



ARKANSAS ENERGY & ENVIRONMENT

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VIA EMAIL

Sen. Kim Hammer, Co-Chair
Rep. Mark Berry, Co-Chair
Joint Performance Review Committee
Arkansas State Legislature
C/O Colby Little, Legislative Analyst
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JPR heard a presentation on October 24, 2023, by concerned citizens from the Roland, Little Italy, and Wye Mountain communities (and their legal counsel, Mr. Mays) regarding Arkansas Department of Energy and Environment – Division of Environmental Quality (DEQ)-issued wastewater permits in western Pulaski County.

Generally, the citizens presented a slideshow alleging that DEQ does not properly perform its duties to enforce state and federal regulations to protect human health and safety and water quality in the State. As an initial matter, DEQ affirmatively states that it has consistently enforced state and federal regulations to protect human health and safety or water quality in the state, and will continue to do so, through its permitting and compliance scheme.

The citizens' slideshow presentation offered "Three Examples of ADEQ Failures": (1) the permitting, compliance, and enforcement history related to an existing domestic wastewater treatment facility for **Waterview Estates** in the Roland area of western Pulaski County; (2) DEQ's issuance of a permit for a proposed domestic wastewater treatment facility for the yet-to-be developed **Paradise Valley**, also near Roland in western Pulaski County; and (3) DEQ's actions related to **Bethel Heights**, a former city in Benton County with well-documented problems related to domestic sewage and wastewater treatment that were resolved with the city's dissolution and annexation into the adjacent city of Springdale in 2020.

DEQ appreciates the opportunity to respond to the allegations, clarify some of the information provided, and supply additional information for the Committee's consideration. Given that the bulk of the citizens' concerns and comments are related to DEQ permits issued in western Pulaski County, DEQ will address those actions individually.

I. Waterview Estates

Almost 20 years ago, a developer proposed building a residential subdivision near Roland, along with a domestic wastewater treatment facility to manage and treat the household sewage that would be generated by the constructed homes. Because of the proposed development's proximity to Lake Maumelle, Central Arkansas Water (CAW) and others raised concerns about the potential impact of such development on the lake. Recognizing that development and construction of a residential area could significantly change the natural runoff of the property, including storm-water, CAW and the developer reached an agreement for the construction of a concrete storm-water diversion ditch to direct water runoff from the planned development away from the lake and instead towards the drainage watershed for the Arkansas River. While DEQ regulates storm-water runoff from certain site such as industrial sites or large-scale construction sites with disturbed ground, this type of permanent re-grading and diversion of water by a landowner does not generally fall under DEQ's regulatory authority.

As development progressed, some property owners in the area made allegations that the changes in drainage and runoff caused flooding in areas down-gradient from Waterview Estates, including a county roadway. Eventually, the property owners pursued their flooding complaints in a civil lawsuit. To the best of DEQ's knowledge, the civil litigation is still in process. DEQ is not a party to this lawsuit, but several of the citizens who presented at JPR, as individuals and as part of the group Pinnacle Mountain Community Coalition (PMCC), are current participants along with their legal counsel Mr. Mays.

On September 30, 2005, DEQ issued an initial NPDES discharge permit (permit number AR0050393) to Waterview Estates to allow a domestic wastewater treatment facility to discharge treated effluent to Mill

Bayou, approximately one-mile south of Roland on Hwy 300. DEQ updated and renewed the permit on June 22, 2011, and again on February 27, 2017.

Waterview Estates made application to renew its NPDES permit and that renewal application is pending. DEQ issued public notice of both the renewal application and of a pending draft renewal permit. DEQ received voluminous public comments on this application and draft permitting decision and held a public hearing on August 23, 2023 to allow another opportunity to receive public comment and input. DEQ has not issued a final permitting decision on the Waterview Estates renewal application yet. When DEQ issues a final permitting decision on the renewal application, it will include responses to public comments received. Administrative review and appeal of that permitting decision can be pursued before the Pollution Control and Ecology Commission. Subsequent to the initial issuance of Waterview Estates' NPDES permit, the developer constructed homes that rely upon sewer service that can only be delivered if there is an NPDES permit authorizing that sewer service. Stated differently, any request to revoke or suspend the Waterview Estates' NPDES permit would necessarily disrupt sewer service for every **existing** resident of the Waterview Estates development.

