

ADEQ

ARKANSAS
Department of Environmental Quality

May 7, 2013

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

Submitted via: reg-comment@adeq.state.ar.us

Re: Comments on Arkansas Pollution Control and Ecology Commission Regulation No. 2,
Docket No. 13-003-R

Dear Mr. Szenher,

This letter serves to document ADEQ's comments on the Triennial Review of Regulation 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas. The rulemaking to consider changes to Regulation 2 was initiated by the Arkansas Pollution Control and Ecology Commission on February 22, 2013.

The attached Act 954 was enacted during the 2013 Legislative Session. Act 954 became a state law on April 8, 2013 and will go into effect in August. We submit Act 954 as part of our public comments, and we believe changes to Regulation 2 should be included in the 2013 Triennial Review of the State's Water Quality Standards in order to implement Act 954.

In addition, the ADEQ Water Division submits the following comments for consideration:

Reg. 2.502, Temperature

The last sentence of the first paragraph should be revised to read "The following standards are applicable:"

Reg. 2.503, Turbidity

The second sentence of the first paragraph should be revised to read "Specifically, waste discharge or instream activity should not cause turbidity values to exceed the base flows values listed below."

Reg. 2.504, pH

A typo was noted at the end of the third sentence, "(except as specified in 40 C.F.R. § 133.201(c))" should read "(except as specified in 40 C.F.R. § 133.102(c))."

Reg. 2.507, Bacteria

Revise the second paragraph to read "For assessment of ambient waters, the applicable standards shall not be exceeded in more than 25% of samples in at least eight (8) data points taken during the primary contact season or during the secondary contact season."

Reg. 2.511(A), Mineral Quality

Revise ER footnote as follows: "ER – Ecoregion Value"

Reg. 2.511(A)(1), Mineral Quality

Revise Big Creek Ditch in table as follows:

Big Creek Ditch (Headwaters to unnamed trib)

Revise Bayou Bartholomew in table as follows:

Bayou Bartholomew	50-30	20 30	500 220
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The 2007 version of Reg. No. 2 was inadvertently changed; the numbers from the 2004 version are the correct site specific standards.

Reg 2.511(A)(2), Mineral Quality

Revise Bayou Two Prairie in table as follows:

Bayou Two Prairie (Pulaski/Lenoire county line Rickey Branch to Northern boundary of Smoke Hole Natural Area)

Reg 2.511(B), Mineral Quality

Revise the first sentence to read "The following values were determined from ..."

Appendix A, Designated Uses, Specific Standards and Maps of Waters of the State by Ecoregions

A typo was noted on Page A-37, "southern hickrynut" should read "southern hickorynut."

A typo was noted on Page A-46, "winger mapleleaf" should read "winged mapleleaf."

A typo was noted on Page A-47, "Loutre creek" should read "Loutre Creek."

Thank you for the opportunity to comment.

Sincerely,



Steven L. Drown
Chief, Water Division

Enclosed:

Stricken language would be deleted from and underlined language would be added to present law.
Act 954 of the Regular Session

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed H3/18/13

A Bill

HOUSE BILL 1929

5 By: Representatives Davis, Alexander, D. Altes, C. Armstrong, E. Armstrong, Baine, Ballinger, Baltz,
6 Barnett, Bragg, Branscum, J. Burris, Clemmer, Cozart, Dotson, C. Douglas, Eubanks, Farrer, Ferguson,
7 Gillam, Harris, Hickerson, Hobbs, House, Hutchison, Jett, Lea, Lowery, McElroy, D. Meeks, S. Meeks,
8 Miller, Neal, Payton, Ratliff, Rice, Steel, Wardlaw, Westerman, B. Wilkins, Wren
9 By: Senators D. Sanders, Burnett, Caldwell, E. Cheatham, J. Dismang, J. English, Files, K. Ingram, Irvin,
10 B. King, B. Sample, D. Wyatt
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For An Act To Be Entitled

12
13 AN ACT TO AMEND THE LAWS PERTAINING TO THE
14 PROMULGATION OF WATER QUALITY STANDARDS; TO IMPROVE
15 THE PROCESS FOR DEVELOPING AND IMPLEMENTING WATER
16 QUALITY STANDARDS; TO DECLARE AN EMERGENCY; AND FOR
17 OTHER PURPOSES.
18

Subtitle

19
20
21 TO AMEND THE LAWS PERTAINING TO THE
22 PROMULGATION OF WATER QUALITY STANDARDS;
23 TO IMPROVE THE PROCESS FOR DEVELOPING AND
24 IMPLEMENTING WATER QUALITY STANDARDS; AND
25 TO DECLARE AN EMERGENCY.
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 SECTION 1. DO NOT CODIFY. Legislative findings and intent.

