Conservation Service's technical standard 590 into the State regulations.

Arkansas has 108 CAFOs with liquid animal waste disposal systems. Those CAFOs are covered by the expired, but administratively extended, 1995 general permit. There are approximately 2100 "newly defined" poultry CAFOs in Arkansas that must seek permit coverage by no later than April 2006. Approximately 5% of the CAFOs that will require coverage under the new regulations (by 2006) are covered by NPDES permits. Arkansas has drafted a general permit to cover the poultry CAFOs. Region 6 has reviewed the permit, and the public has provided comments. ADEQ is in the process of finalizing the permit. This poultry general permit incorporates the new CAFO regulations and guidelines, including the requirement to develop and implement a nutrient management plan, and will include the nine minimum standards of the CAFO regulation. A general permit for the liquid waste disposal system CAFOs will be drafted after the poultry CAFO general permit is completed.

Arkansas is completing an inventory of poultry operations of any size under State licensing laws. This inventory will assist the State in identifying the dry poultry operations that need to submit NPDES permit applications as a result of the revised federal regulations.

ADEQ inspects 100% of CAFOs once a year. Due to this rate of inspection, annual refresher training, and outreach presentations to the farming community, ADEQ informed EPA Region 6 enforcement during a recent audit that citizen complaints have decreased significantly, the farms are doing much better, and the public is not as concerned.

CAFO enforcement priorities are (1) release discharges and (2) repeat discharges. Enforcement actions on a “paperwork” violation are not issued unless it is a repeat violation. A draft formal enforcement action, with or without a penalty, is sent to the facility for review, comment, and/or signature. If the facility is known to be recalcitrant, ADEQ can go directly to a notice of violation (NOV). Enforcement actions are tracked by an internal tracking system

#### EPA Region 6:

Currently, there are no CAFO facilities under the authority of EPA’s NPDES program in Arkansas.

## **4. Stormwater**

#### The State of Arkansas:

Stormwater general permit facilities permit information is tracked in ADEQ’s PDS. Enforcement action information and stormwater general permit facilities are tracked in the CAO/NOV database. Neither of these databases includes the level of data required for PCS. The human resources have not been available to enter these data into PCS.

ADEQ has issued all required Phase I stormwater permits. The one expired Phase I municipal separate storm sewer system (MS4) permit is being prepared. The draft permit has been submitted to EPA to review, and ADEQ is working with EPA to address some of the concerns with the proposed permit.

The construction general permit (covering both Phase I and Phase II construction activities) and the Phase II small MS4 general permits are current.

NOIs and stormwater general permit DMRs are tracked electronically with an in-house Microsoft Access database for compliance purposes.

Stormwater data are not accessible through the State’s online searchable database. The list of small MS4 NOIs is available on the ADEQ Web site for public review at

[http://www.adeq.state.ar.us/water/branch\\_npdes/stormwater/ms4.htm](http://www.adeq.state.ar.us/water/branch_npdes/stormwater/ms4.htm).

EPA Region 6 reviewed the stormwater program during the audit review period of April 21–22, 2003. Stormwater Phase II had become effective in March 2003. Approximately 76 municipalities in the State of Arkansas are expected to be affected by Phase II. The ADEQ stormwater program had 1,625 active industrial permitted facilities and approximately 1,000 construction permitted facilities. Inspections are not routinely scheduled at these facilities but are conducted through receipt of citizen complaints or drive-by observations. Citizen complaints are received at ADEQ through letters, referrals, and its hotline at 1-800-327-8411. Most complaints are investigated within 3 to 5 days from the date of receipt. ADEQ may contact citizens with a phone call or letter to inform them of the status of their complaint.



ADEQ's first response to alleged stormwater violators is to provide compliance assistance to help operators/owners achieve compliance. Violators that do not cooperate may receive an escalated enforcement action with penalty. ADEQ's records indicate that from 2000 to 2003 five penalty actions were issued for stormwater violations; \$10,000 was the highest penalty amount assessed.

#### EPA Region 6:

Currently, there are no stormwater facilities under the authority of EPA's NPDES program in Arkansas.

## **5. Combined Sewer Overflows/Sanitary Sewer Overflows**

#### The State of Arkansas:

Arkansas does not have any combined sewer systems; therefore, there are no requirements for development of long-term control plans for CSOs.

ADEQ requires facilities to properly operate and maintain collection systems to reduce inflow and infiltration. This requirement is included in permits as a standard condition. ADEQ incorporates standard bypass reporting requirements in permits.

ADEQ permits contain reporting requirements for the permittee to report all overflows with the DMR submittal. Reporting requirements for overflows that endanger health or the environment must be verbally reported within 24 hours, with a written report to follow in 5 days. ADEQ Enforcement reviews these reports as they are submitted for possible enforcement action. Formal enforcement actions require facilities to submit for approval a corrective action plan with a milestone schedule for the identification of inflow and infiltration problems and repair of collection system lines.

Noncompliance Reporting: In Part III, Other Conditions, of the NPDES and Arkansas Water and Air Pollution Control Act, facilities are required to report all overflows with the DMR submittal. These reports are summarized and reported in tabular format. The summaries include the date, time, duration, location, estimated volume and cause of overflow, observed environmental impacts from the overflow, action taken to address the overflow, and ultimate discharge location if not contained. Overflows that endanger health or the environment must be reported orally or by fax to ADEQ (Enforcement Section of the Water Division) within 24 hours from the time the permittee becomes aware of the event. A written report of overflows that endanger health or the environment must be provided within 5 days of the time the permittee becomes aware of the circumstance. This particular situation may trigger an inspection by the Field Services Branch.

