

May 8, 2013

Via email: reg-comment@adeq.state.ar.us

Doug Szenher
Public Outreach and Assistance Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118

Re: Proposed Changes to APEQ Regulation 2

Dear Mr. Szenher:

The following comments regarding the proposed changes to the Arkansas water quality standards in Arkansas Department of Environmental Quality (ADEQ) Regulation No. 2 (hereinafter "Reg. 2") are submitted on behalf of the Central Arkansas Water (CAW). Central Arkansas Water is a regional drinking water utility that provides safe, high-quality, affordable water to over 400,000 individuals and businesses throughout the Central Arkansas region.

1. **Reg. 2.106 Definitions, "Critical Flows"**. There is confusion regarding appropriate critical flows applicable to minerals criteria and permitting – the wording in this definition of critical flows for minerals criteria needs to be clarified to plainly state that either the harmonic mean flow or a flow of 4 cfs are the two options that are to be used for applying minerals criteria.
2. **Reg. 2.507, Bacteria**. CAW, in general, supports the proposed changes to Reg. 2.507 that have made this provision more readable. However, the revised bacteria standard has eliminated a section setting numerical criteria for designating impairment of ambient waters.

Current regulation states, "(C) For assessment of ambient waters as impaired by bacteria, the above listed applicable values for E. coli shall not be exceeded in more than 25% of samples in no less than eight (8) samples taken during the primary contact season or during the secondary contact season.

We believe that a quantifiable threshold designating impairment is necessary and ask that the current wording remain or be strengthened to include the Recreational Water Quality Criteria (RWQC) recommendations regarding bacterial indicators issued by the United States Environmental Protection Agency (EPA) on or about November 29, 2012.

3. **Reg 2.509- Nutrients**. The proposed regulation includes generic language regarding the establishment of future numeric standards for nutrients. This regulation will not be enforceable until numerical values are established.

It is important that numerical criteria be based on site specific data applicable to the waterbody to which the criteria would apply. It is also important that stakeholders be allowed to participate into the process before nutrient criteria are adopted. We recommend that until ADEQ establishes numerical nutrient values, the current language remain.

CAW objects to the removal of the numeric phosphorus requirements for point source discharges into certain waterbodies in the legislatively designated nutrient surplus watersheds and on Arkansas's list of impaired waterbodies (303(d) list).

The deletion of the phosphorus requirements is contrary to and prohibited by the antidegradation provisions of Section 303(d)(4)(B) of the Clean Water Act, 33 U.S.C. § 1313(d)(4)(B), 40 C.F.R. § 131.12, and Reg. 2.201 through 2.203. ADEQ has not conducted the analyses required by Reg. 2.201 through 2.203 and 40 C.F.R. § 131.12 in order to consider removal of the Reg. 2.509 phosphorus requirements.

4. **Reg 2.509(B), site-specific water quality criteria for Chlorophyll a and Secchi Transparency for Beaver Lake.** CAW supports the addition of site-specific numeric water quality criteria (WQC) for Chlorophyll a and Secchi Transparency for Beaver Lake that are at least as stringent as those proposed by ADEQ. Having scientifically-based and site specific numeric criteria for indicators of nutrient pollution will provide a straightforward method of assessing whether the water quality standards are being met.

5. **Reg. 2.304 & Appendix D, physical alteration of an extraordinary resource waters, ecologically sensitive waterbody, or natural and scenic waterway.** The current language is the result of 3rd party rulemaking in 2006 which, under administrative procedures, had to be reviewed and approved by the Pollution Control & Ecology Commission. That rulemaking had been initiated in response to ADEQ's staff interpretation and application of the 2004 and previous years' language to mean that no alteration of any kind could be made. This was in spite of the specific language of Reg.2.304 which stated that only "significant physical alterations" are not allowed." ADEQ staff's previous interpretation and application had meant that absolutely no consideration of the possibility of a drinking water application could be considered regardless of the economic, societal, or public health need.

Given that the PC&E Commission has previously recognized the need to consider the possibility of a drinking water application on an ERW, ESW or NSW and that the current Reg. 2.304 and Appendix D were intended as guidance on how the ADEQ Director was to review such an application, ADEQ staff need to now define and provide guidance on what constitutes "significant physical alteration" in regards to ERW, ESW and NSW.

6. **Reg. 2.511 & related Sections.** ADEQ needs to clarify the impact of Act 954 of 2013, and how the language and implementation of this and other sections will be modified as a result of that legislation.

Should you have any questions in regards to these comments, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Robert Hart". The signature is written in a cursive style with a large, looping initial "R".

Robert Hart, P.E.
Technical Services Officer

Cc: Randy Easley, CAW