

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF AMENDMENTS TO)
REGULATION NO. 2, REGULATION ESTABLISHING)
WATER QUALITY STANDARDS FOR SURFACE) DOCKET NO. 20- ____ -R
WATERS OF THE STATE OF ARKANSAS)

PETITION TO INITIATE RULEMAKING TO AMEND REGULATION NO. 2

Comes now, the Department of Energy and Environment, Division of Environmental Quality (DEQ or “Division”), by and through the Associate Director of the Office of Water Quality, Dr. Robert Blanz, and 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. DEQ proposes the amendments listed below for portions of Regulation No.2, 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.

2. DEQ proposes amendments to incorporate statutory changes from Acts 910 and 315 of 2019 passed by the General Assembly that amend the name of DEQ and references to rules.

3. Dr. Robert Blanz and Basil V. Hicks III from DEQ will be available to answer questions concerning this proposed rulemaking. The proposed regulatory amendments are as follows:

- a. Amendments to incorporate Acts 910 and 315 of 2019 that amend the name of ADEQ and references to rules;
- b. Amendments to provide clarification to section of the regulation that were otherwise unclear and minor corrections to make the regulation more illustrative of the regulatory intent, specifically to:

- 1) Reg. 2.105: Insert “temporary” before “modification.”
- 2) Reg. 2.106 – Effluent: Insert definition of “Effluent.”
- 3) Insert “Water Quality Standards” before “Temporary Variance” in the title of Reg. 2.309.
- 4) Amend to “A water quality standards temporary variance shall be developed in accordance with and meet the requirements of 40 C.F.R. § 131.14 and must be approved by the Arkansas Pollution Control and Ecology Commission and the United States Environmental Protection Agency.”
- 5) Reg. 2.407: Strike “receiving” and insert “all.”
- 6) Reg. 2.408: Strike “Receiving” and capitalize “Waters.”
- 7) Reg. 2.410: Strike “Receiving.”
- 8) Reg. 2.502: Insert “For purposes of determining effluent limits” at the beginning of the first sentence of the paragraph after the table.
- 9) Reg. 2.502: Strike “Standards” and insert “criteria” in the second paragraph.
- 10) Reg. 2.502: Strike “Limit” and insert “criteria” in the heading of the second column of the table.
- 11) Reg. 2.503: Add a line space after “There shall be no distinctly visible increase in turbidity of receiving waters attributable to discharges or instream activities.”
- 12) Reg. 2.503: Revise “(June to October)” to “(June 1 through October 31).”
- 13) Reg. 2.504: Strike “standards” and insert “criteria” in the first sentence.
- 14) Reg. 2.504: Add “rivers” and “lakes and reservoirs” to the first sentence.

- 15) Reg. 2.505: Strike “standards” and insert “criteria” in multiple places within this regulation.
- 16) Reg. 2.507: Insert “Secondary contact use is assumed in all watersheds” in first paragraph.
- 17) Replace “values” with “criteria in the second paragraph.
- 18) Reg. 2.507: Insert “or fecal coliform” after “*E. coli*” in second paragraph.
- 19) Reg. 2.507: Insert “individual” in the second paragraph before “samples.”
- 20) Reg. 2.507: Strike “standards” and insert with “criteria” in the third paragraph.
- 21) Reg. 2.507: Strike “limit” and replace with “criteria” in table.
- 22) Reg. 2.507: Footnote 5 – Strike “October 1 to April 30” and replace with “Year-round.”
- 23) Reg. 2.509(A) and (B): Strike “standards” and insert “criteria” in three (3) locations.
- 24) Reg. 2.511(A): Insert “White River headwaters to Noland WWTP 20 20 160” into table.
- 25) Reg. 2.511(A): Insert “from Oklahoma State line to Millwood Lake” after “Little River” in the table.
- 26) Reg. 2.511(A): Strike “limits” and insert “criteria” within the “**” footnote.
- 27) Appendix A-OM and A-GC: Strike the footnote “† Not applicable for clean water act purposes until approved by EPA.”
- 28) Appendix A-OH: Strike “standards” and insert “criteria” in five (5) locations within this section.