All overflows are entered into a database. The information can be sorted by facility name or permit number. This feature enables ADEQ to track and evaluate overflows by isolating the information relative to a particular facility in the database.

Failure to report an overflow or a misleading report are common triggers used to take enforcement action. The enforcement action may include the following areas:

- Installation of a better alarm system for notification
- Documentation of wet weather/dry weather flows for 3 years (prior to current event)

- Identification of all overflows not reported to ADEQ prior to the current event
- Validation of flow monitoring records prior to the current event

There has been a noted improvement in the number of SSOs reported due to various ADEQ activities, including workshops, meetings, and presentations regarding reporting and compliance with the permit requirements.

EPA and ADEQ will partner to enhance the SSO program in Arkansas by looking at the current program, including format, schedules, and notification process. The Region is working toward establishing a baseline in FY2006 by reviewing reported overflows and other associated activities.

## 6. Biosolids

### The State of Arkansas:

Arkansas does not have authorization for the NPDES biosolids (sludge) program.

### EPA Region 6:

EPA Region 6 has the authority to regulate the discharges, including sludge disposal, of Class I facilities (facilities that produce sludge that may adversely impact the environment) by means of EPA-issued NPDES permits. EPA Region 6 does not currently have any biosolids (sludge) permits in Arkansas.

Arkansas sludge generators and disposers operate under the self-implementing regulations found in 40 CFR part 503. The Region's Permits Branch provides assistance to the State and individuals with questions regarding interpretation of part 503. The Region's Water Enforcement Branch receives the annual reports required from Class I sludge facilities in February of each year, investigates compliance concerns, and performs inspections. Most regulation interpretation and compliance concerns are discussed jointly between the Permits Branch and the Water Enforcement Branch.

EPA Region 6 receives the annual sludge DMRs in February of each year. The DMRs are reviewed for timeliness of submittal, reporting accuracy, and data violations and then forwarded to the data entry personnel to be entered into PCS. After a review of the data entered into PCS, the proper level of enforcement action is determined, if needed, ranging from a telephone call or a letter to a formal enforcement action. From 1999 through 2003, a total of 17 administrative orders were issued for non-submission of DMRs. All issued orders are entered into PCS with a schedule for submission of the DMRs.

The Arkansas sludge DMRs for FY2003 show an annual amount of sludge production total of 39,385 metric tons/year with

- 23,126 metric tons/year land-applied
- 19,092 metric tons/year disposed of in landfills
- 473 metric tons/year surface disposal

- 4,943 metric tons/year interstate transported
- 0 metric tons/year incinerated
- 0 metric tons/year other methods

In FY2003, 65 out of 66 facilities (98.5%) submitted their annual sludge DMRs.

## **Section III. NPDES Compliance Monitoring and Enforcement Response**

*In a separate initiative, EPA's Office of Enforcement and Compliance Assurance (OECA), EPA Regions, and the Environmental Council of the States have developed a tool for assessing State performance in enforcement and compliance assurance to ensure that States meet agreed-upon minimum performance levels and provide a consistent level of environmental and public health protection nationwide. OECA will use the State profiles to focus these efforts and identify areas needing further discussion and evaluation.*

### **1. Enforcement Program**

#### The State of Arkansas:

ADEQ addresses significant noncompliance (SNC) violations with enforcement actions, also incorporating the findings from inspection reports, pretreatment reports, stormwater inspections, SSO violations, citizen complaints, and compliance issues discovered during review of monthly reports and during routine file reviews by the Enforcement assistants and administrators. The reviewing official reviews all SNC violations using the appropriate Violation Review Action Criteria (VRAC) to ensure that problems are quickly identified and referred to an enforcement supervisor. The Enforcement Response Guide (ERG) is used for enforcement determination to ensure that the most appropriate response or set of responses is taken to uphold the intent of the law and regulations and to ensure that the permittee adheres to technology- or water quality-based permit limitations. Both the VRAC and the ERG are contained in ADEQ's current Draft Enforcement Management System (EMS) Manual, which guides appropriate enforcement response and enforcement escalation.

ADEQ uses the CWA Settlement Penalty Policy to calculate and assess penalty amounts, along with Arkansas Pollution Control and Ecology Commission Regulation No. 6.501 and Regulation No. 7, section 9. Economic benefit is considered in the determination of final penalty amounts to be collected in formal enforcement actions. The data in PCS verify that penalties are collected; however, ADEQ does not have written documentation of its penalty calculations.

In FY2005, the NPDES Enforcement Branch will adapt a penalty policy based on the State Permits Branch's penalty calculation policy. This will enable ADEQ's Water Division to be consistent in the assessment of the penalty calculations, unilaterally. The formal enforcement will include the development of a case file based on inspections/reports, sample results, photos, and other pertinent information. This will result in the issuance of a consent administrative order, which may include a civil penalty calculation based on ADEQ Regulation 7, section 9, and the Water Division's enforcement policy, or may be escalated to an NOV.

Table 2 demonstrates the amount of penalties collected during FY2001 (10/1/00 to 9/30/01) as compared to FY2003 (10/1/02 to 9/30/03) for major and minor facilities. As shown, the amount of penalties collected from major facilities in FY2003 was double that in FY2001.

