

December 2, 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: City of Huntsville's Proposed Changes to APCEC Regulation No. 2

Dear Mr. Szenher:

The following comments are in regard to the City of Huntsville's third-party rulemaking that proposes changes to the Arkansas water quality standards for minerals in Arkansas Pollution Control and Ecology Commission (APCEC) Regulation No. 2 (hereinafter, "Reg. 2"). The City of Huntsville (hereinafter, "Huntsville") seeks, among other things, to increase the water quality criteria (WQC) for the minerals sulfate, chloride, and total dissolved solids (TDS) at Reg. 2.511 that apply to certain segments of Town Branch, Holman Creek, and War Eagle Creek. Huntsville discharges treated municipal wastewater into Town Branch approximately one-half mile above its confluence with Holman Creek. Holman Creek is a tributary of War Eagle Creek, a significant tributary of Beaver Lake. The comments are submitted on behalf of Beaver Water District (BWD), the largest of the four public drinking water utilities whose source of raw water is Beaver Lake and the second largest drinking water utility in Arkansas. BWD produces the drinking water for over 300,000 people and numerous businesses and industries in Northwest Arkansas.

BWD expressed concern at the June and July 2013 meetings of the APCEC when Huntsville sought to initiate its third-party rulemaking. BWD stated that, among other things, Huntsville's proposed rulemaking was premature given the ongoing uncertainty related to Arkansas Act 954 of 2013, which has since been repealed, and the changes to Reg. 2 proposed by the Arkansas Department of Environmental Quality (ADEQ) as part of its triennial review process and rulemaking. BWD recognized, however, that pursuant to provisions in Huntsville's National Pollutant Discharge Elimination System (NPDES) permit, any changes to the minerals WQC sought by Huntsville would need to be completed by the permit expiration date of May 31, 2014. For that reason, BWD did not directly oppose Huntsville's request to initiate rulemaking at the July 2013 APCEC meeting. Nonetheless, BWD stated its belief that Huntsville's request to initiate rulemaking before the issues related to minerals were settled was inadvisable. BWD suggested that a better approach would be to delay the third-party rulemaking under an ADEQ consent agreement or other appropriate mechanism that provided relief from the permit deadline, which BWD stated it would support.

The approach taken by Huntsville in its Section 2.306 Site Specific Water Quality Study (hereinafter, the "Study") is inconsistent with ADEQ's proposed changes to Reg. 2 and ADEQ's stated opposition to the APCEC regarding the use of four (4) cubic feet per second (cfs) as an

automatic flow factor in the development and implementation of WQC for minerals. BWD, however, is not submitting detailed comments on this issue or the other variables that Huntsville utilized in its mathematical equations to derive its proposed changes to the minerals WQC. We simply point out that any proposed rulemaking premised on values that will not be utilized by ADEQ in the future and that are unlikely to be upheld by the United States Environmental Protection Agency can only lead to further conflict and confusion.

BWD's primary concern is with the proposed changes to the WQC applicable to War Eagle Creek. War Eagle Creek flows approximately twenty-nine (29) miles from its confluence with Holman Creek to Beaver Lake. The War Eagle Creek watershed constitutes approximately one-third of the Beaver Lake watershed upstream of BWD. Huntsville proposes one set of increases to the minerals WQC for the approximately twenty (20) mile segment of War Eagle Creek from its confluence with Holman Creek to Clifty Creek and another set of lesser increases to the minerals WQC for the approximately nine (9) mile segment of War Eagle Creek from Clifty Creek to Beaver Lake. The proposed changes represent over a six hundred percent increase in the WQC for chloride, a thirty percent increase in the WQC for sulfate, and a sixty percent increase in the WQC for TDS.

BWD believes that the proposed changes to the WQC for War Eagle Creek are unnecessary and unsupported. Instead of focusing on an analysis of the mathematical equations and projections related to War Eagle Creek in the Huntsville Study, BWD believes that a review of the twenty (20) plus years of ADEQ and United States Geological Survey ambient water quality monitoring data on minerals in War Eagle Creek is sufficient to show that the proposed changes are not needed. Out of almost four hundred samples taken since 1993, the ***current*** WQC for sulfate has never been exceeded. The ***current*** WQC for TDS has been exceeded only twice, and those values were much lower than Huntsville's proposed WQC for TDS on the upper reach of War Eagle Creek. ADEQ's assessment protocol for minerals currently allows a ten percent exceedence rate, and ADEQ informed the Minerals Subcommittee of the APCEC that it is considering raising the allowable exceedence rate to twenty-five percent for site-specific WQC for minerals. Approximately twenty percent of the chloride samples have exceeded the ***current*** WQC for TDS, but the proposed WQC for chloride on the upper reach of War Eagle Creek is still more than two and a half times the maximum concentration of chloride detected in War Eagle Creek in over twenty years of monitoring. The actual concentrations of chloride, sulfate, and TDS in War Eagle Creek measured by Huntsville during July 2011- June 2012 corroborate that the proposed changes are unnecessary (see Tables 5.1 and 5.2 and Appendix B of the Study).

The purpose of a study pursuant to Reg. 2.306 is to develop WQC that reflect site-specific conditions based on an investigation of those conditions. As the measured concentrations of chloride, sulfate, and TDS in War Eagle Creek demonstrate, the WQC proposed for War Eagle Creek do not reflect actual site-specific conditions. As a consequence, even though the biological field data in the Study may show that the aquatic life in War Eagle Creek is acceptable at the *existing* level of minerals in the stream, the impact on aquatic life if the in-stream concentrations of minerals are allowed to increase to the proposed levels is unknown. Because the proposed WQC for minerals for War Eagle Creek are much, much higher than historical and existing in-stream concentrations, the impact on aquatic life at the proposed levels must be addressed.

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BWD understands the need to allow Huntsville's existing wastewater discharge in a manner consistent with the regulations and based on sound science. The proposed changes to the WQC for minerals for War Eagle Creek, however, go well beyond what is necessary to accommodate Huntsville's discharge, would potentially provide for new and increased discharges of minerals to War Eagle Creek, and are not scientifically justifiable. Thank you for your consideration of these comments.

Sincerely,



Colene Gaston
Staff Attorney

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