As noted at the JPR hearing, interested persons can access a copy of the draft permit [here](#).

II. Paradise Valley

In September 2022, the same developer submitted an application for a new NPDES permit to allow discharge of treated effluent from a proposed domestic wastewater treatment facility to be constructed as a part of a new proposed development in the Roland area, Paradise Valley. The Paradise Valley permit proposed the construction of a facility on Roland Cutoff Road to discharge treated effluent into an unnamed tributary of Mill Bayou, and then to Mill Bayou.

The Paradise Valley permit review process included multiple rounds of public notice, opportunities for public comment, and two public hearings resulting in an unprecedented volume of public comment and participation. At the conclusion of the permit review process, DEQ issued the final permit (AR0053210) on

June 16, 2023.

After the final permitting decision, the Pollution Control and Ecology Commission received multiple Requests for Administrative Hearing and Review. These hearing requests are still in adjudicative review and appeal process is ongoing. Several of the citizens who presented at JPR, as individuals and as part of the group Pinnacle Mountain Community Coalition (PMCC), along with Maumelle Water Corporation, are current participants in that ongoing administrative litigation, and are represented by legal counsel, including Mr. Mays, in those proceedings.

As noted in the JPR hearing, interested parties can review a copy of the final permit [here](#). The final portion of the permit includes DEQ's response to all public comment.

III. DEQ's permitting, compliance, and enforcement actions related to Waterview Estates and Paradise Valley

The citizens' presentation to the JPR Committee made a number of assertions that were either misleading or inaccurate. Regarding the Waterview Estates permit, the citizens alleged several issues regarding chlorine, including that DEQ "agreed to allow the applicant to dump 300 times the legal limit of Chlorine into a zero flow stream," allowed the applicant to miss a compliance deadline for a plan to address TRC and never followed up, and continues to allow "toxic levels of chlorine" while unjustifiably allowing the permittee more time to address these concerns.

In fact, the permitting history shows that DEQ has been fully compliant with the federal Clean Water Act, applicable federal regulations, and state law while engaging the permittee in increasingly progressive steps to address proper compliance with chlorine management. While the March 1, 2017, permit renewal did not have a chlorine limit, it did require monthly monitoring, reporting, and establishment of Best Management Practices (BMPs) for reduction of Total Residual Chlorine (TRC) in the effluent. Permittee submitted a report in July 2017 stating that if its evaluation of lower dosage chlorine tablets was ineffective, it would install a dechlorination tablet dispenser. Although DEQ does not prescribe what BMPs a facility should use to achieve

compliance, the latest iteration of the draft renewal permit includes a TRC limit based on meeting EPA criteria in the receiving stream with an EPA-approved compliance schedule.

The citizens' presentation asserted that the Waterview facility was being allowed "to operate with an expired permit without penalties." In the normal course of permit renewals, it is common that facilities continue to operate under conditions of their former permit and the former permit is considered "administratively continued" while a permit renewal is pending. In this instance, the permittee did not submit their renewal application 180 prior to the expiration date of their current permit. However, DEQ and the permittee entered into a Consent Administrative Order (CAO) that allowed the permittee to continue operate under the conditions of the previous permit while the renewal was pending. The CAO (LIS 21-124) and assessing a \$500.00 civil penalty for failure to timely submit the renewal application.

This CAO, along with another CAO issued in 2006 (LIS 06-031) that included a \$4,050.00 penalty for construction site storm-water control violations, are cited by the citizens as evidence that the developer is a "bad actor" and should be denied a permit for Paradise Valley because of these violations. Although the DEQ Director has discretion under PC&EC Rule 8.204(D)(4) to deny a permit to an applicant with a history of violations or non-compliance, a permittee's entry into a CAO that acknowledges violations and demonstrates compliance with those orders does not form a basis for a "bad actor" determination under that rule.

The citizens' remaining issues related to Waterview involve the storm-water diversion described above and the complaints about flooding, including allegations that resulting flooding impacts a Native American archeological site. DEQ has no regulatory authority over these issues, and parties who believe they have been injured by the changes in water runoff can, and have, filed lawsuits that are still pending.

