

# Discussion of Wastewater Permits issued by the Division of Environmental Quality in the Mill Bayou and Lake Maumelle Watersheds in West Pulaski County

*For: Joint Performance Review Committee*

*By: Roland, Little Italy, and Wye Mountain communities*

*October 24, 2023*

# Failures of Government Agencies

## It all began with Pulaski County Planning

Witnessed and experienced as Commissioner from 2018 - 2022:

- Code violations by applicants and staff – site bulldozed/cutting in roads before plat certification; missing documents with plat; etc.
- Other incidents outside the scope of this meeting

## Failures continued with ADEQ

- ADEQ relies upon approvals (8.4.203 (B)(1)(A)) such as the Pulaski County Planning Preliminary Plat Approval in its permitting decision for sewage treatment facilities. Unfortunately, ADEQ washes its hands even knowing an approval by another agency was reported flawed without doing a thorough investigation into alleged violations. They just take the applicant's word. Kind of like allowing the fox to guard the henhouse.

# Grievance Statement

The ADEQ is weak on inspections, enforcement & weak on good engineering practices and thereby fails to protect Arkansas' streams, lakes, and wetlands in its permitting decisions for both wastewater treatment/discharge and stormwater runoff. In some instances, as in the case of stream degradation, they are violating federal law and state regulation (Reg 2.306).

# Grievance Statement continued

The ADEQ has shown disregard in the public's eyes for their health, disregard for Federal regulations, disregard for State regulations, disregard for SHPO process, and has for decades been operating an unfair system due to lack of oversight and reporting. The ADEQ system is such that boxes are checked without considering facts and its own legal authority to protect the higher standard and therefore has become merely a “permit mill”.

# Three (3) Examples of ADEQ Failures


## **I. Waterview Estates Sewage Facility, Roland (EXISTING)**

- The 2010 NPDES permit agreed to allow the applicant to dump 300 times the legal limit of Chlorine into a zero flow stream. THIS WAS HAPPENING FOR 7 YEARS.
- ADEQ allowed this same applicant the 60 day requirement to comply with submitting a plan for the total residuals of chlorine (TRC) BMP in the 2017 permit TO SLIP TO 150 DAYS AND THEN NEVER FOLLOWED UP TO ENSURE THE BMP STANDARD WAS MET.
- ADEQ allowed Waterview Estates to treat sewage with toxic levels of chlorine without a dechlorination system installed for 5 YEARS after a reissue of their permit in 2017. No BMP was executed by ADEQ although it was required in the permit and the current 2023 edition of the permit is giving this applicant 3 MORE YEARS to comply with the BMP for TRC. Dechlorination systems are available for purchase today and there is no conceivable reason to allow this applicant 8 years to comply with the BMP for TRC.


- ADEQ is allowing Waterview Estates sewage facility to operate **WITH AN EXPIRED PERMIT WITHOUT PENALTIES.**
- Waterview Estates sewage facility's applicant has two CAO's yet **ADEQ READILY APPROVED ANOTHER PERMIT FOR THIS BAD ACTOR** for the Paradise Valley development's new sewage facility in Roland. ADEQ was given power by the legislature to deny permits for reasons of bad actor history (8.204(A) and (C)(3) and (D)(4)).
- There are many more examples of ADEQ failures with Waterview Estates permitting. This is just the tip of the iceberg.
- ADEQ has also failed in its responsibility to inspect and enforce controls on Stormwater runoff from this same applicant's 3 mile diversion ditch, which has sent millions of gallons of stormwater **WITHOUT CONTROLS FOR 16 YEARS AND COUNTING** from the Lake Maumelle Watershed north into the Mill Bayou Watershed in Roland thereby flooding neighbors, including a significant Native American archeological site causing costly and irreversible erosion & desecration respectively. Only until citizens brought it to their attention did ADEQ inspect the site. It has been 11 years since the last inspection in 2011, when they found significant violations.