31 (a) The General Assembly finds that:

32 (1) Under current interpretations by the United States
33 Environmental Protection Agency, the development, implementation, and
34 assessment of water quality standards required under the Clean Water Act, 33
35 U.S.C. § 1251 et seq., are to be based on sound scientific and statistical
36 principles, among other things, and should consider readily available data



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1 that is consistent with and relevant to the water use to be maintained;

2 (2) Federal law requires the consideration of certain relevant
3 factors, including natural variability and statistical variability over
4 periods of time that are relevant to the water use to be maintained;

5 (3) After consideration of readily available data, reliance on
6 data that is not significant or meaningful, is incomplete, is not indicative
7 of conditions relevant to the water use to be maintained, is speculative, is
8 inconclusive or reasonably supportive of different conclusions, or is
9 otherwise not well-suited to the purpose for which it is being used, has the
10 potential to lead to unnecessary regulation and the inefficient use and
11 allocation of scarce resources;

12 (4) The State of Arkansas has a well-developed and long-standing
13 program of sampling the quality of waters subject to various uses;

14 (5) There is a rational basis found in sound scientific and
15 statistical principles for using long-term averages in assessing mineral
16 concentrations in a stream;

17 (6) The Arkansas Department of Environmental Quality's analysis
18 of data from Arkansas streams demonstrates that four cubic feet per second (4
19 ft³/s) is the median flow for small streams, which makes this measure an
20 appropriate indicator for stream flow when long-term flow data is not
21 available, thereby avoiding unnecessary regulation and the inefficient use of
22 state resources;

23 (7) It is appropriate and consistent with sound scientific and
24 statistical principles to use the greater of long-term average flows or four
25 cubic feet per second (4 ft³/s) for assessing mineral concentrations in
26 streams; and

27 (8) Because of the existing technological and economic limits on
28 treatability of dissolved minerals and the likely localized economic impacts
29 of the treatability requirement, it is an inefficient use of scarce resources
30 to apply domestic water supply uses and criteria to streams, stream segments,
31 or other bodies of water that do not have an existing domestic water supply
32 use or that do not have a demonstrated and reasonable potential to be used as
33 a domestic water supply source.

34 (b) The intent of this act is to:

35 (1) Provide for the consideration of existing and readily
36 available data and information relevant to the development, implementation,

1 and assessment of water quality standards for minerals;

2 (2) Provide standards for determining the data that should be
3 considered and relied on by the State of Arkansas and its agencies for the
4 development, implementation, and assessment of water quality standards for
5 minerals; and

6 (3) Direct state agencies to support the development,
7 implementation, and assessment of water quality standards according to the
8 provisions of this act.

9
10 SECTION 2. Arkansas Code § 8-4-202(b)(3), concerning the rules and
11 regulations the Arkansas Pollution Control and Ecology Commission may
12 promulgate with respect to water pollution, is amended to read as follows:

13 (3)(A) Water quality standards, performance standards, and
14 pretreatment standards.

15 (B) Water quality standards for minerals adopted under
16 subdivision (b)(3)(A) of this section shall comply with the following
17 requirements without precluding the evaluation of existing and readily
18 available water quality-related data:

19 (i) The development and implementation of standards
20 and criteria for minerals, including without limitation total dissolved
21 solids, chlorides, and sulfates, and the assessment of a stream's or a stream
22 segment's conformity with or attainment of a standard or criteria for
23 minerals shall be based on the greater of the average flow in the stream or
24 stream segment or four cubic feet per second (4 ft³/s);

25 (ii) The development and implementation of standards
26 or criteria for minerals, including without limitation total dissolved
27 solids, chlorides, and sulfates, in order to protect the use of a domestic
28 water supply, and the assessment of a stream's or a stream segment's
29 conformity with or protection of the use of a domestic water supply shall be
30 based on the greater of the average flow in the stream or stream segment or
31 four cubic feet per second (4 ft³/s);

32 (iii) The assessment of a stream, stream segment,
33 lake, or reservoir by the Arkansas Department of Environmental Quality for
34 conformity with or attainment of a water quality standard for minerals for
35 purposes of 33 U.S.C. § 1313(d) shall be based on the average concentration
36 of minerals in the stream, stream segment, lake, or reservoir using at least

1 sixty (60) actual measured samples taken at regular intervals over at least a
2 five-year period;

3 (iv)(a) Except as provided in subdivision
4 (b)(3)(B)(iv)(b) of this section, a water quality standard to protect or
5 maintain the use of a domestic water supply may be developed and implemented
6 only for a stream segment, lake, or reservoir that:

7 (1) Has an existing use as a domestic
8 water supply; or

9 (2) Is listed in the Arkansas Water Plan
10 as a planned or potential domestic water supply.