**Table 2: Number of Penalties Collected, FY2001 and FY2003**

Fiscal Year 2001	Fiscal Year 2003
Major Facilities \$15,300	Major Facilities \$31,700
Minor Facilities \$47,160	Minor Facilities \$48,325
Total \$62,460	Total \$80,025

Enforcement actions describe clearly and in enforceable terms what must be done by certain dates. ADEQ monitors and measures the response to each enforcement action, and failure to meet dates and events is a basis for escalating enforcement action. Except for stormwater enforcement actions, formal enforcement actions for major and minor facilities are monitored in PCS to determine the need for follow-up. Informal enforcement actions for minor facilities are not entered into PCS due to the large number of actions taken and the lack of personnel resources to enter these data.

ADEQ issues many formal enforcement actions; however, during past audits of ADEQ’s program, it was determined that approximately 30% of the actions were not addressed in a timely manner and did not have appropriate escalation when violations continued over a long period. In FY2005 the NPDES Enforcement Branch will finalize its Enforcement Management System (EMS) Manual, which will include pre-enforcement procedures consistent with VRAC and ERG criteria. This will aid in screening the level and frequency of violations to determine the appropriate initial response within a 30-day time frame.

Tables 3 and 4 compare formal enforcement actions and SNC rates between FY2001 and FY2003. The data show a decrease in the number of formal enforcement actions issued in FY2003, with a slight decrease in the SNC rate as well. These decreases occurred while the amount of penalties collected in FY2003, as shown above, significantly increased during this same period.

**Table 3: ADEQ Formal Enforcement Actions**

Fiscal Year 2001	Fiscal Year 2003
Major Facilities 21	Major Facilities 15
Minor Facilities 43	Minor Facilities 31
Total 64	Total 46

**Table 4: ADEQ Informal Enforcement Actions**

Fiscal Year 2001	Fiscal Year 2003
Major Facilities 443	Major Facilities 326
ADEQ SNC Rates:	
Fiscal Year 2001	Fiscal Year 2003
18%	15% <sup>1</sup>

<sup>1</sup> The National Data Sources column of the Management Report, measure #34, shows 19% of major facilities in SNC during FY2003, based on the universe of major facilities as of 2/4/04. The 15% is based on the universe of major facilities at the beginning of the fiscal year, 10/1/02.

The decrease in the number of formal enforcement actions is the result of several factors, including the following:

- Current formal enforcement action in effect
- Current formal enforcement action with construction schedule in effect
- Ongoing verbal communication to bring facility into compliance
- Facility in bankruptcy
- Facility returns to compliant status automatically

ADEQ has an in-house procedure for addressing citizen complaints received by letters, phone calls, and referrals. Complaints are coordinated between the enforcement personnel and inspectors. After coordination, a decision regarding any action for the complaint is made by ADEQ.

The ADEQ stormwater program continues to expand and evolve. ADEQ receives citizen complaints through letters, referrals, and its hotline at 1-800-327-8411. Most complaints are investigated within 3 to 5 days from date of receipt. ADEQ may contact citizens with a phone call or letter to inform them of the status of their complaint. The first response to alleged stormwater violators is to provide compliance assistance to help operators/owners achieve compliance. Violators that do not cooperate may receive an escalated enforcement action with penalty. ADEQ records indicate that from calendar year 2000 to 2003, five penalty actions were issued for stormwater violations, with \$10,000 the highest penalty amount assessed. These records also show that one penalty case had been dropped and the remaining penalties had not been collected. At present, ADEQ stormwater enforcement actions are not entered into PCS. ADEQ needs to develop a procedure to ensure that all enforcement actions are entered into PCS. This would allow the Department to receive proper recognition of the program's accomplishments. The stormwater engineers have developed a basic data form to record the receipt and description of each stormwater complaint.

#### EPA Region 6:

Arkansas sludge generators and disposers operate under the self-implementing 40 CFR part 503 regulations. There are also State licensing requirements that affect sludge generation and disposal, such as septic hauler license and surface disposal permitting requirements. EPA Region 6 provides assistance to the State and to individuals regarding interpretation of part 503.

Each year the annual DMRs, along with the "Region 6 Instructions for Completing DMRs for Sludge" are mailed to each facility. These instructions are very detailed and reference each page of the DMRs and the respective pollutant codes. The telephone number of the enforcement engineer is included in case a facility has any questions or needs additional information.

The Water Enforcement Branch receives these annual DMRs from Class I sludge facilities in February of each year and reviews them for timeliness of submittal, reporting accuracy, and violations. A total of 17 formal enforcement actions have been issued only for non-submission of DMRs for calendar years 1999 through 2003. The orders require the facilities to respond and/or submit their sludge DMRs within

30 days. To date, no penalties have been assessed. If it is determined that the facility has not reported accurately, according to the amount of sludge land-applied or surface-disposed, the facility is contacted and required to send in revised DMRs. If violations are reported on the DMRs, the enforcement engineer contacts the facility for resolution.

## **2. Record Keeping and Reporting**

### The State of Arkansas:

ADEQ maintains current and accurate files and records in central records, which are open and accessible to the public. All permit records, fact sheets, permits, enforcement actions, correspondence, and technical backup are available for review. All of these documents are subject to full disclosure except those determined to be confidential, if they are part of a litigation or information entitled to protection as trade secrets of the applicant in accordance with 40 CFR 122.7, adopted by reference in ADEQ Regulation No. 6. The Arkansas Freedom of Information Act of 1967, as amended, prescribes how and when the State government must respond to requests for disclosure of public records.

### EPA Region 6:

Accurate and up-to-date files for sludge materials are maintained in the EPA central file room, where they are easily accessible for internal and public review. The sludge data that have been reported to EPA are entered into PCS, where the data can be retrieved and reviewed.

