Mossy Lake

✅ **In 1974, 1986, and 1991, EPA issued permits that authorized Georgia-Pacific (GP) to discharge from Mossy Lake.**

NPDES Permit AR0001210

✅ **GP's current NPDES Permit mirrors the NPDES permits issued to GP by EPA.**

All of these permits authorize GP to discharge from Mossy Lake, just like any other permitted outfall.

EPA's actions on Mossy Lake

✔ **Between 1979 and 1986, EPA examined the status of Mossy Lake and issued a permit that authorized GP to discharge from Mossy Lake – making Mossy Lake a part of GP's permitted treatment system.**

- GP's NPDES permit has continued to authorize GP to discharge from Mossy Lake since EPA made that decision.

GP's current NPDES Permit states:

- ✔ During the period beginning on the effective date of the second modification of this permit and lasting until the date of expiration, ***the permittee is authorized to discharge*** from serial number SMS 002. ***Such discharges shall be limited and monitored by the permittee*** as specified.

EPA's Revised Definition of "Waters of the United States"

b. Waste Treatment System Exclusion

- The agencies are also proposing to retain the waste treatment system exclusion from the 1986 regulations and return to the longstanding version of the exclusion that the agencies have implemented for decades.

EPA's Revised Definition of "Waters of the United States"

b. Waste Treatment System Exclusion

✔ Specifically, the proposed rule provides that ''[w]aste treatment systems, including treatment ponds or lagoons, designed to meet the requirements of the Clean Water Act are not waters of the United States.'' This language is the same as the agencies' 1986 regulation's version of the waste treatment system exclusion.

EPA's Revised Definition of "Waters of the United States"

b. Waste Treatment System Exclusion

✔ EPA has not limited application of the waste treatment system exclusion to manmade bodies of water for four decades.

EPA's Revised Definition of "Waters of the United States"

b. Waste Treatment System Exclusion

✔ **A waste treatment system may be "designed to meet the requirements of the Clean Water Act"** where, for example, it is constructed pursuant to a Clean Water Act section 404 permit, *Ohio Valley Envtl. Coalition v. Aracoma Coal Co.*, 556 F.3d 177, 214-15 (4th Cir. 2009), **or where it is "incorporated in an NPDES permit as part of a treatment system,"** *N. Cal. River Watch v. City of Healdsburg*, 496 F.3d 993, 1001 (9th Cir. 2007).

EPA's Revised Definition of "Waters of the United States"

b. Waste Treatment System Exclusion

✓ Relatedly, the agencies are also clarifying that, consistent with the agencies' longstanding practice, a waste treatment system does not sever upstream waters from Clean Water Act jurisdiction. In other words, discharges into those upstream waters remain subject to Clean Water Act requirements and thus may require a section 402 permit.

What is Mossy Lake?

✓ **Under the Waste Treatment System Exclusion in EPA's 2021 Revised Definition of "Waters of the United States," Mossy Lake is part of GP's waste treatment system.**
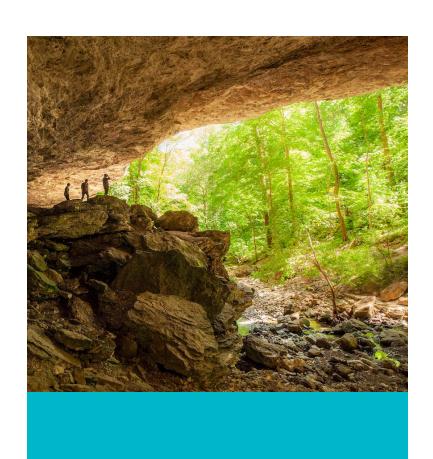
Facts Supporting the Waste Treatment System Exclusion

✓ Mossy Lake was originally constructed to remove pollutants from GP's effluent.

✓ Mossy Lake was incorporated in to GP's NPDES Permit.

APC&EC Rule 2:

Mossy Lake is excluded from the definition of Waters of the United States under the Waste Treatment System Exclusion.

No changes to APC&EC Rule 2 are required for Mossy Lake.

DEQ does **not** propose to make any changes to APC&EC Rule 2 related to Mossy Lake because Mossy Lake is part of GP's permitted treatment system.

KEEP IN TOUCH

📍 **E&E-DEQ-OWQ**
5301 Northshore Drive
North Little Rock, AR 72118

📞 **PHONE**
501.682.0744

✉️ **EMAIL**
Rule_2_Comments@adeq.state.ar.us

🌐 **WEBSITE**
https://www.adeq.state.ar.us/water/planning/reg2/triennial/2023/

ⓕ @AREnergyEnvironment   🐦 @ArkansasEE

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