

EXHIBIT B

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No X

5. Is this a new rule? Yes _____ No X If yes, please provide a brief summary explaining the regulation.

Does this repeal an existing rule? Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

Is this an amendment to an existing rule? X No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up." Please see summary marked as "Attachment A."

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation.
Ark. Code Ann. §8-4-206 and 8-4-207 (authority and responsibilities as state water pollution control agency). Ark. Code Ann. §8-4-202(b) (authority of Commission to adopt water quality standards).
7. What is the purpose of this proposed rule? Why is it necessary?
As stated above, the Clean Water Act requires the State to review and update our water quality standards every three years. This proposed rule is the result of that process. The proposed changes are necessary to ensure that waters of the State are maintained and protected, in accordance with the Clean Water Act and the Arkansas Water and Air Pollution Control Act.
8. Will a public hearing be held on this proposed rule? Yes X No _____
If yes, please complete the following:

NOTE: Multiple public hearings will be held on this rule.

<u>Date/Time</u>	<u>Location</u>
<i>May 18, 2010; 6 pm</i>	<i>Jones Center, Springdale</i>
<i>May 20, 2010; 6 pm</i>	<i>Garrison Center, Henderson State University, Arkadelphia</i>
<i>May 24, 2010; 6 pm</i>	<i>Jonesboro High School Auditorium, Jonesboro</i>
<i>May 26, 2010; 2 pm</i>	<i>ADEQ Headquarters, North Little Rock</i>

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)
The period for receiving all written comments shall conclude ten (10) business days after the public hearing pursuant to Regulation No. 8.806(B). The projected date for the close of public comment period will be approximately June 10, 2010.
10. What is the proposed effective date of this proposed rule? (Must provide a date.)
Final promulgation of the rule is anticipated on September 24, 2010. The rule will become effective 10 days after filing with the Arkansas Secretary of State, the State Library and the Bureau of Legislative Research, which is anticipated to be October 11, 2010.

11. Do you expect this rule to be controversial? Yes X No _____ If yes, please explain.
The water quality standards are some of the most important environmental rules for the State and garner interest from many interested persons and organizations. ADEQ expects that industry groups may be concerned about more restrictive criteria, while environmental groups may be concerned that some standards may not be restrictive enough to protect water quality. At this time, we cannot anticipate every concern that the public may have with this rule. To that end, our public comment period will extend to a minimum of 60 days, instead of 45, and four public hearings will be held throughout the state.
12. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.
*Beaver Water District
Connie Burks, private citizen
Mary Rivera, private citizen
State of Oklahoma (Oklahoma Water Resources Board and Oklahoma Department of Environmental Quality)
State of Louisiana
U. S. Environmental Protection Agency
U.S. Fish and Wildlife Service
Arkansas Canoe Club
Ozark Society*

Summary of Proposed Rule

- 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: critical flow, primary season critical flow, and seasonal fishery.
- E) Removal of references to “Critical flows” and “Primary season critical flow” throughout the regulation. Critical flow is a component of implementing the minerals standards in National Pollution Discharge Elimination System (NPDES) permits. Based on consultation with the Environmental Protection Agency (EPA), all procedures for implementation of water quality standards are included in the CPP.
- F) Removal of unnecessary or confusing acronyms, such as “D.O.” for dissolved oxygen, “TDS” for Total Dissolved Solids, and “ELS” for Early Life Stage.
- G) Addition, deletion, and/or revision of language in Regs 2.401, 2.305, 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.
- H) 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.
- I) 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.
- J) Revision of Regs 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.
- K) 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.
- L) 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.

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- M) Remove the term “ambient” from Reg.2.503 because this wording limits the data that can be used to assess turbidity.
- N) Remove the phrase “Mercury based on bioaccumulation of residues in aquatic organisms, rather than toxicity” from the second footnote of Reg.2.508, as this is no longer applicable.
- 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, Reg 2.401, Reg 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).