



Arkansas Environmental Federation
Water Committee
Comments on Draft Regulation #6 Petition for Rule Making
ADPCE
October 7, 2013

Reg 6.103 and the definition of "Average Flow": "Average Flow" means an average flow value that represents both the high and the low streamflow oscillations and is established by no less than twenty (20) consecutive years of daily streamflow data (7300 data points) from a gaging station must be used to calculate the average flow.

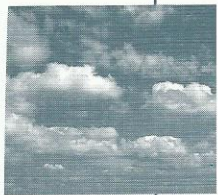
In a telephone interview with Mr. Jason Funkhouser with the US Geological Survey on September 13, 2013 he indicated that approximately 80 of the 140 gauging stations in Arkansas have 20 consecutive years of daily stream flow data. We know that there are current and potential gaps in the data caused by flooding, vandalism, and gauge malfunctions. Therefore the proposed definition presents a standard that cannot be met in many circumstances.

Moreover, this proposed definition in Regulation No. 6 conflicts with the definition of Long Term Average Flow in Regulation No. 2, which is defined as: An average annual stream flow based on a period of record which reflects the typical annual variability. This definition, which is approved by EPA, was relied upon in the drafting of Act 954. Conflicting definitions insert additional ambiguity into the permitting process.

So what is the result of using the proposed definition of Average Flow in Regulation No. 6 ? Since many of the gauges do not have 20 years of consecutive data, under ACT 954 of 2013, the default flow is 4 cfs, which essentially puts the methodology back where we started on many stream segments when it comes to the assessment of mineral quality.

Additionally, the proposed Section 6.403 concerning the development and implementation of Water Quality Standards is inappropriate in Regulation No. 6. As we all know, Water Quality Standards are promulgated in Regulation No. 2. Regulation No. 6 deals with the implementation of the NPDES program, not Water Quality Standards. The Department's stated goal of having Reg 2 and Reg 6 to proceed together ignores the conflicts and shuns the prospect of an overall, coordinated approach to the mineral standards conundrum.

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This proposed regulation does nothing to comply with the intent of the Act 954, in fact it flies in the face of the intent and purpose. Is it the Commission's intent to flaunt the intent of the legislature and continue to require our cities and industries to spend hundreds of thousands of dollars to demonstrate time and time again that minerals standards below the EPA secondary drinking water criteria do not pose a threat to human health and the environment?

Therefore, the AEF requests that the Commission remand this petition back to ADEQ to develop a framework for addressing mineral standards in a coordinated manner. Once the framework is established, Regulation # 2, Regulation No. 6, the CPP, the Water Quality Management Plan, and NPDES permits can be addressed in a planned, consistent manner.