Formal administrative records for general permits are developed, and when inspections are performed and enforcement actions issued, they are entered into PCS and into ICIS.

## **3. Inspections**

### The State of Arkansas:

The inspection strategy is based on section IV of the memorandum of agreement (MOA), which states that ADEQ will conduct compliance inspections of all major facilities annually. CAFOs and grant-related NPDES facilities are also inspected annually. The MOA does not give a schedule for minor permittee inspections, but previous statements made by ADEQ in the context of quarterly meetings and semiannual audits indicate that compliance inspections of minor facilities are conducted at least once every 3 years. Past audits of the ADEQ program confirm these two schedules of inspection. Inspection frequencies are increased due to factors such as public complaints, permit renewal controversies, significant rain events, fish kills, spills, and health issues, along with water quality issues.

Inspections have always been considered a strength of the ADEQ program because all geographic locations in the State are covered by regional inspectors, with compliance assistance provided as part of their inspections. They provide information on upcoming training and workshops. In addition, the inspectors explain the rules and how they apply to the particular facility. Regional inspections allow for more cooperation between the facility and ADEQ and a better understanding of what is required for compliance. Currently, the regional staff conducts oversight inspections on 5% to 10% of the major facilities in the State.

ADEQ enters major and minor facility inspections into PCS; however, stormwater and CAFO inspections are not entered due to lack of personnel resources. In-house Access and Excel databases were created to track these inspections. All areas that are not evaluated as “Satisfactory” on the inspection reports are addressed with a notice of deficiency letter from the inspector, which is coded into PCS as an enforcement action. Each letter contains a schedule with a due date for a response from the facility stating what will be done to correct the deficiencies.

The increased number of inspections in FY2003 (Table 5) is attributed to the factors mentioned in the above paragraph that affect frequency of inspections, as well as the addition of new major facilities and the upgrade to major of some previous minor facilities. The inspections in Table 5 consisted of compliance, sampling, reconnaissance, pretreatment, biomonitoring, and SSO inspections.

**Table 5: Number of Inspections Conducted<sup>1</sup>**

Inspection Year 2001	Inspection Year 2003
Major Facilities 148	Major Facilities 155
Minor Facilities 265	Minor Facilities 325
Total 413	Total 480

<sup>1</sup> The number of inspections shown does not include inspections at facilities covered by general permits. These inspections are included in the calculation of Management Report measure #33.

ADEQ is considering an inspection trade-off because of (1) the new Phase II Stormwater regulations and (2) the new CAFO general permit for dry litter operations. To cover this new universe of facilities, one idea being considered is to lower the inspection rate of major facilities, which have a history of being compliant, from once a year to once every 3 years.

ADEQ performs routine NPDES inspections on a regular basis with all major facilities inspected annually and minor facilities inspected on a 3-year rotational basis. ADEQ does not individually target specific sectors, facilities, pollutants, or geographic locations. However, rotation cycles and frequencies may be increased depending on citizen complaints, ecological sensitivity issues, ambient water monitoring data, or requests from ADEQ’s enforcement section as file reviews are completed.

EPA Region 6:

Septic Hauler Program: During FY2003, Region 6, Water Enforcement Branch, performed two sludge inspections, issued one show cause order, and drafted one Administrative Penalty Order (APO) related to sludge violations.

EPA Region 6 is developing a septic hauler program, which is in the pilot stage. An expedited settlement offer document has already been approved by EPA Headquarters. Six septic hauler inspections were conducted by EPA in Arkansas in FY2004; one show cause administrative order was issued in January 2004. During the pilot phase, Region 6 is relying on the State’s knowledge of septic haulers for inspection targeting. In addition to the inspections, Region 6 will conduct more septic haulers workshops throughout the remainder of the fiscal year.



## 4. Compliance Assistance

### The State of Arkansas:

The ADEQ Web site includes many features to inform the public and encourage public involvement. These features include an employee directory and personnel charts, printable copies of regulations and application forms, general permits and NOIs, news releases, public notices, searchable databases, and links for the public to use to request additional information or file a complaint.

ADEQ has given stormwater workshops to the construction community, including home builder associations, across the State to address the Phase II construction stormwater permit. Approximately 76 municipalities in Arkansas are expected to be affected by Phase II. Two public meetings to address the new MS4 stormwater permit have also been held. The frequency, topics, and locations of future meetings will be determined as needed. As an incentive to attend the stormwater meetings, ADEQ offers continuing education credits to participants through the Operator Certification Program.

Public meetings have also been held for the new dry litter CAFO general permit. During these meetings, background information is given and any changes or new requirements are explained, followed by a question/answer session on the issues.

More applications, NOI submissions and improved compliance have been noted as a result of these meetings. As more meetings are held, the public also becomes more aware of the programs, and their requirements and purpose, resulting in more active participation in the detection of noncompliance.

### EPA Region 6:

At the onset of the sludge program in 1988, to assist the facilities in reporting their sludge data, the enforcement engineer wrote a very detailed, nine-page set of instructions that was included with the blank DMRs in a packet of sludge materials. To further help the facilities that needed additional clarification of the Clean Water Act part 503 requirements, EPA Region 6 referred them to a Web site called "A Plain English Guide to Part 503 Biosolids Rule." Responses from several facilities stated that this Web site was very helpful to them. The result of this compliance assistance has been more accurate data that are being reported in the correct monitoring periods and submitted to EPA in a very timely manner.

Three septic hauler workshops that involved information sharing with the Arkansas Department of Health and individual haulers have been held in Arkansas.