## **II. Paradise Valley Sewage Facility, Roland (NEW)**

- Paradise Valley & Waterview Estates sewage facility permits do not contain a requirement for phosphorus nor does it even require testing and reporting. Northwest Arkansas has Phosphorus control. Phosphorus causes algae to grow and chokes water systems creating a hazardous situation for people and animals.
- ADEQ lowered the stream standard to allow this applicant to use chlorine as a disinfectant for both Paradise Valley and Waterview Estates sewage facilities. ADEQ is allowing stream degradation which conflicts with their stated commitment to enforce the state anti-degradation policy.
- The applicant never asked for a “Wetlands and Waters of the U.S. Delineation” and never was going to for its site and sewage plant UNTIL the citizens brought it up to ADEQ.

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- A Native American tribe, represented by Osage Nation, had requested to meet with ADEQ concerning a significant archeological site containing a great number of burial mounds currently being impacted by stormwater from Waterview Estates and the imminent threat of desecration posed by the new Paradise Valley sewage facilities (there will mostly likely be 2-3 sewage facilities as the development reaches full build-out of nearly 600 homes in the unincorporated rural area) but ADEQ did not meet with this tribe before issuing the permit.
  - The local water company Maumelle Water Corporation which serves over 1,000 customers in Roland from 3 drinking water wells, one is near the area of impact from the Paradise Valley sewage facility and stormwater runoff, has asked ADEQ for an impact study before approving the Paradise Valley permit. ADEQ repeatedly ignored MWC's concerns and issued the permit anyway.



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- The outfall location of this sewage facility is classified as the smallest of the world's streams and a dry part of the year "ditch" which means the only flow at times will be what is expected to be poorly treated sewage, which will stagnate in the Bayou, which is by definition slow moving. This sewage will accumulate and create toxic conditions. ADEQ knows this and still issued the permit to a bad actor.
  - ADEQ knows that this area floods (and increasingly due to the applicant's uncontrolled stormwater) and what is expected to be poorly treated sewage will move into areas it wasn't intended: people's yards, the road, horse and cow pastures.
  - ADEQ knows a natural pristine wetland that has excellent water quality and is capable of sustaining aquatic, terrestrial, and many other lifeforms will be impacted. The property owners in that area also use the wetlands for recreation such as hunting . Their land is valuable to them. This placement will destroy the property values and enjoyment of their own properties. ADEQ declined the invitation by residents to visit their location.
  - There are many more examples of ADEQ failures with Paradise Valley permitting. This is a drop in the bucket.

### **III. Bethel Heights, Benton County (DISSOLVED)**

- ADEQ was asked repeatedly – dozens of times – to send an inspector to Bethel Heights in the early morning hours to catch the city discharging raw sewage onto private property. Pictures were provided to the Department regularly showing the illegal discharge. The newspaper printed pictures and the television stations ran pictures. But no inspector ever came.
- In 2020, to stop the sewage facility and the ADEQ madness, the people voted to dissolve their own town and annexed into Springdale.

# Photos

## Wading & Hunting in Mill Bayou Wetlands



# Pristine Mill Bayou Wetlands with ducks





# Roland Cutoff Road after 2" rain - stormwater mainly from Waterview Estates Diversion Ditch – NO CONTROLS



# Dry Season Mill Bayou – ZERO FLOW





# Osage Cease & Desist letter to ADEQ but they issued the permit anyway.



## Osage Nation Historic Preservation Office ᏊᏊᏊᏊ ᏊᏊᏊ ᏊᏊᏊᏊ

Date: April 5, 2023

File: 2223-1792AR-10

RE: EPA, DEQ, Paradise Valley NPDES Permit, Roland Cutoff Road, Pulaski County, Arkansas

The Osage Nation Historic Preservation Office is responsible for preserving and protecting Osage heritage, as charged by Osage Nation Principal Chief Geoffrey Standing Bear. As a third public comment, Osage Nation wishes to address why the proposed NPDES discharge permitting from DEQ could affect protected Osage sites, and why further consideration is requested to prevent erosive flooding events on sacred landforms downstream.

