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Mr. Caleb Osbourne, Associate Director, Office of Water Quality
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118

Dear Mr. Osborne,

May I first make some general comments on Regulation 6? It is not clear to me what latitude ADEQ has in making regulations, which are based on legislation, but the following issues seem important.

1. The legislation that repealed the former financial assurances for non-municipal domestic sewage treatment works, and replaced them with a much less financially significant requirements, is irresponsible and hopefully ADEQ will be involved in the creation of new legislation to deal with this and other ever increasing problems associated with such private plants.
2. Sewer Improvement Districts are exempt from any financial assurances and should not be. Also these districts are excluded from the definition of "Non-municipal domestic sewage treatment works" which limits ADEQ with a large portion of these units. Evidence is clear that they are not as well financed and managed as those operated by a city, town, county, etc.
3. From a practical point of view, it is impossible to close a plant serving residential area, therefore some other method of dealing with failing plants such as these.
4. It appears the ability to levy fines already exists, but this too seems impractical since most of the failing plants are probably rooted in financial inadequacy.
5. It is not clear to me what the impact of a stream going dry part of the year has on the permitting of discharge into that stream.
6. It is also not clear if the cumulative effect of multiple plants has any impact on the permitting of each individual plant.

Following are specific comments on language in the regulation.

The regulation should be expanded to cover the specific language of the new legislative requirement for financial assurance? The proposed regulation shows the deletion of the repealed portion of the legislation, but makes no attempt to codify any of the new legislation into this regulation. There are likely to be many specific questions about the detailed implementation of this law which should be answered in this regulation. A few examples follow.

What latitude does ADEQ have for alternative methods of financial assurance? The bottom of page 1 and the top of page 2 of the HB 1314 states, ".....the need for financial assurance for non-municipal domestic sewage treatment facilities **may** be met through the creation of a trust fund" Does that imply other alternatives may be considered by ADEQ? If so what are they?

The language in section 4 (B) i (Page 8) reads, "The department shall determine the required initial and annual trust fund contribution fees for each non-municipal domestic sewage treatment works based on each non-municipal domestic sewage treatment works' actual flow and existing and projected number of residential end users." Some specific language as to how this will be calculated seems appropriate.

Please refer to 5(B), (page 9) which states, "...the department may initiate procedures to suspend or revoke the permit under which the non-municipal domestic sewage treatment works is operated." Because it is impossible, from a practical point of view, to close down a residential treatment plant, this seems to imply that specific actions for a problem facility will be taken. These should be clear and specific.

Likewise, section 7 on (page 9), "The department may seek cost recovery from an owner or operator and reimbursement to the fund of any moneys expended under this section, including without limitation the institution of a civil action against the owner or operator." What exactly does this mean? What are "moneys expended?" When and how would ADEQ seek damages against the owner, and more interestingly, against an operator? What would ADEQ do with any such funds?

Thank you in advance for considering these comments. Given that existing plants appear to be failing at an increasing rate, this regulation is critical to adequately protect Arkansas's unique water supplies.

Sincerely,

Walter Smiley