



April 20, 2010

The Honorable Michael O'Malley
Administrative Hearing Officer
Arkansas Pollution Control and Ecology Commission
Little Rock, AR 72201

RE: Regulation No. 2
Regulations Establishing Water Quality Standards for Surface
Waters of the State of Arkansas

Dear Judge O'Malley:

My office has been contacted about proposed Regulation No. 2 and after doing some research I have several concerns. As you're keenly aware municipalities are dramatically impacted by any regulatory change regarding wastewater discharge given that many Arkansas cities and towns provide wastewater services to their citizens. The resulting permitting process regarding that service is, as a logical consequence, of interest to the League. Thus I'm writing in hopes that the League's membership be given an opportunity to work with ADEQ staff before the formal rule making process begins. In that regard regulation no. 2, needs further and more careful study at the staff level before proceeding any further with formal rule making. By doing so, I believe ADEQ staff will better understand the fiscal and service issues facing local wastewater facilities and thus be able to craft far more accurate standards, if in fact new standards are necessary at all.

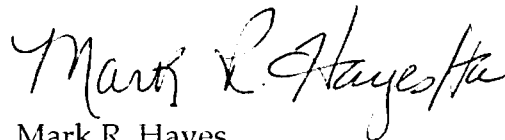
In its current form, the proposal creates a great many uncertainties regarding discharge standards and permitting for cities and towns whereas the current regulations are clearly understood by everyone involved and have worked exceptionally well. For many years municipalities in the seven ecoregions have had the benefit of well researched, consistent science and meaningful permitting regulations that ensures the discharge of clean water in the Natural State. Our environment is better because of those standards. Further, cities and towns have regularly worked with ADEQ under a set of guidelines that are clearly written and easily identified. The proposed removal of the mixing zone for pH and fisheries use as the basis of protection from the regulations presents a level of uncertainty in the permitting process that should be of concern to ALL those involved and begs further study at the staff level.

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Finally, it appears that no fiscal impact statement has been done regarding the proposal and its effect on cities and towns. I believe such a study is required by Arkansas law and ADEQ regulation and thus request that same be done before the rule making process begins. See ACA 19-1-302 and ADEQ Reg. 8.812 and Appendix A. Regardless of what the law may say about such a study it is critical at this time to consider the impact of any regulatory change on the financial bottom line of municipal government. The budgets of cities and towns in Arkansas are not immune from the economy of the state or the nation. To the contrary, municipal budgets have suffered significantly over the past several years and, as things currently stand, cannot withstand any unfunded mandate. Thus I respectfully request that such a study be done to ensure that the citizens of Arkansas's municipalities continue to get all the services that they rely on including but not limited to police and fire protection, passable roads, safe parks, potable water and of course environmentally friendly waste water systems.

I'm sorry that I'm not able to attend the committee meeting on the 23d but would request that this letter be attached as part of the record and made available to all members. As always, I stand ready to assist in any way I can as does the League.

Sincerely,

A handwritten signature in black ink that reads "Mark R. Hayes". The signature is written in a cursive, flowing style.

Mark R. Hayes
General Counsel

MRH/jta

Cc: Randy Young, Executive Director, ANRC
Teresa Marks, Director, ADEQ