Long before European exploration of the Arkansas River Valley, the Osage Nation and other tribes occupied this region. During that time, a multitude of utilitarian and sacred activities were conducted creating cultural ties to the landscape. Unfortunately, locations of interest to pre-contact populations are often the same for modern populations. Development into previously undisturbed areas can inadvertently and negatively affect sites and areas culturally significant to tribal nations. Osage Nation is concerned this project is one of those situations.

The increased water discharge allotted within the proposed permit has potential to increase erosion in an unnamed tributary feeding Mill Bayou. Osage Nation understands permitting calculations were conducted for the increased water, but none included potential effects to sacred tribal properties. To adhere to the National Historic Preservation Act and National Environmental Policy Act legislation, DEQ must consider effects to tribal properties. Additionally, to avoid violating the Arkansas State Unmarked Burial Act (Act 753 of 1991, as amended) any affects to burials must be avoided. Anyone knowingly desecrating or permitting the desecration of a burial ground commits a Class D felony on the first offense and a Class C felony for subsequent offenses. It should also be noted that the Osage site in question is also afforded protection under Arkansas' archaeological site protection laws (Arkansas Code 13-6-308), that specifies, "no person, natural or corporate, shall knowingly...deface, mutilate, destroy, or otherwise injure any artifact or archaeological site." Any action, permitted or otherwise, that would desecrate, disturb, or destroy such an Osage site must be avoided. This project will directly increase water discharges that would erode, destabilize, and ultimately destroy Osage protected sites. The Osage Nation believes strongly that the Department of Environmental Quality shares the Osage Nations concerns given your mission to protect Arkansas resources and stand as a respected steward of these lands.

The Osage Nation Historic Preservation Office anticipates formal consultation from DEQ concerning the permit and the increased risk of adverse effects to federally protected sacred properties within the discharging fluvial system. Zero government-to-government consultation has been conducting for this project, an increasing concern for Osage Nation. Restoration of the consultation process would include

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OSAGE NATION HISTORIC PRESERVATION OFFICE



inquiring with all tribal stakeholders to ensure no historic properties are effected, and proactively avoiding future indirect effects during project permitting.

Thank you for hearing Osage Nation on this matter. The Osage Nation Historic Preservation Office is grateful for the opportunity to comment to DEQ on the proposed permitting.

# Interagency Communication

## Breakdown – ADEQ not reviewing forms

Example: The ADEQ Notice of Intent storm water application was checked NO by the Paradise Valley applicant in answering if “Waters of the United States” would be impacted; **ADEQ is not reviewing these forms or they surely would have noticed this was incorrect and would have sent back to the applicant to please check the correct box and then the USACE would have been properly notified. The citizens instead informed USACE and ADEQ about the impact.**

Name of Receiving Municipal Storm Sewer System (If applicable): Pulaski County, Arkansas

Will you be conducting any in-stream or wetted area activities (i.e. re-routing, trenching, stabilizing, sloping, etc.) ? ☐ Yes ☒ No

If yes, have you obtained an approval for a Short Term Activity Authorization (STAA) from the Department? ☐ Yes ☒ No

Is the stream or wetted area considered “Waters of the United States”? ☐ Yes ☒ No

If yes, have you obtained a 404 permit from the U.S. Army Corps of Engineers? ☐ Yes ☒ No

For information regarding what constitutes “Waters of the United States” please contact the U.S. Army Corps of Engineers, Regulatory Division in the District in which the activity is to take place. Below is the contact information for the three U.S. Army Corps of Engineers Districts in the State:

