

**BEFORE THE ARKANSAS POLLUTION CONTROL & ECOLOGY  
COMMISSION**

<b>IN RE: PETITION BY CENTRAL ARKANSAS</b>	)	
<b>WATER TO INITIATE RULEMAKING TO</b>	)	
<b>AMEND REGULATION NO. 6, REGULATIONS</b>	)	<b>08-003-R</b>
<b>FOR STATE ADMINISTRATION OF THE</b>	)	
<b>NATIONAL POLLUTANT DISCHARGE</b>	)	
<b>ELIMINATION SYSTEM (NPDES)</b>	)	

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY'S**  
**RESPONSIVE SUMMARY**

Pursuant to Minute Order 08-09, the Arkansas Department of Environmental Quality ("ADEQ" or "Department") submits the following Responsive Summary regarding proposed changes to Regulation No. 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES).

On March 28, 2008, the Arkansas Pollution Control and Ecology Commission ("Commission") granted Central Arkansas Water's ("CAW") Third-Party Petition to Initiate Rulemaking to amend Regulation No. 6. CAW proposes to add Reg.6.601, which states, "All surface discharges in the Lake Maumelle are prohibited, with the exception of discharges permitted under the NPDES stormwater discharge program."

Two public hearings were held; in North Little Rock on May 27, 2008 and Perryville on June 2, 2008. The final day to submit written comments was June 16, 2008. A total of sixty-eight (68) comments were received on the proposed changes by the end of the public comment period, with sixty-one (61) total comments in support; seven (7) comments in opposition and one (1) comment for which the Department could not determine the position of the commenter.

Pursuant to Ark. Code Ann. §8-4-202(d)(4)(C), the public comments are summarized below and grouped into similar categories. The response of the Department follows each comment.

**Comment 1:** Allowing discharges into Lake Maumelle would violate the Antidegradation Policy in the Clean Water Act.

**Response 1:** ADEQ acknowledges the comment, but disagrees with this interpretation of the Clean Water Act. The antidegradation policy is found at 40 CFR §131.12 and APC&EC Regulation No. 2 (Regs.2.201-2.203). The current regulatory program under APC&EC Regulation No. 6 would allow discharges into Lake Maumelle in accordance with the State's current water quality standards, found in APC&EC Regulation No. 2. Any discharge into Lake Maumelle would be required to meet effluent limitations that ensured "existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." The discharger would be required to implement whatever treatment methods were necessary to meet the water quality standards and to protect existing uses.

**Comment 2:** The scope of the Clean Water Act supercedes any local jurisdiction.

**Response 2:** ADEQ acknowledges the comment. Federal laws, such as the Clean Water Act, only preempt local jurisdiction in instances where federal law has occupied the field of law. The commenter does not cite a specific example regarding federal jurisdiction or preemption, thus the Department cannot agree or disagree with this comment.

**Comment 3:** A newly emerging threat to public drinking water supplies is pharmaceuticals that are increasingly being found in public drinking water supplies

around the country. Prohibiting the direct discharge of wastewater into Lake Maumelle will help protect us from that potentially serious threat to such a vital resource.

**Response 3:** ADEQ acknowledges the comment.

**Comment 4:** Water supply should always be the main objective of this public resource.

**Response 4:** ADEQ acknowledges the comment. Domestic water supply is a designated use for Lake Maumelle, as found in Reg.2.

**Comment 5:** All 22 members of the stakeholder group who participated in the development of the Watershed Management Plan agreed to this proposed regulation change.

**Response 5:** ADEQ acknowledges the comment.

**Comment 6:** You have a great opportunity to act in a proactive way and yet not alter the current plans of any property owners. Since no wastewater is currently being directly discharged into Lake Maumelle at present, no entity would have to change its existing wastewater discharge.

**Response 6:** ADEQ acknowledges the comment.

**Comment 7:** You are the body that must take this action because you are the only ones with the authority to protect the entire watershed. Your actions will preserve an ever important aspect of equal treatment for all in the watershed. Since the Lake Maumelle watershed is in three counties (Pulaski, Perry, and Saline) it is more appropriate that prohibition of wastewater in the basin be at the state level.

**Response 7:** ADEQ acknowledges the comment.

**Comment 8:** Several options are available under the Watershed Management Plan that would either allow pumping of wastewater outside the watershed or small systems that would discharge wastewater into the ground after it is treated.

