Archived: Friday, October 2, 2020 2:55:23 PM
From: J. Murdoch
Sent: Friday, October 2, 2020 2:11:22 PM
To: CPP-antideg-comments
Subject: ADEQ Anti-degradation Implementation Methodology (AIM) and Continuous Planning Process (CPP)
Importance: Normal
Attachments:
Antidegradation Implementation Methodology and Continuing Planning Policy.pdf;

Please review attachment.

Antidegradation Implementation Methodology and Continuing Planning Policy.pdf

10/02/2020

Dear Jacob Harper,

My name is John Murdoch of Elkins, Arkansas. My public comments will be short regarding the "Antidegradation Implementation Methodology and Continuing Planning Policy".

I urge Arkansas Department of Energy and Environment to continue robust protection of the streams and lakes of our state as a high priority and a crucial part of your mission and not let needed regulations become watered-down or turn into "self-regulation" as the main path for checks and balances dealing with our water quality. Most of us realize the importance of clean, safe water and want your assurance that we will have it. Our state deserves the highest standards and protections for the long-term health of our water, and thus our health. The rapidly growing Arkansas economy depends on our water protection of the highest degree for our drinking water sources, game and fishing, tourism, agriculture, and many industries that are located here and hopefully will remain here, also need safe and clean water. Please do the following.

- Protect high-quality streams in our state and national parks, wildlife refuges, and wilderness areas from pollution.
- Properly establish protected baseline water quality through testing and data analysis.
- Account for non-point sources of pollution when making point source permitting decisions.

I am referencing a couple of other's comments below that I fully understand and support. Please review the following links and comments:

Buffalo River Watershed Alliance (BRWA) "Draft"

https://buffaloriveralliance.org/resources/Documents/DRAFT%20Anti_Deg_CPP_BRWA_comments.pdf

Secretary Becky Keogh
Department of Energy and Environment
5301 Northshore Drive
North Little Rock, AR 72118

October 2, 2020

Dear Secretary Keogh:

Thank you for the opportunity to provide comments on the Continuing Planning Process (CPP) and Anti-Degradation Implementation Methodology (AIM). We hope these recommendations from the Buffalo River Watershed Alliance (BRWA) will be helpful and will be incorporated into the final document. In light of climate change and the Arkansas's second largest industry-tourism-a precautionary approach should be overarching principle throughout the state's water quality standards including the CPP and AIM.

Comments on the CPP:

1. Total Phosphorous (Section 4.15.6)

In Section 4.15.6, the CPP identifies which types of facilities are required to collect data when applying for a permit to discharge nutrients into a listed 303(d) stream. Any large concentrated animal feeding operation (CAFO) under Regulation 5 or Regulation 6 should be required at a minimum to collect water quality data on nutrients (Phosphorous and Nitrogen), develop a water quality monitoring plan approved by DEQ and be required to provide a report containing the water quality monitoring information and data on an annual basis.

BRWA recommends the inclusion of CAFOs as a facility required to collect and annually report water quality and nutrient discharge information.

2. Consistent Use of Statistical Methodology (Section 4.5, 4.15.11)

In Section 4.5 references the use of geometrical means to evaluate effluent discharges. Yet in other sections (5.5.2) the arithmetic is used to calculate effluent concentrations. Geometric means reduce the impact of outlier values and the variability of samples. Storm water events are known to produce the highest levels of E. coli levels in streams due to run off. The use of a geometric mean provides a false (lower) average for the pollutant or nutrient of interest because it reduces the statistical impact of these important ecologically influential events especially given the high variability in the dataset.

In the Minerals section 4.15.11.1 (Small streams less than 7Q10 less than 100 cfs) the arithmetic mean is used but for large streams (7Q10 greater than 100 cfs) the geometric means is used in calculations. Without explanation, there is inconsistency in the methodology. The arithmetic mean is much better tool to reflects the water quality condition.

BRWA recommends the use of arithmetic mean to best characterize effluent discharge and other water quality parameters including minerals.

3. Chapter 5

Chapter 5 identifies guidelines for a permit engineer to consider when establishing a monitoring and sampling program. These are minimal guidelines and insufficient oversight of these activities. DEQ including the Water Planning Branch should review all components of the monitoring and sampling for the permittee, including but not limited to, monitoring locations, frequency, sample types, sample analysis, and representativeness of the sampling and monitoring programs.

BRWA recommends extensive DEQ oversight and approval in monitoring and sampling plans.

Comments on the AIM:

General Comments:

- A second comment period for the AIM should be provided to the public because of the interconnectivity between the AIM and Regulation 2. At present the final Regulation 2 rule has not been finalized or published. Therefore, the AIM comments below should be considered preliminary because final language in Regulation 2 is not available.
- Throughout the draft AIM, reference is made to the Waters of the US (WOTUS). WOTUS is a moving target to litigation and varying decisions from the courts. The AIM should reference Waters of the State (WOTS) for consistency and relevance to our state streams.
- As discussed in the stakeholder working group meeting, the AIM is a requirement under the Clean Water Act (CWA) that should be incorporated into regulation and binding to all parties.
- Any future Nutrient Trading program (including Point Source and Non-Point source trades) should be required to follow all AIM procedures regardless of whether an NPDES permit is required or not.

