

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

IN THE MATTER OF PROMULGATION OF)
REGULATION NO. 15, ARKANSAS OPEN-CUT)
MINING AND RECLAMATION REGULATION)

DOCKET NO. 13-008-R

RESPONSIVE SUMMARY

On August 9, 2013, the Arkansas Department of Environmental Quality, (hereinafter “Department”) filed a Petition to Initiate Rulemaking to promulgate changes to Arkansas Pollution Control and Ecology Commission (hereinafter “APC&EC”) Regulation No. 15, Arkansas Open-Cut Mining and Land Reclamation Regulation. This petition was granted on August 23, 2013, by the APC&EC’s Minute Order No. 13-28.

On October 7, 2013, the Department held a public hearing concerning the proposed revisions to Regulation No. 15. One individual on behalf of Friends of the North Fork and White Rivers (*Friends*) delivered oral formal comments during the hearing. This individual stated that the same comments would be provided in written form before the end of the comment period. The written comments were received before the closing of the comment period on the last day. The public comment period ended at 4:30 p.m. on October 21, 2013.

Below the Department has captured each of the substantive comments and the Department’s response to each comment that was received during the comment period.

Pursuant to Minute Order 13-28, the Department submits the following Responsive Summary to the comments submitted regarding proposed changes to Regulation No. 15, Arkansas Open-Cut Mining and Land Reclamation Regulation.

Comment No. 1: In general *Friends* believe that all in-stream mining should be permanently banned.

Response to Comment No. 1: It is the Department’s position that a total ban of in-stream mining would require legislative action.

Comment No. 2: Under 15.201 – *Friends* believes that various sections of the White River and the North Fork of the White should not be excluded under Stream Bed or stream Channel definitions.

Response to Comment No. 2: The Mining Division will defer any action on this comment until the next Departmental initiated Third-Party Rulemaking. The Mining Division will review available data and consult with the ADEQ Water Division and the U.S. Army Corps of Engineers about this comment.

Comment No. 3(a): Under Section 15.301(G)(1) – Landowners should not be exempted from being required to obtain permits for the removal of material from streambeds or streams within the ordinary high water mark.

Comment No. 3(b): Landowners also should be prohibited from mining sand/gravel on their property for use on other properties they own.

Response to Comments No. 3 (a) and (b): It is the Department's position that legislative action will be necessary to remove exemptions for landowners.

Comment No. 4: Under 15.301(H)(4) – *Friends* believes agriculture should not be exempted from provisions under this Regulation but acknowledges that existing law exempts agriculture.

Response to Comment No.4: The Department agrees that legislative action would be required to remove the agricultural exemptions.