**Response 8:** ADEQ acknowledges the comment.

**Comment 9:** The clean, affordable water that comes out of Lake Maumelle is part of the important economic engine that drives Arkansas' economy. Allowing Lake Maumelle to be degraded by allowing the direct discharge of wastewater into it would threaten our economy, or at a minimum make water more expensive for both residential customers and businesses. If wastewater is directly discharged into Lake Maumelle, it will almost certainly lead to higher costs in the future, as additional water treatment would be needed to remove contaminants that never should be allowed to enter our drinking water supply in the first place.

**Response 9:** ADEQ acknowledges the comment.

**Comment 10:** Due to its unique hydrologic characteristics, Lake Maumelle cannot adapt as easily to increases in the amount of various pollutants, like the contaminants in wastewater, that would drain into the lake from its surrounding watershed.

**Response 10:** ADEQ acknowledges the comment.

**Comment 11:** The cornerstone of the Lake Maumelle Watershed Management Plan was that there would be no direct discharge of wastewater into Lake Maumelle. Everything else in the Plan, from limiting the number of new homes, minimum lot sizes, minimum undisturbed acres, maximum impervious areas, etc., was based on no direct discharge of wastewater into Lake Maumelle. Central Arkansans cannot adequately protect the lake unless such discharges are prohibited.

**Response 11:** ADEQ acknowledges the comment.

**Comment 12:** Potential solutions towards understanding the sailing/fishing paradise requires a management of long term orientation that invokes the mindset more typical of the Japanese style of management. Historically, the ecologist, planners and civil servants use the term quality of life when in fact to think ecology begins to place one at the seat of wonderment for being embedded in life. The fact is more of one trying to understand the complex chemistries that will shift with climate change while altering settlement patterns. The science and systemic basin for advancing research, perhaps through the EAST Program. However truthing the dynamics stored in data storage may not yet reflect the life of a watershed typified by Maumelle.

**Response 12:** ADEQ acknowledges the comment.

**Comment 13:** The potential challenge for household regulatory inspection of waste poses a challenge in the view of green design and alternative disposal systems that can be managed by intelligent households. The waste system haulers, the commercial entities that would service the systems and the cultural paradigms that they operate within need to be understood and respected. However, as all systems are prone to problems of operational breakdown, the signaling system of early warning devices or responsive governing systems requires responsive policy that is truthful and not subjective to political rhetoric. Nature's life and the performance for ecological stewardship requires greater understanding for the structure of life itself.

**Response 13:** ADEQ acknowledges the comment.

**Comment 14:** Scientific studies, including the use of calibrated watershed and lake response models, have demonstrated that long-term surface water discharges of

wastewater pose the single most serious and dominant threat to Lake Maumelle, greatly increasing the likelihood of harmful algae blooms and significantly degrading the current high level of lake water quality. These watershed and lake analyses showed that allowing surface wastewater discharges – even with the highest levels of treatment of 1 ppm total phosphorus – would make it impossible to achieve lake water quality targets established by the Lake Maumelle Watershed Management Plan.

Under the scenario of uncontrolled development in the watershed and associated discharges of wastewater, the models showed that algal concentrations near the water intake could increase by more than five times current levels, and up to thirteen times current levels in the upper portion of Lake Maumelle, leading to conditions in which visible algal blooms would be frequent and the quality of finished water is compromised, greatly exceeding the target values.

Under the scenario of controlled development, the modeling showed that non-point pollutant loads from development alone would use up the allowable increase in loads necessary to meet the water quality targets. The controlled development scenario was based on minimum lot sizes of 5 and 10 acres, minimum amounts of undisturbed land (30 to 50% depending on slope) and without surface wastewater discharges.

**Response 14:** ADEQ acknowledges the comment.

**Comment 15:** The current regulatory requirements are not adequate to protect Lake Maumelle. Existing designated uses and associated water quality criteria are not adequate to protect Lake Maumelle, based on the Tetra Tech analysis. This analysis showed that even with a permit limit of 1 part per million total phosphorus for surface discharges, the target values established by the Plan would not be achieved. Under the

current regulatory requirements, ADEQ must issue a NPDES permit if the existing water quality standards are met (there are currently no numeric water quality standards for Chlorophyll-a or nutrients in water supply lakes or tributaries). Therefore, there should be a prohibition of surface discharges of wastewater in the Lake Maumelle Basin.