Little Rock District	Ph: (501) 324-5295, <a href="mailto:CESWL-Regulatory@usace.army.mil">CESWL-Regulatory@usace.army.mil</a>
Vicksburg District:	Ph: (601) 631-7071, <a href="mailto:regulatory@usace.army.mil">regulatory@usace.army.mil</a>
Memphis District:	Ph: (901) 544-3471, <a href="mailto:MemphisPAO@usace.army.mil">MemphisPAO@usace.army.mil</a>



# ADEQ in Reactive Mode

- West Fork
- Decatur

“Inadequately treated sewage flowed in the past two years into the West Fork of the White River from West Fork's treatment plant and into Columbia Hollow Creek from Decatur's plant, according to records at the Arkansas Department of Environmental Quality.” *Dem-Gaz 2019*

- Pea Ridge
- Centerton
- Lakeview West

Lakeview West is in the Lake Maumelle Watershed & has a pending ADEQ stormwater permit yet they've been constructing homes and using heavy equipment to move earth and construct roads. This work is being done without proper implementation of BMPs and those BMPs which have been implemented are not being properly maintained.

- And more...

# Some of our Questions

- How many other ADEQ-permitted projects..
  - are allowing applicants to dump illegal amounts of chlorine?
  - allow deadlines to slip and BMPs to fail?
  - are not receiving adequate inspections?
  - have expired permits and are operating without penalties?
  - are dumping sewage into zero flow streams?
- How many other ADEQ applicants are given such an inordinate amount of time to comply to BMPs to the detriment of Arkansas citizens, streams, lakes, wetlands?
- Why are bad actors allowed so much leeway and concessions by ADEQ?
- Why is phosphorus removal, testing, and reporting not required everywhere in Arkansas?
- How many other projects with ADEQ have not undergone a “Wetlands and Waters of the U.S. Delineation” USACE issues 404s probably in the dozens, yet ADEQ issues SWPPPs in the 100s?
- Why would a stormwater permit still be pending for a site under construction and who is responsible for inspecting sites from ADEQ to ensure SWPPP BMPs are being met?
- Why is ADEQ avoiding person-to-person discussions with a tribe who has requested a meeting? Perhaps they didn’t get the memo with Governor Sanders declaring September 18-24, 2023 Native American Week.
- Why is ADEQ avoiding person-to-person discussions with Maumelle Water Corporation (MWC) about their drinking water well concerns? If it was Central Arkansas Water (CAW), would they have met their demands?

# Some of our Suggestions

- ADEQ's leadership should be made to answer for their permitting decisions, inspections, reporting, and engineering practices by looking at these and other case studies.
- ADEQ has failed every reasonable test for managing chlorine as a disinfectant especially for no-flow streams and because of this the legislature should remove this stumbling block and require a different type of disinfectant system be used for all discharges in no-flow streams.
- Regulation 6 of the State's Administration of the National Pollutant Discharge Elimination System (NPDES) should be amended to prohibit any potential future discharges from cities or industries or developments into the Mill Bayou Watershed, the location of 3 drinking water wells. Such a prohibition currently exists for Lake Maumelle Watershed and Buffalo River Watershed. Also consider a prohibition against discharges in a natural wetlands and near homes in a floodplain.

# Closing

Residents not only give our representatives our vote, but also our trust. We've been trusting that our government appointed officials & agencies are doing the right thing for the people of Arkansas.

Unfortunately, this has been found to be a myth in some cases and the trust is broken. Now, We the People, by whom and for whom the federal, state, and local governments were made require an accounting. This issue is not democrat or republican but Arkansan – we can all agree that we want safe streams, lakes, and wetlands to enjoy.

ADEQ needs to be brought to task and if this requires new leadership at all its levels, so be it because this issue is bigger than any one person. ADEQ is quietly undermining the Governor's stated goals for the natural state's clear running streams and lakes. Arkansans have been sounding the alarm for years and today is judgement day. Fix the ADEQ before Arkansas the Natural State is no longer the reality but wishful thinking.