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Mountain Home, Arkansas 72654



October 3, 2013

**Mr. Doug Szenher
Public Outreach and Assistance Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118**

Re: Proposed Changes to APCEP Regulation No. 6

Dear Mr. Szenher:

Friends of the White and North Fork Rivers (*Friends*) recognizes ADEQ's responsibility and requirement to modify Regulation 6 to accommodate and eliminate conflict between the existing regulations and ACT 954 passed by the Arkansas Legislature this past Spring. *Friends* also believe that it is premature at this time to propose amendments to Regulation 6 because a comprehensive review of this new law by the EPA has not occurred and the EPA has already indicated this new law possibly violates the Federal Clean Water Act (CWA). We also acknowledge that ADEQ has admitted that ACT 954 contains provisions which, if implemented, are in violation of the CWA and could result in the EPA revoking Arkansas' authority to oversee the CWA regulations and NPDES permitting.

Therefore, Friends wishes to comment on the proposed changes to Regulation 6 in conjunction with ACT 954. The following paragraphs address both the proposed Regulation changes and the ACT 954 law that required ADEQ to address existing Regulation 6 regulations.

(Proposed Reg. 6.103, Definition of Average Flow)

- ACT 954, Section 1 (5) states: “There is a rational basis found in sound scientific and statistical principles for using long-term averages in assessing mineral concentrations in a stream;”

Friends does not believe it appropriate to use long-term average flows for assessing mineral concentrations in streams nor do we believe this is a rational basis to use in this situation. The use of a average flow which includes high flow events for mineral assessment with respect to water quality will result in allowable mineral content during normal or low flow periods that would jeopardize the actual water quality during most of the year by allowing a higher than safe mineral content. Use of this “long term average flow” methodology has the effect of diluting the actual mineral content of the stream during normal and especially low flow periods.

Therefore, *Friends* believes proposed Reg. 6.103, Definition of Average Flow should be withdrawn. The use of average flow put forth in ACT 954 and now Reg. 6.103 of should be referred to the EPA for consideration with respect to the CWA. Only after an EPA ruling should this even be considered as part of Regulation 6.

Proposed Reg. 6.403 A & B Development and Implementation of Water Quality Standards and Criteria for Minerals

Act 954 suggests that mineral concentrations and other pollutant measurements in individual streams be used to establish averages over the last 20 years. The reality is that very little data on individual streams exists for the last 20 years and the data on most streams is non-existent. The application of the sparse data that exists to all of the streams in an eco-region or the use of a median flow is anti-scientific and completely irresponsible, and it is certain that the legislature was either unaware of or simply ignored these facts.

Section 1(6) of Act 954 indicates that ADEQ ‘s “analysis of data from Arkansas streams demonstrates that four cubic feet per second (4 ft³/sec) is the median flow for small streams which makes this measure an appropriate indicator for stream flow when long-term flow

data is not available, thereby avoiding unnecessary regulation and the inefficient use of state resources.”

Friends position is that using a median flow value of 4 ft³/sec for all streams for which long-term flow data is unavailable is inappropriate. We believe that each stream must be evaluated separately since small stream variability can be huge and the water quality can be greatly compromised by using a flow on streams where the flow is often less than 4 ft³/sec during the summer months.

Section 1(7) of ACT 954 states “It is appropriate and consistent with sound scientific and statistical principles to use the greater of long-term average flows or four cubic feet per second (4 ft³/s) for assessing mineral concentrations in streams, and

As discussed above, *Friends* believes the use of long term average flow is NOT appropriate and the median flow of 4 ft³/sec for small streams may still be inappropriate to use for establishing permitting discharge limits, dependent on the low stream flow conditions during summer or drought periods. The preservation of water quality during low flow periods is essential: for use as a drinking water source, for the preservation of aquatic life and, in general, for the overall health of streams.

Friends believes the use of the median flow value of 4 ft³/sec as a basis for flow in assessing mineral content and water quality should be referred to the EPA for consideration and Regulation 6 changes should be put on hold until the EPA has ruled.

Also, over the last 20 or more years, farms, the timber industry, and animal ranches have been excluded from government oversight of waste discharge regulations (non-point source pollution). Instead, these industries have been allowed to self regulate, resulting in little control of minerals, phosphates, sulfates, and nitrates entering many of the streams. And, with population growth in Northern Arkansas, individuals without access to municipal waste treatment systems have installed septic systems. We doubt if many of these unregulated discharge systems that exist for properties along waterways are maintained to assure that discharges meet NPDES discharge standards. This is especially the case for older systems.