## **Section IV. Related Water Programs and Environmental Outcomes**

### **1. Monitoring**

#### The State of Arkansas:

Monitoring Strategy: EPA Region 6 staff met with Arkansas staff in 2003 and 2004 to discuss EPA's "Elements of a State Water Quality Monitoring Program" guidance sent out in March 2003 and to answer the State's questions regarding the completion of a strategy consistent with this guidance. The State of Arkansas has committed to submitting to EPA a draft monitoring strategy consistent with the 10 elements described in the guidance by late spring 2005. The monitoring strategy should address the State's need to have adequate in-stream data for permit background calculations and for calibration of wasteload allocation models. The monitoring strategy should also include the use of existing water quality data, such as data in STORET or from drinking water treatment facilities, to provide information on water quality condition prior to permit issuance or renewal.

Statistical Approach: The State has not implemented a statistical approach in its water quality assessments. Although the State was not able to directly participate in a national stream study, it is supportive of the study being conducted by the University of Arkansas. The University was provided resources and technical support from EPA to conduct water quality and biological monitoring of selected Arkansas wadeable streams using a probabilistic design. It is hoped that this partnership will provide valuable experience to the State in conducting studies using multiple indicators in a probabilistic design and will lead to an expanded use of statistical designs in the State's monitoring program.

Rotating Basin Schedule: Water quality monitoring includes the monitoring of the chemical constituents in the water and sediment of rivers, streams, and lakes within the State and monitoring the biological communities and physical habitat within selected waters. Arkansas's water quality monitoring frequency does not follow a rotating-basin schedule.

The chemical monitoring network on rivers and streams includes more than 130 stations that are sampled monthly for more than 30 parameters, over 100 stations that are sampled on a bimonthly or quarterly schedule, and an additional 30 to 50 stations that are intensively sampled over a short period for special purposes. Some of these stations have been regularly sampled since the 1970s. Collection of the routine, monthly water samples is performed by the Water Division's field inspectors, and laboratory analyses are conducted by the Department's Technical Services Division. The quarterly or bimonthly sampling of unassisted or reassessed waters is conducted by Planning Branch personnel with laboratory analyses by Tech Services. Synoptic, watershed-intensive surveys of the physical, chemical, and biological conditions of a watershed are conducted by the Planning Branch personnel.

Biological/habitat monitoring is currently restricted to special project needs associated with synoptic watershed surveys or to the development of additional data to support the establishment of biological criteria used to evaluate the biological integrity of a water body. Biological data collections consist primarily of the fish and macro-invertebrate communities of a stream, including species identification, enumeration and grouping by guilds such as families, trophic feeding levels, sensitivity to disturbances,

and the like. In addition, measurement of existing aquatic life habitat is necessary to identify habitat stressors that might be affecting the communities in addition to water quality contaminants.

The Lake and Reservoir Monitoring Program was not formalized until 1989, when the first statewide intensive monitoring of Arkansas' significant publicly owned lakes was conducted. This included measurement of approximately 30 chemical parameters plus bacteria and chlorophyll a. At least 80 lakes were included. They ranged in size from 60 to over 45,000 acres and totaled 356,254 acres. Subsequent lakes surveys were completed in 1994, 1998, and 2004 and included a very similar plan, except sediment quality was added to the project.

The State's comprehensive monitoring strategy will address the manner in which it will improve the number of State waters assessed in order to enhance the understanding and characterization of surface water quality throughout Arkansas.

An online searchable database of monitoring station lab results is now available. Arkansas's monitoring strategy is documented in its water quality inventory prepared under Clean Water Act section 305(b) and the Continuing Planning Process. The State's existing fixed-station water chemistry network is representative of conditions statewide.

## **2. Environmental Outcomes**

### The State of Arkansas:

Monitoring data are used to assess approximately 50% of the 12,072 river/stream miles and evaluate another 2,600 river/stream miles. Since 1989, seventy-nine publicly-owned lakes (356,254 lake acres) have been monitored once every 5 years.

## **3. Water Quality Standards**

### The State of Arkansas:

Arkansas NPDES staff coordinate with the Water Quality Planning Branch staff to ensure that water quality standards (WQS), including designated uses and criteria, are accurately addressed in the permitting process.

Arkansas has recently undergone a triennial review of its WQS, throughout which WQS staff have coordinated with NPDES, monitoring, and TMDL staff in Region 6. On April 23, 2004, the Arkansas Pollution Control and Ecology Commission adopted proposed amendments to the Pollution Control and Ecology Commission Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas. The revised WQS were submitted to and received by EPA Region 6 on November 2, 2004. Some of the major revisions included a new biological integrity provision, a revised nutrient provision, new E. coli criteria, new ammonia criteria, new storm-flow turbidity criteria, and the designation of four streams as "channel-altered" Delta Ecoregion streams. The majority of Arkansas's revised WQS were approved on December 21, 2004. EPA was unable to take action on a single sentence in the nutrient provision at Regulation 2.509, based on the absence of a written "Department assessment methodology" for nutrients as specified in the sentence. EPA will move to approve this sentence once the State has developed a written assessment methodology for nutrients.

Although Arkansas is not in agreement with the need for numeric nutrient criteria, especially for rivers and streams, it has committed to begin working on the development of numeric nutrient criteria for Beaver Reservoir. The State will continue to use its nutrient assessment protocol to evaluate waters, including rivers and streams, for compliance with the State's existing narrative criteria for nutrients. This protocol primarily employs visual observation measures, but it also includes the application of quantitative water chemistry analyses to confirm observational findings.

