

From: [Colene Gaston](#)
To: [Reg-Comment](#)
Cc: [Gardner, Raeanne](#); [Alan Fortenberry](#); [Larry Lloyd](#); [James McCarty](#); [Kayla Mhoon](#)
Subject: BWD Public Comment on Draft Reg. 8
Date: Friday, August 31, 2018 4:21:48 PM

August 31, 2018

Via email: reg-comment@adeq.state.ar.us

Raeanne Gardner
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, Arkansas 72118

Re: Proposed Changes to APCEC Regulation No. 8

Dear Ms. Gardner:

The following comments are submitted on behalf of Beaver Water District (BWD) regarding the proposed changes to Arkansas Pollution Control and Ecology Commission (APCEC) Regulation No. 8 (hereinafter, "Draft Reg. 8"). BWD supplies treated drinking water to the Cities of Fayetteville, Springdale, Rogers, and Bentonville. These Cities then distribute the drinking water to more than 330,000 people and industries. As both a permittee and as a drinking water utility that is committed to implementing its Source Water Protection Program, we recognize the importance of clear and efficient administrative procedures that address the needs of the regulated community and the interests of the public.

BWD welcomes the changes in Draft Reg.8 that "modernize" the administrative procedures to allow for electronic filings, notifications, and such. We reserve judgment, however, on a number of other changes. We encourage ADEQ and APCEC to wait no more than a year or two before conducting a review of how well the final revisions have worked and determining whether additional changes are warranted. With that approach in mind, BWD offers the following comments on Draft Reg. 8:

1. Draft Reg. 8.302(A)(3): This new provision removes "[e]xemptions, interim authority, temporary variances, and waivers" from the public notice, public hearing, public comment, and decision-making provisions that apply to permits. Presumably, this is because of the statutory requirements of A.C.A. § 8-4-230 and the new language at Draft Reg. 8.315 "Interim Authority and Temporary Variances." BWD, nonetheless, objects to any revisions to Reg. 8 that limit public notification and participation (including appeals) related to exemptions, interim authority, temporary variances, and waivers beyond the already restrictive provisions of the statute.

2. Draft Reg. 8.304 and 8.306: These provisions regarding the "Public Notice of Permit Application" and "Public Notice of Draft Permitting Decision," respectively, should include an additional requirement to clearly and specifically identify in the notices the surface water body nearest the facility to be permitted or, where applicable, the receiving stream for the facility. This information is not burdensome for the permittee or ADEQ to provide and it will enable the public to identify permit

matters of interest.

3. Draft Reg. 8.308(E)(5): This revised provision allows the Presiding Officer at a public hearing to extend the period for written public comments for no more than twenty (20) calendar days “from the date of the public hearing.” Currently, the period for written comments can be extended for up to 20 days from the end of the public comment period -- which often comes days, weeks, or more after the public hearing. BWD objects to this change. This provision should allow for an extension of time for the submission of written public comments of up to 20 calendar days from either the public hearing or the end of the public comment period, whichever is later.

4. Draft Reg. 8.313(B): This provision covers who has standing to appeal in situations where no public comment period is provided, including “Exemptions, variances, or waivers,” and includes a standard for standing that requires a person to be “injured in his or her person, business, or property.” BWD believes that this standing requirement is overly restrictive, and it should be more along the lines of what is required for situations where there is a public comment period. (This comment also applies to Draft Reg. 8.801(H)). BWD also is uncertain about how the inclusion of exemptions, variances, and waivers in Draft Reg. 8.313(B) aligns with Draft Reg. 8.315.

5. Draft Reg. 8.404 et seq.: BWD is cognizant of the statutory requirements that apply to General Permits, but, for the record, BWD objects to the lack of opportunity for meaningful public comment on the Notices of Intent and Notices of Coverage issued under General Permits.

6. BWD requests that a provision or provisions be added to Reg. 8 that would require copies of the public notices for permitting decisions, exemptions, variances, waivers, interim authorizations, and administrative enforcement actions to be sent to any public drinking water supplier whose raw water source is located in the watershed in which the subject facility is located. This would greatly assist drinking water suppliers with their source water protection programs.

Thank you for your consideration of these comments.

Sincerely,
Colene Gaston
Staff Attorney
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