



August 18, 2020

Via E-mail: keogh@adeq.state.ar.us and
CPP-antideg-comments@adeq.state.ar.us

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

Re: Antidegradation Implementation Methods (AIM) and
Continuing Planning Process (CPP) Documents
Request for Extension of Public Comment Periods

Dear Secretary Keogh:

On Sunday, July 26, 2020, you issued a public notice for a thirty-day public comment period on the Department of Energy and Environment (DE&E), Division of Environmental Quality's (DEQ's) draft Antidegradation Implementation Methods (AIM) and draft Continuing Planning Process (CPP) documents. Beaver Water District (BWD) respectfully requests extensions of the public comment periods for both the draft AIM and the draft CPP documents for at least sixty (60) days from the current public comment deadline of Wednesday, August 26, 2020, at 4:30 p.m. Central Time to at least Tuesday, October 27, 2020. The reasons for the requested extensions include:

- The public comment period for the AIM and the CPP overlaps with the public comment period for DEQ's proposed amendments to Regulation No. 2 ("Reg. 2"), which are part of DEQ's triennial review of the State's surface water quality standards that is required pursuant to the federal Clean Water Act (CWA). The public comment period for the proposed amendments to Reg. 2 concludes Tuesday, September 8, 2020, at 4:30 p.m. Central Time.
- The AIM document is approximately eighteen (18) single-spaced pages long. The CPP document is approximately one hundred seventeen (117) single-spaced pages long. The marked-up version of the proposed amendments to Reg. 2 is approximately one hundred thirty (130) single-spaced pages long. Each of these three documents is complex and oftentimes highly technical. They also are interrelated. To fully understand each document, one must regularly consult the other documents, as well as the federal CWA regulations.
- The water quality standards in Reg. 2 are the foundation for the AIM and CPP documents. Public comments on Reg. 2 should be addressed by DEQ and, ideally, any changes to Reg. 2 in response to comments should be made prior to the close of the public comment periods on the AIM and CPP. Otherwise, the public will be unable to ascertain the full meaning of provisions in the AIM and CPP when preparing comments.

- The CPP document is a wholesale revision of the current CPP that was last issued in 2000. The proposed changes are so comprehensive that DEQ, understandably, chose not to prepare a marked-up version of the document showing the changes between the 2000 and draft 2020 versions. Presumably, one of the reasons that it took DEQ twenty (20) years to propose revisions and updates to the CPP, which the CWA requires, was the complexity of the issues involved.
- A state AIM has been required by the CWA since 1987. Arkansas is one of only two states that have failed to meet this requirement in the intervening thirty-three (33) years. This long delay also reflects, in part, the complexity of the issues involved. Although being the shortest-by-far of the three DEQ water quality documents currently out for public comment, the AIM is critical in terms of the State's ability to fulfill the mandate of CWA section 101(a) "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." BWD believes that a well thought-out and drafted AIM also is essential for the protection and maintenance of Arkansas' drinking water sources. Every word of this first-time AIM document deserves careful consideration.
- BWD acknowledges DEQ's efforts to engage select stakeholders prior to the issuance of the AIM and CPP for public comment. Unfortunately, we must conclude that those actions were largely window-dressing. No changes to the draft AIM and CPP were made by DEQ in response to comments made during the stakeholder workgroup virtual meetings.
- In addition, the process for participation in the stakeholder workgroup via virtual meetings was flawed from the outset. The schedule for meetings was not made available at the start of the process, and there was, to BWD's knowledge, no consultation with stakeholders regarding the timing of the meetings. Notice of the three stakeholder workgroup virtual meeting dates and times -- June 22, July 7, and July 22 -- was given only four, eight, and six business days, respectively, in advance (note that DEQ characterizes the June 22 morning and afternoon sessions as "two meetings"). The process for reviewing the AIM and CPP documents was compressed and was not calculated to maximize, or even facilitate, the ability of volunteer stakeholders to prepare for and attend the virtual meetings, much less to provide comments. More significantly, it was not until the stakeholder workgroup meeting on July 22 that participants were informed that DEQ would be making no changes to the AIM and CPP documents and that it had decided to issue those documents just four days later for a thirty-day public comment period. BWD's representative on the stakeholder workgroup, among others, objected to DEQ's intended course of action.
- Regardless of any opportunities provided to select stakeholders in advance, the public (including the members of the stakeholder workgroup) should have a meaningful opportunity to review and comment on the AIM and CPP documents during the formal public comment periods. A simultaneous thirty-day comment period for both documents

that overlaps with the public comment period for Reg. 2 would be wholly inadequate under the best of circumstances. Current circumstances, however, are far from ideal.

- In recognition of the global pandemic, DE&E issued an unprecedented Enforcement Guidance to provide regulated entities flexibility and alternative approaches to compliance. The challenges presented by the pandemic to the public's ability to simultaneously review and comment on multiple, complex documents that will serve as the bases for DEQ's water quality programs deserve no less consideration and accommodation.

Thank you for your consideration of BWD's request to extend the public comment periods for the AIM and CPP documents to at least Tuesday, October 27, 2020. Given the current, impending deadline, we look forward to a prompt response.

Sincerely,



M. Lane Crider, P.E.
Chief Executive Officer

Cc via email to Department of Environmental Quality, Office of Water Quality:

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