#### EPA Region 6:

Region 6 is not directly responsible for implementing water quality standards in Arkansas. In its oversight role, the Region is charged with ensuring that all of its States and authorized Tribes have adopted beneficial uses and appropriate criteria for those uses consistent with the goals described in section 101(a)(2) of the Clean Water Act and the water quality standards regulation.

## **4. Total Maximum Daily Loads**

#### The State of Arkansas:

On an as-needed basis, the State submits for review a wasteload allocation on expiring permits. EPA NPDES coordinators are advised of the technical acceptability of submitted wasteload allocation reviews. ADEQ NPDES permitting staff coordinate with the ADEQ water quality assessment staff in developing water quality-based limits for permit development.

Development of TMDLs in Arkansas is done in a manner consistent with the consent decree *Sierra Club v. Whitman*, case No. LR-C-99-114 (E.D. Ark), which identifies 311 water body-pollutant pairs. As of January 15, 2005, sixty-five TMDLs have been completed and 183 water body-pollutant pair delistings have been approved under the consent decree since 2001. Under this schedule, it is anticipated that the remaining 62 waters on the consent decree will either be delisted or have a completed TMDL by January 15, 2007. This calculates to about 80% complete with the consent decree scope.

The consent decree pertains to only those waters on the 1998 and 2002 lists of impaired waters required under Clean Water Act section 303(d). Once the requirements of the consent decree have been met, it is hoped that Arkansas will take a more active role in developing TMDLs that will be required on the 2004 303(d) list and future lists.

At the end of FY2003, Arkansas had 126 TMDLs in the docket. Arkansas committed to 35 TMDLs in the FY2003 Management Agreement. Fifty-five cumulative TMDLs were completed through FY2003 with 7 TMDLs completed in FY2003. There were 49 TMDLs completed through FY2003 that include at least one point source wasteload allocation.

#### EPA Region 6:

Status: The Region is developing TMDLs for the State of Arkansas, as a result of court case LR-C-99-114. Most of the TMDLs are developed using national contractors. The court schedule is more rapid than the EPA headquarters suggested schedule, but the schedule has been met.

TMDLs are submitted as updates to the Water Quality Management Plan. The plan updates provide water quality-based effluent limitations for permits.

Region 6 has developed an internal TMDL review process for NPDES implementation of TMDL conditions, prior to the public comment period on the EPA-sponsored, contractor-developed TMDLs. To date, no Region 6-generated discharge permits for the State of Arkansas have implemented approved TMDL conditions because the Region has not issued individual permits in the State since ADEQ assumed the NPDES permitting program.

Based on the profile, Arkansas is on pace in TMDL development. Of the TMDLs established through FY2003 in Arkansas, about 89% include NPDES point sources.

## 5. Safe Drinking Water Act

### The State of Arkansas:

Drinking water, public health concerns, and disinfection procedures are taken into consideration during the actual calculations of water quality-based limits and screening process in addition to the development of WQS.

### EPA Region 6:

Integration of the Safe Drinking Water Act (SDWA) Programs: The SDWA establishes source water assessment program requirements. The SDWA requires that States submit the location (latitude/longitude) of all surface water intakes and wells used by public water systems to the Safe Drinking Water Information System. The Office of Ground Water and Drinking Water has formed a national Baseline Water Quality Standards Workgroup to work toward providing locational data for the public water supply surface water intakes and wells that are under the direct influence of surface water to the Water Quality Planning Branch staff for use in establishing WQS, determining appropriate designated uses, and designating stream segments. The EPA Region 6 Source Water Protection Branch has been asked to work closely with the appropriate State agencies during the validation process for the latitude and longitude of the surface water intakes and wells.

The Region 6 Source Water Protection Branch is also reviewing State WQS setting procedures to ensure that designated uses include appropriate language for drinking water supply and to encourage States to consider public water supplies that use groundwater wells that are under the direct influence of surface water during the WQS setting process.