Therefore, *Friends* believe current water quality in many of our streams is likely already compromised from what they were when ADEQ first determined the original basis for north Arkansas streams under the CWA. So, the assumption that ADEQ can ascertain the baseline water quality for the huge number of Arkansas' individual streams is unproven and, therefore, Arkansas gathered data from a relatively small number of streams and applied this data to all streams in the same eco-region.

- “Proposed Reg. 6.207(A), regarding Domestic Water Supplies.”
- Section 1(8), states “...it is an inefficient use of scarce resources to apply domestic water supply uses and criteria to streams, stream segments, or other bodies of water that do not have an existing domestic water supply use or that do not have a demonstrated and reasonable potential to be used as a domestic water supply source.”

Friends asks if ADEQ knows or has records of how many private individuals rely upon streams for their domestic water supply. We suspect that there are hundreds if not thousands whose water supply is affected by the quality of a small stream. Therefore, until a comprehensive study is undertaken to discover which streams are currently being used for domestic water supplies, it would be irresponsible to automatically remove streams as domestic water supply sources from the overall list of streams. *Friends* agree that any waterways or waters which are inappropriate to use as domestic water sources could be removed from the list. However, a comprehensive study to ascertain which streams are being used as domestic water sources should be conducted before any stream is removed from this list. This study would be beyond the resources of ADEQ and take an inordinate amount of time. Unless such a study is performed, the only reasonable thing to do is what was originally done, and that is to keep the designation of all Arkansas waters as potential domestic water supply resources.

Because of the above described issues *Friends* has with Act 954, and because in our opinion various provisions of this new law will place Arkansas in violation of the Federal CWA, *Friends* believe changes to Regulation 6 should be put on hold until the EPA has reviewed the

legality of Act 954 with respect to the CWA and has ruled on this issue.

Postscript:

Friends believes ACT 954 was enacted in response to the problem of municipal sewage treatment plants having difficulty in meeting the existing Regulation 6 requirements for mineral and other pollutant discharge. And, we recognize how expensive it would be for municipalities to upgrade their treatment systems so that they can meet the existing standards. However, in our opinion, changing the standards as directed by ACT 954 and ignoring the long term effects of population growth and its effect on the waste treatment discharge pollutant content will only delay the expense of the ultimate requirement to upgrade these municipal waste treatment systems. Or, it will only be a matter of time when attempts to use the legislative process in the future to modify the regulations to avoid the expensive upgrades will occur again.

One of the biggest problems-these municipal systems face is that in many cases the treatment plants are downstream of other pollution sources and are expected to meet discharge criteria pertaining to water quality even when the upstream dischargers have already degraded water quality. Since the mineral, phosphate, sulfate and other contaminants are already in the water prior to their discharge point, their discharges are additive, imposing an undue hardship for these municipal systems to meet the existing Regulation 6 criteria. The solution is not to change the existing criteria which were based on sound judgment under the initial study required by the CWA, but to require the non-point source polluters and those private individuals with septic systems along our waterways to adhere to a stringent set of criteria for their discharges. This would require that the exclusion of timber, agricultural and animal ranches from ADEQ regulations/oversight be reversed and that these industries are regulated by ADEQ. It also would require mandatory regular inspection of individual septic systems, at least those on properties adjacent to waterways, to assure they are in proper working condition and properly maintained. Of course it would be wise for municipalities who know their population is going to grow to begin planning for the upgrades to their existing systems now.

Thank you for considering our comments. Again, *Friends* appreciates the opportunity to comment on the proposed changes to Reg. 6 dictated by Act 954. We respectfully reiterate our suggestion that the Arkansas Department of Environmental Quality (ADEQ) postpone all Regulation 6 changes until such time as the EPA has had time to review ACT 954 with respect to violations of the CWA.

Sincerely,

Gerald Weber, VP for:
Jane E. Darr
President
Friends of the North Fork and White Rivers

Cc: Jerry Weber, Vice President
Friends Board

Friends of the North Fork and White Rivers is an Arkansas 501(c)(3) non-profit organization devoted to creating an ongoing dialogue where individuals, groups, and government agencies can work together to conserve, restore and enhance these beautiful rivers.