Specific Comments:

1. Definitions: Outstanding Resource Waters (ORW): The definition of an ORW should be expanded to include the tributaries and ephemeral streams that contribute to "…the high-quality waters constitute an outstanding state resource with significant aesthetic, recreational, or scientific value". A river is the sum of its parts. Without protection of the upstream regions of an ORW, the probability of activities that may degrade the stream is very high. Due to the recreational and economic activities that are dependent upon maintaining ORW, DEQ should increase protection of the ORW by including all upstream tributaries and ephemeral streams in the ORW designation.

2. Baseline Water Quality (BWQ): BWQ data collection should be calculated on every stream in Arkansas as soon as possible. DEQ has a wealth of data collected from over 150 streams during the past 30 years including federal and non-profit partners who have added to the dataset. These data should be used in conjunction with more recent

information to establish BWQ for streams in the state. Prior to any new or existing permit renewal, a BWQ should be calculated well in advance of the permit deadline to allow for sufficient review and consideration by DEQ.

3. Non-point source pollution: Under EPA's Water Quality Standards Handbook, it states that that non-point activities are not exempt from the provisions of the anti-degradation policy. The policies and regulations noted by DEQ in Chapter 9 are ambiguous and insufficient in protection of Arkansas' water quality standards. This has been illustrated by the increasing frequency of Harmful Algal Blooms (HABs) throughout the state and in many cases from nutrient run-off associated with CAFOs. Separate "controlling" state agencies apart from DEC regulate potentially degrading activities. How will DEQ oversee or coordinate with other state agencies to ensure protection of existing designations and ensure high quality waters?

Dane Schumacher – September 28,2020
https://www.adeq.state.ar.us/water/cpp/pdfs/comments/Dane%20Schumacher%20-%20September%2028,%202020.pdf

Thank you for the opportunity to provide comment in regard to the Antidegradation Implementation Methodology (AIM).

I respectfully urge the Arkansas Department of Energy and Environment (E&E) to heed the Environmental Protection Agency's recommendation that E&E lay out the steps for assuring the highest statutory and regulatory requirements for point sources are achieved and also assuring that the lowering that is being authorized will not impair existing uses as required by 40 CFR 131.12(a)(2).

In regard to nonpoint activities, EPA's "Water Quality Standards Handbook" expressly states that nonpoint source activities are not exempt from the provisions of the antidegradation policy. See Chapter 4, "Antidegradation". I urge E&E to explain how ADEQ will communicate with controlling agencies to assure compliance with the applicable regulatory programs before authorizing lowering of water quality.

Additionally, I respectfully request that E&E take note of EPA's position on Outstanding Resource Waterways (ONRW) also outlined in Chapter 4 of the "Water Quality Standards Handbook" as follows:

> **4.7 Outstanding National Resource Waters (ONRW) -40 CFR131.12(a)(3)**
> Outstanding National Resource Waters (ONRWs) are provided the highest level of protection under the antidegradation policy. The policy provides for protection of water quality in high-quality waters that constitute an ONRW by prohibiting the lowering of water quality. ONRWs are often regarded as highest quality waters of the United States: That is clearly the thrust of 131.12(a)(3). However, ONRW designation also offers special protection for waters of "exceptional ecological significance."These are water bodies that are important, unique, or sensitive ecologically, but whose water quality,as measured by the traditional parameters such as dissolved oxygen or pH, may not be particularly high or whose characteristics cannot be adequately described by these parameters (such as wetlands).The regulation requires water quality to be maintained and protected in ONRWs. EPA interprets this provision to mean no new or increased discharges to ONRWs and no new or increased discharge tributaries to ONRWs that would result in lower water quality in the ONRWs. The only exception to this prohibition, as discussed in the preamble to the Water Quality Standards Regulation (48F.R.51402), permits States to allow some limited activities that result in temporary and short-term changes in the water quality of ONRW. Such activities must not permanently degrade waterqualityor result in water quality lower than that necessary to protect the existing uses in the ONRW. It is difficult to give an exact definition of "temporary" and "short-term" because of the variety of activities that might be considered. However, in rather broad terms, EPA's view of temporary is weeks and months, not years. The intent of EPA's provision clearly is to limit to the shortest possible time.

A codified Arkansas Antidegradation Policy (as currently referenced in Regulation 2) provides the requisite means to ensure instream uses are maintained and protected.

Arkansas waterways deserve the highest protection afforded by law.

Dane Schumacher

Cc:
Maria Martinez, Permitting & Water Quality Branch