



January 27, 2022

Via email: comment@adeq.state.ar.us
goffpatti@adeq.state.ar.us
moulton@adeq.state.ar.us

Arkansas Pollution Control and Ecology Commission
3800 Richards Road
North Little Rock, AR 72117

Re: Public Comment re Agenda Item VII
Docket # 20-004-R
DEQ Motion to Adopt Amendments to APCEC Rule 2

Dear Chair Roper and Members of the Arkansas Pollution Control and Ecology Commission:

Beaver Water District (BWD) is the second largest drinking water utility in Arkansas. BWD, through its customer cities, provides most of the drinking water for Northwest Arkansas. A component of BWD's source water protection program is to be actively engaged in the development of regulations and other matters that may directly or indirectly impact the water quality of Beaver Lake. This includes Arkansas Pollution Control and Ecology Commission (APCEC or the "Commission") Rule 2, the Rule Establishing Water Quality Standards for Surface Waters of the State of Arkansas.

The Arkansas Department of Energy and Environment, Division of Environmental Quality (DEQ) is required by section 303(c)(1) of the federal Clean Water Act to conduct a review and update of the State's surface water quality standards every three years (the so-called "Triennial Review"). BWD participated in DEQ's stakeholder process for the most-recent Triennial Review that began in 2019. On September 8, 2020, BWD submitted public comments, which are included in APCEC Docket #20-004-R and are incorporated by reference herein, regarding DEQ's proposed amendments to Rule 2. DEQ's January 14, 2022, amended Proposed Minute Order to adopt its proposed changes to Rule 2 currently is Item VII on the agenda for the January 28, 2022, meeting of the APCEC.

BWD has reviewed DEQ's amended Proposed Minute Order and the supporting documents in APCEC Docket # 20-004-R. BWD understands the difficulties and complexity involved in rulemaking and appreciates the effort that DEQ has put into this Triennial Review. Nonetheless, BWD believes that a number of the public comments made by BWD and others have not been adequately addressed by DEQ. DEQ's responses to the public comments are found primarily in its Responsive Summary for Motion to Adopt Amendments to Rule 2 and its Master List of Revisions and Justifications for Rule 2 for the 2020 Triennial Review (*see* APCEC Docket # 20-004-R, Exhibit B and Attachment 1-a, respectively).

In part because of the online nature of Friday's APCEC meeting, BWD will not detail in this public comment all its concerns regarding DEQ's response to the draft Rule 2 public comments and

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DEQ's proposed amendments to Rule 2. BWD's concerns, however, primarily involve the following:

- Rule 2.106 definitions of "All Flows," "Storm Flows," and "Critical Flows" and the use of these terms throughout Rule 2;
- Rule 2, Chapter 2 Antidegradation Policy and the Antidegradation Implementation Methods (AIM);
- Rule 2.302 Designated Uses;
- Rule 2.502 water quality criteria for Temperature;
- Rule 2.503 water quality criteria for Turbidity;
- Rule 2.505 water quality criteria for Dissolved Oxygen (DO);
- Rule 2.507 water quality criteria for Bacteria;
- Rule 2.508 water quality criteria for Toxic Substances;
- Rule 2.509 water quality criteria for Nutrients;
- Rule 2.511 water quality criteria for Minerals; and
- The use of permitting language throughout Rule 2.

BWD will use a less-technical example from the above list to illustrate its concerns. BWD suggested that "the AIM [Antidegradation Implementation Method] either be incorporated into Rule 2, Chapter 2 or that it be promulgated as a separate rule. Otherwise, actual implementation of the Rule 2 Antidegradation Policy will be subject to objection, manipulation, and legal challenge." (See APCEC Docket # 20-004-R, Public Comment of Beaver Water District, p. 3). DEQ's full reply in its Responsive Summary states that "[t]he Antidegradation Policy is a part of Rule 2 and is enforceable. Arkansas's antidegradation implementation methodology is a stand-alone document that works in concert with the Continuing Planning Process (CPP) and the Antidegradation Policy, Chapter 2 of Rule 2." (See APCEC Docket # 20-004-R, Exhibit B, p. 6). One problem with this response is that, to BWD's knowledge, there is no final AIM. The public comment period on the draft AIM ended October 2, 2020, and DEQ appears to have taken no further action since then. (See <https://www.adeq.state.ar.us/water/cpp/> (viewed January 27, 2022)).

Notwithstanding its concerns, BWD has decided against objecting at this time to adoption of DEQ's proposed amendments to Rule 2. BWD instead has chosen to direct its efforts toward timely improvements to Rule 2 during the next Triennial Review. DEQ states in its Supplement to Responsive Summary that stakeholder meetings "will begin in March 2022 as part of the triennial review process to be completed in 2023." (See APCEC Docket # 20-004-R, Exhibit B-1, p. 2). To that end, if the Commission is at this time inclined to approve DEQ's Motion to Adopt Amendments to Rule 2, BWD respectfully requests that the Commission adopt BWD's attached Proposed Minute Order in place of the one proffered by DEQ.

BWD's Proposed Minute Order generally retains the language in DEQ's amended Proposed Minute Order, but it adds commitments and deadlines for the next Triennial Review and amendment of Rule 2. It also includes requirements regarding APCEC Rule 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (NPDES). The Rule 6 requirements are included because DEQ stated in its Responsive Summary that "[p]roposed revisions removing permitting language, receiving water language, or discharge language from Rule 2 will not occur at

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this time. This language will remain in Rule 2 until adoption into Rule 6 has been approved by the APC&EC, Legislative Committees, and U.S. EPA. This includes Rules 2.404, 2.407, 2.408, 2.409, 2.410, 2.503, 2.505, 2.507, 2.508, 2.509, 2.510, 2.512, and Appendix A.” (See APCEC Docket # 20-004-R, Exhibit B, p. 2).

It is due to the history of Triennial Reviews in Arkansas that BWD recommends its proposed additional requirements and deadlines, or something akin, be included in any Commission order that adopts DEQ’s proposed amendments to Rule 2. The most recent Triennial Review that resulted in amendment of Rule 2 occurred during 2013 and 2014. Participants in that Triennial Review process suggested multiple revisions to Reg. 2 that DEQ deferred to the next Triennial Review. Those suggestions remain largely unaddressed by DEQ to this day. Similarly, DEQ declined to accept or address numerous suggestions raised during the 2019 and 2020 Triennial Review process. The deadlines in BWD’s Proposed Minute Order regarding the next Triennial Review are based on the dates provided in DEQ’s Supplement to Responsive Summary and the requirements are intended to facilitate action on issues that have been raised by the public, including the regulated community, for years.

Thank you for your consideration of these comments and Beaver Water District’s Proposed Minute Order.

Sincerely,



M. Lane Crider, P.E.
Chief Executive Officer

Cc via email:

Basil Hicks, DEQ Attorney (hicks@adeq.state.ar.us)
Joe Martin, DEQ Branch Manager, Water Quality Planning (joe.martin@adeq.state.ar.us)
James McCarty, BWD Manager of Environmental Quality (jmccarty@bwdh2o.org)
Colene Gaston, Counsel for BWD (colenegaston@outlook.com)