



CHEMICAL COMPANY

April 17, 2013

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

Re: Comments – Proposed Amendments to Regulation No. 2.

Dear Mr. Szenher:

Pursuant to the ADEQ's public notice of February 27th and 28th, 2013, please find the following comments on the proposed changes to Regulation No.2.

Reg. 2.104 Policy of Compliance

This section has been amended to allow longer than 3 years to come into compliance with a new water quality based effluent limit if a permittee is doing a study under a plan approved by ADEQ in accordance with Sections 2.306 and 2.308. We agree with this modification due to the increasing data requirements for such studies and the extended timeframes resulting from the data requirements.

Reg.2.106 Definitions

Critical Flows- The proposed changes in regards to dissolved minerals should be amended pursuant to the requirements of the recently passed Act 954 which will become effective on July 1, 2013. The proposed changes are quite problematic and would have resulted in significant increases in non-compliance with dissolved minerals and place unnecessary cost on NPDES permit holders with no improvement in water quality.

In addition the harmonic mean flow definition allows the use of a limited data set of essentially once a month flow measurements over a 24 month period. This limited data requirement is not appropriate to determine a harmonic mean flow. The current definition for harmonic mean flow should be retained.

Reg.2.302 Designated Uses

This section references Appendices A and D. In those appendices some of the species listed are not Federal Threatened and Endangered Species. Has the ADEQ performed an analysis of the regulatory issues related to the inclusion of those additional species? For instance, does the presence of these species in a "inventory" require the presence of those species in the listed waterbodies? If that regulatory analysis has not been completed by ADEQ we request that the additional species be omitted from the final version of this regulation.

Reg.2.404 Mixing Zones

A proposed amendment in this section does away with the mixing zone for pH (except for municipalities under certain circumstances). There is no environmental or technical justification for eliminating a mixing zone for that specific parameter and sets a precedent for the elimination of mixing zones on an arbitrary basis at the discretion of ADEQ. We request that proposed change be omitted in the final version of the regulation.

Additionally, the proposed regulation contains language to give ADEQ the authority to prohibit or limit mixing zones in an arbitrary manner if they find it “inappropriate” for a mixing zone to exist. This wording provides no technical or scientific basis for such a decision and we are unaware of any environmental need for this broadening of authority. We request that this proposed language be omitted from the final version of Reg.2.

In addition the proposed changes contain another mixing zone restriction in regards to “public water supply wells” which we feel is inappropriate for surface water regulations. The regulation already restricts mixing zones where there is a water supply intake, but the inclusion of “public water supply wells” is based on an assumption concerning surface water and groundwater connections. This provision could be interpreted as giving ADEQ the authority to require NPDES dischargers to conduct studies to “prove” they are not impacting groundwater. Such negative proof studies are often quite problematic and it is not appropriate for a regulatory agency to place such restrictions on dischargers without a defined environmental need. We request that this proposed language be omitted from the final version of Reg.2.

Reg.2.405 Biological Integrity

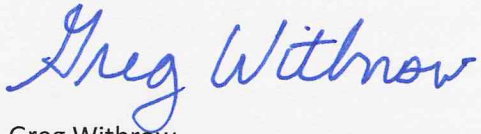
This proposed change amends current language which prohibits ADEQ from developing and imposing permit limits based on biological data (e.g. fish and benthic samples from a waterbody) to allowing such use. The specific language proposed says “Such data may be used to develop permit effluent limitations or conditions”. Besides the obvious issue of broadening ADEQ authority in an arbitrary manner there is no definitive technical process for ADEQ to use biological data to determine that a specific effluent parameter is causing a problem. This language could be interpreted as giving ADEQ authority to require instream monitoring of fish and benthics as enforceable NPDES permit conditions in addition to arbitrarily deciding that a specific parameter should be further limited in a NPDES permit. We request that this proposed language be omitted from the final version of Reg.2.

Reg.2.511 Mineral Quality

The proposed amendments delete the site specific rulemakings previously approved by the Commission but not approved by USEPA. We do not feel the deletion of these rulemakings is appropriate as the rulemakings were approved by the Commission and EPA’s disapproval does not automatically negate the State actions. And in one of the cases there is a Federal court appeal which is still ongoing and it has not yet been determined that the EPA decision will ultimately be upheld. We request that the waterbodies and criteria continue to be listed in the regulation.

In addition, the proposed regulation contains a revision stating that Ecoregion criteria will not be used to evaluate attainment of the water quality standards (i.e. used in the 303d listing process). This change is appropriate and we request that it be retained in the final regulation.

We greatly appreciate the opportunity to provide these comments. If you have any questions do not hesitate to contact me.



Greg Withrow
General Manager
El Dorado Chemical Co.