11 (b) The domestic water supply use shall be
12 designated for all bodies of water within the watershed of a lake or
13 reservoir used as a public water supply unless the designated use is or has
14 been removed under the regulations of the commission.

15 (c) The commission shall regularly publish in
16 Regulation No. 2 a list of the stream segments or reservoirs to which
17 subdivision (b)(3)(B)(iv)(a) of this section applies;

18 (v)(a) Before commencing a study that would purport
19 to allocate loads for permissible discharges to a stream, stream segment,
20 lake, or reservoir in order to conform to a water quality standard, including
21 without limitation a total maximum daily load study under 33 U.S.C. §
22 1313(d), the person conducting the study shall give written notice to all
23 persons who are permitted to discharge directly or indirectly into the
24 stream, stream segment, lake, or reservoir.

25 (b) The notice required under subdivision
26 (b)(3)(B)(v)(a) of this section shall:

27 (1) Identify the person responsible for
28 conducting the study;

29 (2) Explain the purpose of the study and
30 the method that will be used to conduct the study; and

31 (3) Provide instructions on obtaining
32 additional information about the study.

33 (c) At the time a draft report of the study
34 under this subdivision (b)(3)(B)(v) is prepared, a copy of the draft report
35 shall be sent to each:

36 (1) Person that holds a permit to

1 discharge into the stream, stream segment, lake, or reservoir;

2 (2) Public drinking water treatment
 3 system whose source water's watershed contains the stream, stream segment,
 4 lake, or reservoir; and

5 (3) Person that has requested a copy of
 6 the results or report of the study.

7 (d) Before the study under this subdivision
 8 (b)(3)(B)(v) is finalized, the Arkansas Department of Environmental Quality
 9 shall conduct a public hearing on the study if requested by a:

10 (1) Person holding a permit to discharge
 11 to the stream, stream segment, or reservoir; or

12 (2) Public drinking water treatment
 13 system whose source water's watershed contains the stream, stream segment,
 14 lake, or reservoir.

15 (e) A study conducted under this subdivision
 16 (b)(3)(B)(v) shall not establish a waste load allocation for a stream, stream
 17 segment, lake, or reservoir for purposes of protecting the use of a domestic
 18 water supply unless the department has first certified that:

19 (1) There is an existing domestic water
 20 supply use for the stream, stream segment, lake, or reservoir; or

21 (2) The stream segment or reservoir is
 22 listed in the Arkansas Water Plan as a planned or potential domestic water
 23 supply;

24 (vi) Within thirty (30) days after the receipt of an
 25 application for an individual permit to discharge into a stream, stream
 26 segment, or reservoir, the department shall certify to the permit applicant
 27 whether the stream segment or reservoir that will receive the proposed
 28 discharge is:

29 (a) An existing domestic water supply; or

30 (b) Listed in the Arkansas Water Plan as a
 31 planned or potential domestic water supply; and

32 (vii) The values for dissolved minerals listed in
 33 Arkansas Pollution Control and Ecology Commission Regulation No. 2, §
 34 2.511(B) shall not be used to evaluate or assess the attainment of water
 35 quality standards.

36 (C) A term or provision in a National Pollutant Discharge

1 Elimination System permit or an order related to a National Pollutant
2 Discharge Elimination System permit that exists as of the effective date of
3 this act but that has not yet become effective and does not comply with or
4 was not developed according to subdivisions (b)(3)(B)(i)-(iv) of this section
5 shall be:

6 (i) Stayed upon application to the commission by a
7 person regulated under the noncompliant National Pollutant Discharge
8 Elimination System permit term or condition or an order related to the
9 noncompliant National Pollutant Discharge Elimination System permit; or

10 (ii) Waived upon application to the commission by a
11 person regulated under the noncompliant National Pollutant Discharge
12 Elimination System permit term or condition or an order related to the
13 noncompliant National Pollutant Discharge Elimination System permit until an
14 applicable National Pollutant Discharge Elimination System permit term or
15 condition or an order related to an applicable National Pollutant Discharge
16 Elimination System permit that complies with subdivisions (b)(3)(B)(i)-(iv)
17 of this section becomes effective.

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/s/Davis

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Unsigned by Governor

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