**Response 15:** ADEQ acknowledges the comment. It should be noted that Arkansas's water quality standards, including designated uses and water quality criteria, are found in APC&EC Regulation No. 2, which is not the subject of this third-party rulemaking. The Department is required to review the water quality standards, and update as necessary, every three years. Regulation No. 2 identifies the designated uses for water bodies in Arkansas and establishes standards designed to protect those uses. The Department also is charged with ensuring that water quality is maintained and designated uses, such as drinking water supplies, are protected. The effluent limits contained in NPDES permits for surface discharges are calculated to protect in-stream water quality. The Department believes NPDES permits issued for surface discharges will protect all designated uses of a waterbody.

**Comment 16:** One commenter argues that, based on a critique of another watershed management plan done by Tetra Tech in Washington State, the Lake Maumelle Watershed Management Plan is therefore flawed.

**Response 16:** ADEQ acknowledges the comment. The commenter did not provide an analysis or critique of the Lake Maumelle Watershed Plan.

**Comment 17:** The use of properly permitted wastewater systems using direct discharge is an option currently available under the laws of the State of Arkansas. The proposed

rule change would eliminate that option and could force landowners to adopt other wastewater treatment methods which are more costly or even cost-prohibitive.

**Response 17:** ADEQ acknowledges the comment.

**Comment 18:** For the half-century following the construction of Lake Maumelle, Central Arkansas Water (“CAW”) did next to nothing to acquire land in the watershed to protect the lake. When faced with the prospect of spending money to acquire land in the watershed, CAW almost always took the more politically palatable route of not spending the money necessary to acquire a meaningful portion of the watershed. CAW is attempting to convey that this rule is the only way to achieve drinking water of a quality that meets Petitioner’s self-established standards and that the primary purpose of the plan is to achieve clean water. The true purpose of CAW’s plan is to save CAW money by shifting the cost of treating its drinking water from the rate payers who use the water to the property owners in the watershed, none of whom drink the water from Lake Maumelle. CAW is hoping to achieve this goal by having the Commission enforce CAW’s own regulations for drinking water quality, which are more strict than those enforced by the Commission.

**Response 18:** ADEQ acknowledges the comment.

**Comment 19:** The logic behind CAW’s request (prohibiting direct wastewater discharges in watersheds for drinking water lakes) would apply to a huge portion of the State of Arkansas. At the March 2008 Commission meeting, Arkansas Department of Environmental Quality staff advised the Board that if CAW’s proposed rule were extended to other watersheds in the state that met the same requirements proposed by CAW, the rule would impact 40% of the land mass of the State of Arkansas. The



sweeping precedent set by CAW's proposal is one of the reasons [ADEQ] staff took no position on the proposed rulemaking.

**Response 19:** ADEQ acknowledges the comment. While ADEQ staff did acknowledge the potential precedent of the proposed rulemaking, ADEQ did not characterize this proposal as a "sweeping" precedent. ADEQ remains neutral on this proposed rule change (as it does with most third-party initiated rulemakings) and does not adopt the characterizations of this proposal presented by those parties who support or oppose it.

**Comment 20:** It is an important point that CAW is not stating that it will not be able to meet current drinking water quality standards under applicable state and federal laws. CAW is attempting to maintain their own, higher, water quality standards – not those set by federal regulation or the State of Arkansas – and asking the Commission to enforce them. CAW's water quality standards are higher than the standards required by federal and state law. Under [Ark. Code Ann. §8-4-201(b)(1)(A)], the Commission has the role of promulgating regulations – not utility companies. If this agency allows CAW to set its own standards, the subsequent problems will be determining whose standards we are going to be following. We are then faced with the danger of utility companies being allowed to set their standards to what is most beneficial to them.

**Response 20:** ADEQ acknowledges the comment. Again, it should be noted that Arkansas's water quality standards are found in APC&EC Regulation No. 2, which is not the subject of this third-party rulemaking.

**Comment 21:** CAW loudly proclaims its self-made Lake Maumelle Watershed Management Plan as the "scientific" basis for its request. However, it would be naïve not to acknowledge that the creation of CAW's plan was completely controlled by CAW to

get the result they wanted. It was calculated to try and place the burden of treating their drinking water, not on the rate payers, but on the property owners in the watershed. The plan also tried to skew the burden on the property owners from the smaller, more numerous property owners to the large property owners in the watershed. The obvious intent of this move by CAW was to create a plan that had the most impact on the fewest number of property owners to hopefully minimize the number of opponents to their plan. The only possible result from the study was the recommendation that there be a ban on all direct surface wastewater because CAW controlled the research. The real purpose of CAW's proposed change to Regulation 6 is to set its own standards, and it hoping to achieve this purpose by creating a study that could only have the outcome that was most beneficial to CAW's view.

