

October 7, 2013

Mr. Doug Szenher  
POA Division  
Arkansas Department of Environmental Quality  
4301 Northshore Drive  
North Little Rock, AR 72118

Via electronic delivery [reg-comment@adeq.state.ar.us](mailto:reg-comment@adeq.state.ar.us)

RE: Proposed Revisions to APC&EC Regulation No. 6  
Docket No. 13-007-R

Dear Mr. Szenher,

The Energy and Environmental Alliance of Arkansas (“EEAA”), on behalf of itself and its members, offers the following comments on the proposed revisions to Arkansas Pollution Control and Ecology Commission (“APC&EC”) Regulation No. 6, Regulations for State Administration of the National Pollutant Discharge Elimination System (“NPDES”). EEAA’s members are investor-owned, co-operative, municipal, and independent electric utilities and other energy companies which own or operate facilities whose operations are affected by Regulation 6, and therefore have an ongoing interest in the administration of Arkansas’ NPDES program by the Arkansas Department of Environmental Quality (“ADEQ”). EEAA appreciates the consideration of these comments.

1. ADEQ proposes to amend Reg. 6.102 to add a definition for the term “average flow” which requires that “no less than twenty (20) consecutive years of daily streamflow data (7300 data points) from a [gauging] station must be used to calculate the average flow.” The *Petition to Initiate Rulemaking* and *Executive Summary of Proposed Changes* state that the proposed revisions to Regulation 6 are necessary “to incorporate and fully implement the provisions of Act 954.” However, Act 954 does not mandate a definition of “average flow,” and particularly none that requires average flow to be based on 20 years of consecutive daily streamflow data. There may be instances where select daily streamflow data is not available for a stream or stream segment due to historical flooding, vandalism or gauge malfunction. Under the proposed revisions to Regulation 6.403, in those instances where a full 20 years of daily streamflow data is unavailable, average flow for the stream or stream segment will default to 4 cubic feet per second for the purpose of determining standards and criteria for minerals, which could be potentially unrepresentative of actual stream flows and have unintended consequences for permittees and Arkansas’ water quality. Additionally, the proposed definition of “average flow” in Reg. 6.102 conflicts with the EPA-approved definition of “Long Term Average Flow” in Regulation No. 2, which is defined as: “[a]n average annual stream flow based on a period of record which reflects the typical annual variability.” If adopted, this inconsistency will cause

confusion and uncertainty among the regulated community, and could have unintended consequences for administration of the Arkansas' NPDES program.

2. ADEQ proposes to amend Regulation 6, Chapter 4, by adding section 6.403 concerning "Development and Implementation of Water Quality Standards and Criteria for Minerals." This proposed revision to Regulation 6 appears unnecessary because an existing regulation, APC&EC Regulation 2, contains the regulations establishing water quality standards for surface waters of the State of Arkansas. The existing EPA-approved version of Regulation 6 does not include a section concerning water quality standards for minerals, and no such addition to the regulations for administration of the NPDES program is required by Act 954. If proposed Regulation 6.403 is not adopted, then the addition of the defined term discussed in Comment 1 is further unnecessary because proposed Regulation 6.403 contains the only reference to "average flow" within Regulation 6.

For the reasons set forth above, the proposed revisions to Regulation 6 appear unnecessary, may have unintended negative consequences for the regulated community, and should not be adopted. If the proposed revisions to Regulation 6 are retained, EEAA respectfully requests that ADEQ provide a complete written explanation of the necessity of the proposed revisions and a demonstration that any technical regulation or standard is based on generally accepted knowledge and engineering practices, in accordance with *Ark. Code Ann. § 8-4-202*.

Respectfully Submitted,

Energy and Environmental Alliance of Arkansas

Little Rock, Arkansas



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Chad L. Wood  
Gill Ragon Owen, P.A.  
425 West Capitol Ave., Suite 3801  
Little Rock, Arkansas 72201

*Counsel for Energy and Environmental Alliance of  
Arkansas*