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November 10, 2022

Via Email and U.S. Mail

Alan J. York | alan.york@adeq.state.ar.us
Associate Director, Office of Water Quality
Division of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118

Re: Paradise Valley Subdivision WWTP; NPDES
Draft Permit No. AR0053120; AFIN 60-05010

Dear Mr. York:

This firm represents the Pulaski County Property Owners Multipurpose Improvement District No. 2021-2 and the Paradise Valley Subdivision WWTP, the permit applicants in the above-referenced matter. We have reviewed your letter of October 26, 2022 stating that a revised draft permit must be issued and another 30 day public comment period be provided on the revised draft permit. For the reasons set out in this letter, the permit applicants object to your decision to issue a revised draft permit and allow another comment period, and respectfully request that the permit be issued in final form.

Please accept the following as a brief synopsis of the unprecedented history of the permit application:

- The permit application was initially filed on September 2, 2020, and was deemed administratively complete on October 13, 2020.
- On July 11, 2021, the public notice of DEQ's draft permit decision was published allowing a 30-day comment period. The comment period closed on August 11, 2021.
- On October 8, 2021, *almost a year* after the permit application was deemed administratively complete, the Division decided to accept additional comments even though the comment period had already closed. The Division recognized that any comments received outside the original Rule 8 comment period would not provide a basis to appeal DEQ's permitting decision.

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- On March 6, 2022, public notice of DEQ's first revised draft permit was published. The public notice stated that DEQ would accept additional comments on the revised draft permit for another 30 days. The first reopened comment period closed on April 6, 2022.
- On May 18, 2022, after the close of that comment period, the Division held a public hearing on the revised draft permit. The public notice for that public hearing stated that "[a]fter the public comment period and public hearing, DEQ will render a final permitting decision." The March 6, 2022 public notice further stated that "[a]ny interested person who has submitted comments may appeal a final decision by DEQ in accordance with the APC&EC Rule 8," – this contradicts the Division's October 8, 2021 letter.
- Now, by letter dated October 26, 2022, *more than two years after the permit application was first filed*, the Division has indicated that it plans to issue a second revised draft permit and allow another round of public comments.

We understand that this second revised draft permit will incorporate three revisions to the permit. First, the payment due to the non-municipal wastewater treatment trust fund will be increased in accordance with revised information requested by the Division and provided by the permit applicants (the trust fund payment was included in the original draft permit). Second, a 30-day start up certification report and operating manual will be required to be submitted to the Division. Third, the flow condition in the permit will be revised to ensure proper operation of the WWTP during periods of low load on the treatment plant (the flow condition requirement was included in the original draft permit). All of these provisions are more stringent than the first revised draft permit, and provide additional protection to the environment and the public. In addition, no changes to discharge limits are proposed. Consequently, the permit applicants do not believe that these changes are "substantial" and do not necessitate another comment period.

Furthermore, based on a reading of the applicable statutes and rules, the Division is not required or mandated to extend the comment period under these circumstances. Ark. Code Ann. § 8-4-203(e)(1)(C) provides that the Division shall issue its final permitting decision at the conclusion of the public comment period. Arkansas Pollution Control & Ecology Commission Rule 8, including Rule 8.208, does not allow reopening of the comment period on permits even though it expressly provides authority to reopen the comment period for rules based on certain changes made as a result of public comments. APC&EC Rule 8.816.

To be clear, no substantial new questions have been presented by DEQ that require additional public comment; the only changes proposed are in response to public comments previously made (it must be noted that those comments were made outside the permitted time) during the first reopened comment period. The Division's decision to reopen the comment period exceeds the Division's statutory and regulatory authority and its effect will be to further delay the Division's final permitting decision on a minor discharge permit application that is already two years old.

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For these reasons, the permit applicants object to the Division's decision to reopen the comment period on the draft permit. Moreover, because the permit applicants have been compliant with the Division's rules, procedures, and requests in obtaining the NPDES permit, the permit applicants respectfully request that the Division issue its revised permit as of November 7, 2022 as its final permitting decision.¹

Sincerely,

WRIGHT, LINDSEY & JENNINGS LLP



Mark Allison

cc: Basil Hicks | basil.v.hicks@adeq.state.ar.us
Bryan Leamons | bryan.leamons@adeq.state.ar.us

¹ By submitting this letter, the permit applicants do not waive any rights or equities, including, without limitation, the right challenge the standing of any person who might appeal the Division's final permitting decision.