**Response 21:** ADEQ acknowledges the comment.

**Comment 22:** The alternative sewage treatment methods are more expensive to property owners in the watershed or simply so expensive as to prohibit development. The Commission has a duty to duly consider the economic impact of any proposed amendment. For such a broad rule-change, the Commission should consider evidence other than that presented by CAW, and to not simply accept CAW's evaluation of the economic impact of its plan. The Commission needs to study the relative costs of the alternatives proposed by CAW and also examine whether or not they are feasible for property owners in the watershed.

CAW incorrectly concludes that landowners have an alternative to direct surface wastewater discharges. They state that landowners could alternatively use sub-surface non-discharging systems; drip-irrigation systems; or pumping the wastewater out, where

feasible. However, alternative methods may not be available to property owners depending on their soil type or their location within the watershed. Pumping the wastewater out is not economically feasible for any but the largest landowners, and those properties on the edge of the watershed. The cost of building a pressurized sewer line and related infrastructure is cost prohibitive. Many property owners are thousands of feet from the edge of the watershed. This would require thousands of feet of sewer lines and large pumps, not to mention the acquisition of the necessary right of way for these lines. In addition, if the permeability of the land does not allow for the other methods suggested by CAW, and pumping out of the watershed is too costly, direct surface wastewater discharges may be the only reasonable method available.

**Response 22:** ADEQ acknowledges the comment.

**Comment 23:** There is already an effective system in place under Regulation 6 to protect the quality of water in this area – a permit process for discharging septic systems. ADEQ had previously issued permits for direct discharge of treated wastewater in other watersheds for drinking water lakes. By allowing the amendment is the Commission stating that these prior decisions were in error? If the system currently in place is so bad, then what is the agency going to do with the permits previously granted? Is the agency going to pull those permits? Will the Commission have to compensate the permit holders if it does pull them?

It should be considered that the permits that are currently issued by this agency that are in place for package treatment plants are temporary and require the permit holders to maintain their systems. This maintenance obligation and the temporal nature of the permits allows the ADEQ to review the agency's decision from time to time and

determine if there is a problem. Therefore, the current system for protecting water is effective. It is working to protect drinking water in other areas of the state, and there is no reason to assume it would not continue to work in the Lake Maumelle watershed.

**Response 23:** ADEQ acknowledges the comment. The Department administers the NPDES permit program throughout the state of Arkansas. The Department issues NPDES permits in a manner that protects the quality of the state's water resources.

These determinations are made on a case by case basis after careful consideration of all the potential water quality effects and based upon all the facts and scientific data available. The Department acknowledges that prohibiting all discharges of wastewater in the Lake Maumelle Basin will maintain water quality and reduce treatment costs.

However, the Department remains neutral on this proposed rule change.

**Comment 24:** We maintain that the ratepayers of Central Arkansas Water should bear some of the burden to ensure the high quality of water they desire. We know that surface discharge systems effluents can be addressed through treatment prior to distribution to homes and still be within acceptable levels as designated by the Arkansas Department of Health and Arkansas Department of Environmental Quality. Ratepayers would be asked to pay higher monthly water bills if additional treatment were required, but instead we offer they could be asked to pay a minimal surcharge on their monthly water bill to ensure the water quality of Lake Maumelle. These funds could be restricted to ensure they are used solely for the purpose intended.

**Response 24:** ADEQ acknowledges the comment.

**Comment 25:** The Quorum Court of Perry County passed Resolution 2006-5 to state that the Quorum Court opposes any effort by CAW to seek to obtain the property of Perry

County landholders or to attempt to gain restrictions on the use of land in Perry County.

The Quorum Court believes that CAW's current proposed regulatory change is undue and is therefore an unnecessary intrusion upon the rights of Perry County property owners.

**Response 25:** ADEQ acknowledges the comment. ADEQ respects the rights of individual property owners. The determination of any violation of those rights is made on a case-by-case basis following the precedents of state and federal constitutional law.

**Comment 26:** The proposed change is unnecessary, especially as it relates to Perry County. At the public hearing in Perryville, the CAW representative admitted that the residents and businesses in Perry County are not currently discharging wastewater in a way that would be affected by this change. The CAW representative even admitted that CAW is not aware of any future plans in Perry County that would be affected by this change. To impose this vaguely worded regulatory restriction on Perry County is overreaching by CAW and it should be rejected.

