

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 2, REGULATION ESTABLISHING) DOCKET NO. 10-____-R
WATER QUALITY STANDARDS FOR SURFACE)
WATERS OF THE STATE OF ARKANSAS)

FIRST AMENDED PETITION TO INITIATE RULEMAKING
TO AMEND REGULATION NO. 2

The Arkansas Department of Environmental Quality (hereinafter “ADEQ” or “the Department”), for its Petition to Initiate Rulemaking to Amend Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, states:

1. Pursuant to the Federal Water Pollution Control Act (“Clean Water Act”), 33 U.S.C. §1251 *et seq.*, Arkansas has been delegated the authority to establish and administer water quality standards. The Clean Water Act requires states to review their water quality standards on a triennial basis and to amend those standards as necessary. As a result of the triennial review process, ADEQ proposes to amend portions of Regulation No. 2.

2. The following sections outline the proposed amendments to Regulation No. 2.

A) Clarification, updating, and correction of typographical errors, formatting, and text standardization throughout the document, for example:

- “mg/l,” “µg/l” and “ng/l,” have been changed to the standard abbreviations of “mg/L,” “µg/L” and “ng/L;”
- “Arkansas” has been changed to “Arkansas’s”, per the 2007 change by Arkansas General Assembly;
- Add “Clean Water” in front of “Act” for clarification of references and standardization of text; and
- Change all references to the CPP to “State of Arkansas’s Continuing Planning

- Process” for clarification.
- B) Revision of designated use term “Fisheries Use” to “Aquatic Life Use” to better reflect definition of the designated use and national trends.
 - C) Revision of term “aquatic life” to “aquatic biota,” where not referring to “Aquatic Life” as a designated use, to differentiate between the Aquatic Life designated use and the plant and animal life found in aquatic systems.
 - D) Amending definition section, Reg.2.106, to clarify and add consistency; the following definitions are added: Criterion Continuous Concentration (CCC), Criterion Maximum Concentration (CMC), Maximum Contaminant Level (MCL), and groundwater and the following definitions are deleted: primary season critical flow, and seasonal fishery.
 - E) The definition of “critical flow” has been amended to state that, for minerals criteria, the critical flow shall be calculated as “harmonic mean flow” for waterbodies impaired for minerals, Extraordinary Resource Waters and Ecologically Sensitive Waterbodies.
 - F) The definition of “harmonic mean flow” has been clarified to be, “the number of daily flow measurements divided by the sum of the reciprocals of the flows.”
 - G) Removal of unnecessary or confusing acronyms, such as “D.O.” for dissolved oxygen, “TDS” for Total Dissolved Solids, and “ELS” for Early Life Stage.
 - H) Addition, deletion, and/or revision of language in Reg.2.401, 2.404, 2.405, 2.504, 2.505, 2.510, 2.511(A), and 2.511(C) to better clarify the intent of the regulation. (Please note for the site-specific standards table in 2.511(A), the asterisks have been removed from the table. However, in the marked-up version the strikethrough function makes them appear as underlined, not stricken.)

- I) Amendment of Reg.2.304 to comport with EPA's Record of Decision disapproving the amendment to the regulation during the 2007 Record of Decision. The proposed amendment is intended to address the concerns of EPA while retaining the intent from the stakeholder meetings from the 2007 Triennial Review.
- J) Removal of the text of Appendix D, per EPA's 2007 Record of Decision, and replacement with a list of all designated Extraordinary Resource Waters (ERW), Ecologically Sensitive Waterbodies (ESW) and Natural and Scenic Waterways (NSW). Listing these designated uses in one location will be useful for both ADEQ and other agencies and persons.
- K) Revision of Reg.2.505, 2.510, and 2.512 to no longer include the phrase "shall not exceed." Based on recent litigation, EPA has stated that language such as "shall not exceed" may not be appropriate for standards, when the State's assessment methodology allows for more than one exceedance.
- L) Removal of assessment language and permitting procedures from the document – based upon recommendations by EPA, assessment language is included in the Assessment Methodology and permitting procedures are included in the State of Arkansas's Continuing Planning Process.
- M) Revision of standards for Dieldrin, Endrin, Hexachlorocyclohexane, Cadmium, Copper, Chromium (III), Nickel, Silver, Zinc, Dioxin (2,3,7,8 TCDD), Chlordane, PCBs (polychlorinated biphenyls), alpha Hexachlorocyclohexane, and Toxaphene based upon the recommendation of EPA to adopt revised national criteria.
- N) Remove the term "ambient" from Reg.2.503 because this wording limits the data that can be used to assess turbidity.

- O) Remove the 3rd and 4th paragraphs and table from Reg.2.509. Based on recent litigation, EPA has stated that the phosphorus effluent limitations that were approved in 2004 are not water quality based standards designed to maintain and protect designated uses and therefore are not appropriate for inclusion in the State's Water Quality Standards.
- P) Remove the phrase "more than 1/3 higher than these values for Cl and SO₄⁻ or more than 15 mg/l, whichever is greater" from Reg.2.511(B) and add the phrase "greater than those listed in the table below is...." This phrasing is more appropriate because the corresponding table already includes the 1/3 higher values.
- Q) Addition of site-specific nutrient criteria for Beaver Lake to Reg.2.509(B).
- R) Add references to Designated Use variations in Reg.2.302, 2.401, 2.501 and Appendix A.
- S) Revise the Site Specific Mineral Quality criteria tables in Reg.2.511(A) for better clarification.
- T) Revise the Site Specific Mineral Quality criteria, Reg.2.511(A) and Appendix A based upon EPA Records of Decision on Third-Party Rulemakings for Bayou Meto Water District, Lion Oil, El Dorado Chemical Company and Great Lakes Chemical Company.
- U) Revise Appendix A headings to "Designated Use Variations Supported by UAA" and "Specific Standards Variations Supported by UAA" for each ecoregion to clarify the difference between designated use variations and specific standard variations supported by UAAs.
- V) Revise the ERW, ESW, and NSW text in Appendix A to more accurately reflect the designations on the associated plates.
- W) Update plates in Appendix A based upon the availability of better mapping software and data.

X) Revise the scientific names in Appendix C, per Common and Scientific Names of Fishes from the United States, Canada and Mexico. American Fisheries Society (6th Edition, 2004).

3. Jamie Ewing and Steve Drown from ADEQ will be available to answer questions concerning this proposed rulemaking. A red-lined version of the regulation showing the proposed changes is attached as Exhibit “A” and is hereby incorporated by reference. A copy of the Legislative Questionnaire is attached as Exhibit “B”, and a copy of the Financial Impact Statement for the proposed revision is attached as Exhibit “C”, both of which are incorporated by reference. A copy of a memo explaining the exemption of this rule from the regulatory flexibility analysis pursuant to Act 143 of 2007 is attached hereto at Exhibit “D” and is hereby incorporated by reference. At the time of filing this petition, the AEDC has not responded to the submittal of this statement. Any correspondence received from the AEDC will be forward to the Commission. A copy of the Economic Impact/Environmental Benefit Analysis is attached hereto as Exhibit “E” and is hereby incorporated by reference. A proposed minute order is attached as Exhibit “F” and is hereby incorporated by reference.

WHEREFORE, ADEQ requests that the Commission initiate the rulemaking process, adopt the proposed Minute Order, and adopt the proposed amendments to Regulation No. 2.

Respectfully Submitted,

By: _____
Jamie Ewing, Attorney Specialist
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118