- 29) Appendix A-BM: Strike “standards” and insert “criteria” in five (5) locations within this section.
- 30) Appendix A-ARV: Strike “standards” and insert “criteria” in five (5) locations within this section.
- 31) Appendix A-OM: Strike “standards” and insert “criteria” in five (5) locations within this section.
- 32) Appendix A-OM: Insert “Temporary” in front of “Variations” in the title of the list of “Variations Supported by Environmental Improvement Project.”
- 33) Appendix A-OM: Insert “*” footnote marker for Chamberlain Creek, Cove Creek, Lucinda Creek, and Rusher Creek entries in the Temporary Variations Supported by EIP table.
- 34) Appendix A-OM: Strike the “†” footnote indicator from the Chamberlain Cree, Cove Creek, Lucinda Creek, and Rusher Creek entries under the Temporary Variations Supported by Environmental Improvement Project heading.
- 35) Appendix A-OM: Insert “*These temporary standards variations are effective for 160 months from EPA’s approval of the EIP on January 7, 2020.” as a footnote below the Temporary Variations Supported by EIP table.
- 36) Appendix A-GC: Strike “standards” and insert “criteria” in ten (10) locations within this section.
- 37) Appendix A-GC: Insert “Temporary” in front of “Variations” in the title of the list of “Variations Supported by Environmental Improvement Project.”

- 38) Appendix A-GC: Insert “*” footnote marker for Reyburn Creek and Scull Creek entries in the Temporary Variations Supported by EIP table.
 - 39) Appendix A-GC: Strike the “†” footnote indicator from the Reyburn Creek and Scull Creek entries under the Temporary Variations Supported by Environmental Improvement Project heading.
 - 40) Appendix A-GC: Insert “*These temporary standards variations are effective for 160 months from EPA’s approval of the EIP on January 7, 2020.” as a footnote below the Temporary Variations Supported by EIP table.
 - 41) Appendix A-D: Strike “standards” and insert “criteria” in six (6) locations within this section.
 - 42) Appendix D: Strike “Red” from the “Little Red River” entry of the ESW Waterbody list.
- c. Amendments to incorporate EPA decisions on previous versions of Rule:
- 1) Reg. 2.104: Strike “but not to exceed three years from effective date of permit” and add “in accordance with the 40 C.F.R. §122.47.”
 - 2) Reg. 2.104: Strike “, unless the permittee is completing site specific criteria development or is under a plan approved by the Department, in accordance with Regs. 2.306, 2.308, and the State of Arkansas Continuing Planning Process.”
 - 3) Reg. 2.106 – All Flows: Strike “All Flows - Takes into account all flows and data collected throughout the year, including elevated flows due to rainfall events.”
 - 4) Reg. 2.106 – Storm Flows: Insert “Storm flows: Takes into account all flows and data collected throughout the year, including elevated flows due to rainfall events.”

- 5) Regs. 2.502, 2.503, 2.504, 2.505, 2.511(C): Strike “(applicable at 1.0 meter depth).”
- 6) Reg. 2.503: Strike “all” and replace with “storm” in the last sentence of the first paragraph and in the table.
- 7) Reg. 2.507: Strike “2” as a footnote marker under the “Primary Contact” and “Secondary Contact” headings of the table for ERW, ESW, NSW, Reservoirs, Lakes.
- 8) Reg. 2.507: Strike the footnote “Applicable at 1.0 meter depth in Reservoirs and Lakes.” Insert “(RESERVED).”
- 9) Reg. 2.511(A): Bayou Meto: Revise as follows to “Bayou Meto (Rocky Branch to Pulaski/Lonoke county line Bayou Two Prairie)” and “Bayou Meto (mouth to Bayou Two Prairie) (Pulaski/Lonoke county line to mouth)”
- 10) Reg. 2.511(A): Strike “†” on all values for the entry “Crooked Creek (Harrison WWTP outfall to ...” and for the TDS values for entry “Crooked Creek (Monitoring Station WHI0193 to...”
- 11) Reg. 2.511(A): Strike “†” footnote indicator in table for entry “White River from WR-02 to WHI0052.”
- 12) Reg. 2.511(A): Strike “†” footnote indicator in table for entry “White River from Noland WWTP to 0.4 miles downstream.”
- 13) Reg. 2.511(A): Strike “Unnamed trib A to Flat Creek from mouth of EDCC 001 ditch to confluence with Flat Creek 16*† 80*† 315*†” and “Confluence with unnamed trib A to Flat Creek 23*† 125*† 475*†”