**Response 26:** ADEQ acknowledges the comment. Please see Response 25 above.

**Comment 27:** CAW is proposing to control the use of property in Perry County while at the same time motorboats are permitted on Lake Maumelle and the City of Little Rock is allowed to release its treated sewage into the Arkansas River.

**Response 27:** ADEQ acknowledges the comment.

**Comment 28:** If this regulatory burden is placed on the property owners of Perry County that the property values may be reduced. For instance, the wording of the regulatory change is so vague that it may harm the mineral rights of our property owners, including natural gas exploration or development.

**Response 28:** ADEQ acknowledges the comment. Please see Response 25 above.

**Comment 29:** It is very important that is be noted in the record that not all property owners in Perry County received notice of this proposed change and the public hearing that was held in Perryville. This fact alone is enough for the Quorum Court to object strongly to this proposed regulatory change.

**Response 29:** ADEQ acknowledges the comment. Ark. Code Ann. §8-4-202(d)(1)(D) provides that a proposed regulation “shall be published at least twice in newspapers having a general statewide circulation and in the appropriate industry, trade, or professional publications the commission may select.” The notice regarding this rulemaking was published in the Arkansas Democrat-Gazette on April 3-4, 2008. In addition, Michael O’Malley, Administrative Hearing Officer for the Arkansas Pollution Control and Ecology Commission, sent a letter to the County Judge in each of Pulaski, Perry, and Saline Counties asking for comments regarding the proposed rule change. Martin Maner, on behalf of Central Arkansas Water, sent a letter to property owners within the watershed informing them of the proposed regulation and the means of making comments on the proposal. ADEQ believes that the Commission and Central Arkansas Water went well beyond the legal requirements necessary to provide notice to all property owners.

**Comment 30:** The overwhelming need in central Arkansas area is a change in behavior by landowners, ratepayers and industry. It is everyone’s responsibility and as such looking at this issue inclusively will have much greater impact for future generations. This could be achieved in a variety of ways, such as:

- Voluntary land acquisitions in the Lake Maumelle Basin as property becomes available, with priority given to those lands adjacent to streams, tributaries, etc.

- Eminent domain should only be used in specific cases where landowners are documented, by the appropriate agency having jurisdiction, as negatively impacting the watershed, have been notified, given time to correct deficiencies and make no viable effort to address the situation.
- Cost share to landowners to implement best management practices throughout the watershed.
- Best management practices are identified by the Arkansas Natural Resources Commission and/or the Natural Resources Conservation Service and working through the conservation districts could assist landowners in the implementation.
- Cost share to homeowners to replace and/or repair defective septic systems.  
Some of the homeowners in this area may not be able to address septic system failures due to lack of resources and will require assistance.
- If cost share is accepted, then landowners would voluntarily agree to forego surface discharge systems on their land, utilizing other means for disposal of wastewater, if necessary.
- Education and outreach throughout the central Arkansas area, as everyone needs to be educated on these issues regardless of where they live, remembering that someone lives downstream of them.

**Response 30:** ADEQ acknowledges the comment. ADEQ supports the inclusion of all stakeholders in protecting water quality in the Lake Maumelle watershed; however, as these suggestions do not specifically address the proposed rulemaking, ADEQ will not address each item in this response.

**Comment 31:** The existing plan has not allowed sewage to be dumped into the lake and I can see no reason to change that. Do you want your water supply polluted? The dumping is not allowed now, so this will not be an imposition on anyone. No has to stop dumping because no one has been allowed to start.

**Response 31:** ADEQ acknowledges the comment.

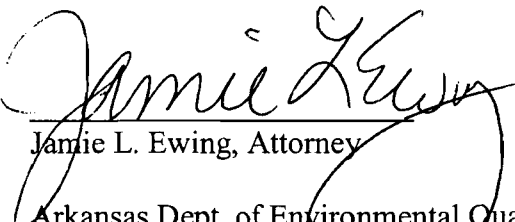
**Comment 32:** Several commenters submitted general comments in opposition to development and building in the Lake Maumelle watershed.

**Response 32:** ADEQ acknowledges the comment. The subject of the proposed rulemaking is surface discharge of wastewater into the Lake Maumelle Watershed. Development and building regulations are not under the jurisdiction of the Arkansas Pollution Control and Ecology Commission.

**Comment 33:** Several commenters submitted general comments of support for preventing the discharge of wastewater into the Lake Maumelle watershed.

**Response 33:** ADEQ acknowledges the comment.

Submitted by:

  
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