## **Section V. Other Program Highlights**

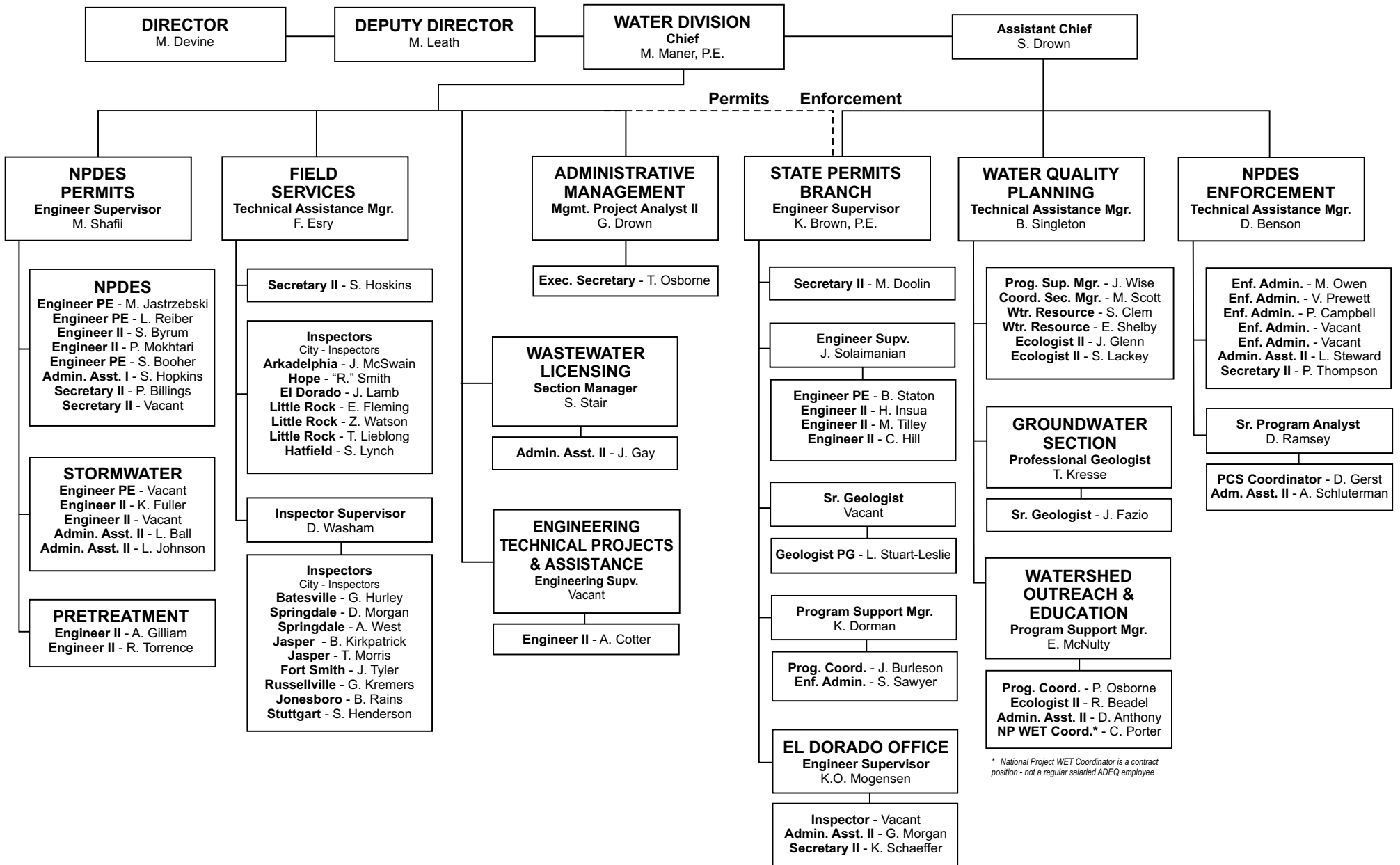
### The State of Arkansas:

Over the past 2 years, efficiency in the permitting process has increased dramatically, as reflected in the decrease in backlog for the State. This allows Arkansas to maintain an average of 92 percent or more current permits. ADEQ was EPA Region 6's first State to meet and maintain the Agency's National Backlog Goals.

Arkansas is investigating opportunities for watershed permitting and potential effluent trading. The State is working diligently to address many of its most controversial permits. Arkansas is actively working with the States of Oklahoma, Louisiana, and Missouri to address various interstate issues.

# ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

## Water Division Personnel Chart



\* National Project WET Coordinator is a contract position - not a regular salaried ADEQ employee

# NPDES Management Report, Winter 2005

## Arkansas

			Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data	
						State Activities	EPA Activities	State Activities	EPA Activities
<b>NPDES Progress</b>									
Universe	1	# major facilities (6,690 total)	I.1		n/a	113	0		
	2	# minor facilities covered by individual permits (42,057 total)	I.1		n/a	702	0		
	3	# minor facilities covered by non-storm water general permits (39,183 total)	I.1		n/a	337	0		
	4	# priority permits (TBD)	I.6			--	--		
	5	# pipes at facilities covered by individual permits (142,761 total)	I.7		n/a	1,872	--		
	6	# industrial facilities covered by individual permits (32,505 total)	I.1		n/a	454	0		
	7	# POTWs covered by individual permits (15,197 total)	I.1		n/a	360	0		
	8	# pretreatment programs (1,482 total)	II.2		n/a	24	--		
	9	# Significant Industrial Users (SIUs) discharging to pretreatment programs (22,158 total)	II.2		n/a	277	--		
	10	# Combined Sewer Overflow (CSO) permittees (831 total)	II.5		n/a	0	--		
	11	# CAFOs (current and est. future) (17,672 total)	II.3		n/a	2,110	--		
	12	# biosolids facilities (TBD '05)	II.6			--	--		
NPDES Program Administration	13	State or Region assessment of State NPDES program (none (N)/assessment (A)/profile (P))	I.1	50 states 2004	n/a	A, P	P		
	14	% pipes at facilities covered by individual permits w/ lat/long in PCS	I.7		46.3%	96.5%	--		
	15	State CAFO legal authority expected (mo/yr)	II.3	2005	n/a	3/04	n/a		
	16	# Withdrawal petitions/legal challenges (22 total)	I.4		n/a	0	n/a		
	17	DMR data entry rate	I.7		95%	99%	--		
	18	# permit applications pending (1,011 total)	I.6		n/a	1	--		
NPDES Program Implementation	19	% major facilities covered by current permits	I.6	90%	83.7%	93.8%	n/a		
	20	% minor facilities covered by current individual or non-storm water general permits	I.6	90% 12/04	87.0%	95.6%	n/a		
	21	# major facilities w/permits expired >10 yrs. (56 total)	I.6		n/a	1	0		
	22	% priority permits issued as scheduled (TBD '05)	I.6	95% 2005		--	--		
	23	% pretreatment programs inspected/audited during 5 yr. inspection period	II.2		85.3%	100.0%	--		
	24	% SIUs w/control mechanisms	II.2		99.2%	100.0%	--		
	25	% of CSO permittees with long-term control plans developed or required	II.5	75% 2008	82.2%	n/a	--		
	26	% CAFOs covered by NPDES permits	II.3		35%	5%	--		
	27	% biosolids facilities that have satisfied part 503 requirements (TBD '05)	II.6			--	--		
	28	# Phase I storm water permits issued but not current (76 total)	II.4		n/a	1	n/a		
	29	# Phase I storm water permits not yet issued (5 total)	II.4		n/a	0	n/a		
	30	Phase II storm water small MS4 permits current (Y/N/D (draft) (35 States)	II.4	100% states 2008	n/a	Y	n/a		
	31	Phase II storm water construction permit current (Y/N/D (draft) (49 States)	II.4	100% states 2008	n/a	Y	n/a		
NPDES Compliance Monitoring and Enforcement Response	32	% major facilities inspected	III.3		71%	92%	1%		
	33	(inspections at minors) / (total inspections at majors and minors)	III.3		76%	76%	25%		
	34	% major facilities in significant non-compliance (SNC)	III.1		20%	19%	--	15%	
	35	% SNCs addressed by formal enforcement action (FEA)	III.1		14%	45%	--		
	36	% SNCs returned to compliance w/o FEA	III.1		70%	45%	--		
	37	# FEAs at major facilities (666 total)	III.1		n/a	15	0		
	38	# FEAs at minor facilities (1,660 total)	III.1		n/a	31	1		