- 14) Reg. 2.511(A): Strike “250†” and “940†” and replace with “200” and “850,” respectively, for entry “Red River from Arkansas/Oklahoma state line to mouth of the Little River.”
- 15) Reg. 2.511(A): Strike “225†” and insert “200,” for entry “Red River from mouth of the Little River to the Arkansas/Louisiana State line.”
- 16) Reg. 2.511(A): Strike the “†” after “780” in the TDS column for entry “Red River from mouth of the Little River to the Arkansas/Louisiana State line.”
- 17) Reg. 2.511(A): Strike “†” footnote indicator in table for TDS entry “Little River from Millwood Lake to the Red River.”
- 18) Reg. 2.511(B): Strike “The values listed in the table below are not intended nor will these values be used by the Department to evaluate attainment of the water quality standards.”
- 19) Appendix A-OH, A-BM, A-ARV, A-OM, A-GC, A-D: Strike “all” and insert “storm” under the turbidity heading within the table.
- 20) Appendix A-OH: Strike the “†” footnote indicator from the Crooked Creek and White River entries under the Site Specific Criteria Variations Supported by Use Attainability Analysis heading.
- 21) Appendix A-GC: Beneath the “Site Specific Designated Use Variations...” heading, strike “†” after the last entry “Red River from the mouth of the Little River to the Arkansas/Louisiana state line – no domestic water supply use (GC-1, #55).”
- 22) Appendix A-GC: Strike “†” after the “(from Millwood Lake to the Red River)” temperature entry within the table.
- 23) Appendix A-GC: Strike “Unnamed tributary to Flat Creek from EDCC Outfall 001 d/s to confluence with unnamed tributary A to Flat Creek

Chloride 23 mg/L, Sulfate 125 mg/L, TDS 475 mg/L, (GC-2, #37) †”
and “Unnamed tributary A to Flat Creek from mouth of EDCC 001 ditch
to confluence with Flat Creek, Chloride 16 mg/L, Sulfate 80 mg/L, TDS
315 mg/L, (GC-2, #38) †”

24) Appendix A-GC: Strike the “†” after the entry “Red River from mouth of
the Little River to the Arkansas/Louisiana state line, TDS 780 mg/L
(GC-1, #55, 58)†”

25) Appendix A-GC: Strike “†” footnote indicator at the end of the “Little
River from Millwood Lake to the Red River...” entry.

26) Appendix A-GC: Strike “Variations Supported by Technical Adjustment
Red River from the Arkansas/Oklahoma state line to the mouth of the
Little River, sulfate 250 mg/L, TDS 940 mg/L (GC-1, #57)† Red River
from mouth of the Little River to the Arkansas/Louisiana state line,
sulfate 225 mg/L (GC-1, #58)†”

27) Appendix A-GC: Revise Plate GC-1 to remove #57 and #58

28) Appendix A-GC: Revise Plate GC-2 to remove duplicate #40 and add
#41

29) Appendix A-D: Insert “(Rocky Branch to Pulaski/Lonoke county line)”
and strike “from Rocky Branch Creek to Bayou Two Prairie” in the first
Bayou Meto entry under “Site Specific Criteria Variations Supported by
Use Attainability Analysis” heading;

d. Amend Chapter 4, Chapter 5, and Appendix A to remove permitting
language from Reg. 2 (Rule 2) that is being adopted into Rule 6 –

Regulations For State Administration Of The National Pollutant Discharge Elimination System (NPDES), Rule 6.404¹;

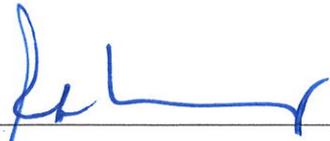
- 1) Reg. 2.404: Remove mixing zone language and Reserve Section 2.404
 - 2) Reg. 2.409: Remove effluent discharge specific language
 - 3) Reg. 2.502: Remove effluent limit language
 - 4) Reg. 2.503: Remove effluent discharge specific language
 - 5) Reg. 2.504: Remove effluent discharge specific language
 - 6) Reg. 2.505: Remove effluent discharge specific language
 - 7) Reg. 2.507: Remove effluent discharge specific language
 - 8) Reg. 2.508: Remove zone of initial dilution and mixing zone language
 - 9) Reg. 2.509: Remove effluent discharge specific language
 - 10) Reg. 2.510: Remove effluent discharge specific language
 - 11) Reg. 2.512(D): Remove effluent discharge specific language
 - 12) Appendix A, throughout: remove * after “Temperature °C (°F)” and associated footnote
 - 13) Appendix A, throughout: remove ** after “Dissolved Oxygen” and associated footnote
- e. Minor, non-substantive stylistic and formatting correcting throughout the Regulation.
5. The following exhibits to this petition are hereby incorporated by reference:
- a. Exhibit A: Mark-up version of the regulation showing the proposed changes
 - b. Exhibit B: Governor Approval
 - c. Exhibit C: Legislative Questionnaire
 - d. Exhibit D: Financial Impact Statement and Impacts to Small Business

¹ If Rule 6 revisions are not adopted by APC&EC and not approved by EPA, then this language will remain in Rule 2.

- e. Exhibit E: Economic Impact/Environmental Benefit Analysis
- f. Proposed Minute Order

WHEREFORE, DEQ 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:  _____

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