The citizens' allegations regarding the permit issued for Paradise Valley, particularly those involving effluent limits and specific parameters for phosphorus, chlorine, and degradation of water quality, are currently at issue in pending administrative permit appeals before the Pollution Control and Ecology Commission. DEQ's response to these concerns and other contested issues are fully developed in the administrative record

and are articulated in the pleadings and briefs filed in those relevant dockets (23-010-P, 23-011-P, and 23-2013-P) and can be publicly accessed and reviewed online [here](#). Though these matters are under administrative review before the Pollution Control and Ecology Commission, DEQ asserts that its issuance of the Paradise Valley NPDES Permit was valid and supported by the facts, evidence, and data presented in the application.

The citizens also reference a “cease and desist” letter that DEQ received from the Osage Nation expressing concerns about the pending Paradise Valley permit and the impact that the permitted effluent discharge might have archeological sites and burial grounds. DEQ acknowledges that it received a cease and desist letter from the Osage Nation. DEQ responded to that letter in writing, noting that the proposed discharge from the treatment system would not significantly contribute to flooding in the area. The comments of the Osage Nation and the agency’s response to those comments are included as part of the final permitting decision. Although, having standing to challenge the issuance of the permit on appeal, the Osage Nation did not do so.

IV. Bethel Heights

The citizens’ third example purporting to demonstrate “DEQ’s Failures” (presumably related to permitting, compliance, and enforcement of domestic wastewater treatment systems) was the former city of Bethel Heights in Benton County, Arkansas. The citizens’ slideshow alleges that DEQ never sent an inspector “to catch the city discharging raw sewage private property.”

The problems with Bethel Heights, and the lengths to which DEQ went to enforce the law and mandate compliance, are well documented in the agency’s records as well as the circuit court proceedings that ultimately led to the city’s dissolution and annexation by the adjacent city of Springdale.

Unlike Waterview Estates and the proposed Paradise Valley developments in western Pulaski County, Bethel Heights did not have a treatment system with an NPDES discharge permit. Rather, as was common for small, sparsely populated towns in northwest Arkansas, Bethel Heights relied on a STEP, or septic tank effluent pumping system designed to send liquid waste through a series of underground pipes into a drip field. While

such systems can be effective for small communities given the right soil conditions, the explosive population growth and increased population density seen in northwest Arkansas can overload these systems, oversaturate the receiving soils, and create recurring waste management problems that can be very expensive to address. After repeated violations related to mismanagement and operational problems, the surfacing of improperly treated waste, and the inability of the city to comply with CAOs to address problems with its treatment system, DEQ sought a court order to mandate that the city brings its treatment system into compliance with state laws to protect the environment and public health and safety. Faced with the prospective costs of an alternative treatment system, the city's residents voted to dissolve and become part of Springdale, which operates a major publicly owned treatment system.

V. Conclusion

Property owners who seek to develop their land and surrounding landowners have valid concerns related to increased residential population density and necessary supporting services and infrastructure. With residential development comes the need for more and improved roads, storm-water management, trash collection, drinking water, sewage management, and police and fire services. All of this has potential impacts on the environment as well as human health and safety.

It is the role of local governments, cities, and counties to plan for and manage growth, address issues related to land use or restrictions on use, and the issues that come with population growth and development. DEQ has a very limited but important role in assessing the kinds of treatment systems and operations are needed to allow for necessary growth and economic activity while protecting water, air, and human health. Within the specific areas of its regulatory oversight as set out in state and federal law, DEQ continually strives to inform the public and allow for their participation in issues that impact their communities and to work with the regulated community to achieve and maintain compliance with the laws and rules that protect the health and environment for all citizens.

DEQ would like to thank the JPR Committee and Chairman Hammer for the opportunity to submit

these comments.

If you have any additional questions or need any additional information, please do not hesitate to contact us.

Regards,

A handwritten signature in black ink, appearing to read 'Caleb J. Osborne', with a long horizontal flourish extending to the right.

Caleb J. Osborne
Chief Administrator of Environment
DEQ Director
Department of Energy and Environment