### Explanation of Column Headers:

**Profile Section:** For each measure, this column lists the section of the profile where the program area (including any additional data for the measure) is discussed.

**National Data Sources:** The information in these two columns is drawn from two types of sources:

(1) EPA-managed databases of record for the national water program, such as PCS, the National Assessment Database, and the National TMDL Tracking System. NPDES authorities are responsible for populating PCS with required data elements and for assuring the quality of the data. EPA is working to phase in full use of NAD and NTTS as national databases.

(2) Other tracking information maintained by EPA Headquarters for program areas such as CAFOs, CSOs, and storm water.

The [definitions document](#) accompanying this Management Report provides a detailed definition of each data element in the National Data Sources columns.

**Additional Data:** These columns provide additional data in cases where information from other data sources differs from information in the National Data Sources column for reasons such as different timing of the data "snapshot." Additional data should generally adhere to the same narrative definitions as data in the National Data Sources, and should be derived using similar processes and criteria. Our goal is to work with the States on these discrepancies to ensure consistent and accurate reporting. A State contact is available who can respond to queries. The profiles discuss each additional data element.

**State Activities:** Information in these columns reflects activities conducted by the State program. (Shaded cells in these columns indicate that the work may not be entirely the State's responsibility, but a breakdown of the data into EPA and State responsibilities is unavailable.)

**EPA Activities:** Information in these columns reflects activities conducted by the EPA Region within the State.



# NPDES Management Report, Winter 2005

## Arkansas

		Profile Section	GPRA Goal	Nat. Avg.	National Data Sources		Additional Data		
					State Activities	EPA Activities	State Activities	EPA Activities	
<b>Water Quality Progress</b>									
Universe	39	River/stream miles (3,419,857 total)	IV.2		n/a	12,072	n/a		
	40	Lake acres (27,775,301 total)	IV.2		n/a	356,254	n/a		
	41	Total # TMDLs in docket at end of FY 2003 (52,795 total)	IV.4		n/a	126	--		
	42	# TMDLs committed to in FY 2003 management agreement (2,435 total)	IV.4		n/a	35	--		
	43	# Watersheds (2,341 total)	IV.2		n/a	--	--		
Water Quality Administration	44	On-time Water Quality Standards (WQS) triennial review completed (42 States)	IV.3		n/a	N	n/a		
	45	# WQS submissions that have not been fully acted on after 90 days (32 total)	IV.3	<25% submissions	n/a	n/a	0		
Water Quality Implementation	46	State is implementing a comprehensive monitoring strategy (Y/N) (TBD)	IV.1	all states 2005	--	--	--		
	47	% river/stream miles assessed for recreation	IV.2		13.8%	--	n/a		
	48	% river/stream miles assessed for aquatic life	IV.2		22.0%	--	n/a		
	49	% lake acres assessed for recreation	IV.2		49.4%	--	n/a		
	50	% lake acres assessed for aquatic life	IV.2		48.5%	--	n/a		
	51	# outstanding WQS disapprovals (23 total)	IV.3		n/a	1	n/a		
	52	WQS for E. coli or enterococci for coastal recreational waters (12 States)	IV.3	35 states 2008	n/a	n/a	n/a		
	53	WQS for nutrients or Nutrient Criteria Plan in place (13 States)	IV.3	25 states 2008	n/a	N	n/a		
	54	Cumulative # TMDLs completed through FY 2003 (10,807 total)	IV.4		n/a	55	--		
	55	# TMDLs completed in FY 2003 (2,929 total)	IV.4		n/a	7	42		
Environmental Outcomes	56	# TMDLs completed through FY 2003 that include at least one point source WLA (5,036 total)	IV.4		n/a	49	--		
	57	% Assessed river/stream miles impaired for swimming in 2000	IV.2		--	0.4%	n/a		
	58	% Assessed lake acres impaired for swimming in 2000	IV.2		--	0.0%	n/a		
	59	# Watersheds in which at least 20% of the water segments have been assessed and, of those assessed, 80% or more are meeting WQS (440 total)	IV.2	600 2008	n/a	--	--		

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