ADEQ
ARKANSAS
Department of Environmental Quality

Mr. Russell Nelson
U.S. EPA, Region 6
nelson.russell@epa.gov

February 6, 2015

RE: Documentation of stakeholder involvement during the 2012-2013 Triennial Review of Regulation No. 2.

Dear Mr. Nelson,

I do not know if Mr. Grisham is a property owner of the Arkwood, Inc. NPL site located in Omaha, Arkansas. This former wood treating site has a very long history as reported in EPA's Third Five Year Review Report (dated July 2011). The remedy for the site appears to include, among other things, treating groundwater discharging at New Cricket Spring, which is then collected and treated to reduce the concentration of pentachlorophenol ("PCP"). With reference to PCP, EPA's Third Five Year Review Report's summary provides as follows:

> Non-ozonated water continues to be injected in the vicinity of the sinkhole as a means of flushing and facilitating the efficient operation of the treatment system at New Cricket Spring. The ozone injection system has reduced PCP concentrations in New Cricket Spring by more than 95 percent. However, the PCP values have reached an average of 50 micrograms per liter (µg/l) over the past five years and an average concentration below 20 µg/l over the past two years. The current injection and treatment systems are able to destroy PCP in the water to the level set by Arkansas Department of Environmental Quality (ADEQ) (9.3 µg/l monthly average and 18.7 µg/l daily maximum).

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The cleanup values referenced in EPA's summary are derived from Arkansas's water quality standard for PCP, which is found at Reg. 2.508 governing toxic substances, and includes acute and chronic aquatic life values based on hardness. Arkansas's Water Quality Standards (Regulation No. 2) are reviewed every three years as required by the federal Clean Water Act. The last Triennial Review was initiated in 2013. However, prior to initiating the rulemaking, ADEQ provided extensive opportunities for public involvement in the development of the proposed changes for the Triennial Review.

Prior to the initiation of the last Triennial Review of Regulation No. 2, a series of informal public participation efforts were undertaken by ADEQ to maximize public involvement in the development of the proposal for amending Regulation No. 2. These informal efforts included listening sessions and then stakeholder workgroup meetings. These efforts were undertaken during 2012, the year before formal rulemaking was initiated. Neither the five listening sessions held around the state nor the seven stakeholder workgroup meetings are rulemaking procedures mandated by state law or regulation.

Listening Sessions

ADEQ held five informal public listening sessions in early 2012 to provide interested persons an opportunity to comment on possible revisions to Arkansas's Water Quality Standards. A news release for these listening sessions was issued on January 20, 2012, and the schedule for the listening sessions provided in the press release was as follows:

- February 9, 2012, ADEQ Headquarters Building, 5301 Northshore Drive, North Little Rock; 2:00 p.m.
- February 15, 2012, Clarion Inn Terrace Room, 1255 S. Shiloh, Fayetteville; 6:00 p.m.
- February 16, 2012, University of Arkansas Community College at Batesville, Independence Hall, Room 103, 2005 White Drive, Batesville; 6:00 p.m.
- February 21, 2012, Eugene Woods Civic Center, 212 W. Polk, West Memphis; 6:00 p.m.
- February 23, 2012, Arkansas Oil and Gas Commission Building, 2215 W. Hillsboro, El Dorado; 6:00 p.m.

In addition to providing information about the listening session, the press release also informed the public that ADEQ was seeking interested persons to volunteer for a stakeholder workgroup to be formed as part of the Triennial Review process. The press release noted that a series of workgroup meetings would be held later in the year to assist the ADEQ staff in developing a final draft of proposed changes to Regulation 2, which would be submitted to the Arkansas Pollution Control and Ecology Commission ("Commission") for initiation of the rulemaking process. The press release also informed interested persons unable to attend the informal meetings that they could submit written comments on any changes they would like to see made to Regulation 2, if the written comments were submitted to ADEQ by 4:30 p.m. on February 29, 2012. (The comments could be submitted via regular mail or email). In addition to the January 20, 2012 press release, notice of the listening sessions was posted on the ADEQ website, and email notifications were issued as indicated below:

1/23/12 – e-mail requesting Notice of Public Listening Sessions be linked on Hot Topics on the ADEQ main page, the Water Division Homepage, and the Water Planning Homepage
1/23/12 – e-mail requesting Notice of Public Listening Sessions be sent to the Reg. change notification e-mail list[1]
1/26/12 – e-mail with an attachment to ADEQ Watershed Outreach & Education Section to send the notification to their contacts
1/27/12- e-mail notifying that the announcement was posted on The Arkansas Wildlife Federation Facebook page
1/30/12 – e-mail notification from ADEQ Watershed Outreach & Education Section that 33 read receipts have been received.
1/30/12 – e-mail notification that the announcement had been featured in the Mitchell Williams Arkansas Environmental, Energy and Water Law Blog
1/31/12 – e-mail notification that the announcement had been noted in the Ozarks Water Watch January 30, 2012 newsletter

[1] Under Arkansas law, individuals or organizations who have asked to receive notice of proposed regulation changes are notified of proposed changes by electronic mail or via First Class mail through the U.S. Postal Service. This email list was the one used to notify members of the public about the listening sessions.

2/2/13 – e-mail notification that the announcement had been shared by the Arkansas Section of the American Water Resources Association
2/2/13 – e-mail notification that the announcement had been noted in Arkansas Out-of-Doors newsletter
2/6/12 – e-mail notification that the announcement had been shared by the Friends of the North Fork and White Rivers
2/7/12 – e-mail request for the announcement to be shared with the Wastewater Licensing Committee on 2/8/12

At each listening session where the public was invited to provide comments on changes they would like to see, ADEQ Water Division staff made a brief presentation to explain the goals of the listening sessions and future stakeholder workgroup meetings, as well as the APC&EC's rulemaking process.

Stakeholder Workgroups

From May through December 2012, seven stakeholder workgroup meetings were held to provide further public input on the proposed revisions to Regulation No.2. Although the number of stakeholders participating on the workgroup was limited to 21 people representing federal, state, and local government agencies, agricultural, industrial, and commercial interests, and environmental and conservation associations, the stakeholder meetings were open to the public. Press releases were issued prior to each meeting to notify the public of the meetings and notice of the meetings was posted on the ADEQ web page. Information related to the stakeholder meetings is provided below:

4/30/12 – Letters sent to Stakeholder Workgroup interested parties.
5/1/12 – Letters sent to Stakeholder representatives notifying of first meeting.
5/7/12 – News Release
5/10/12 - Letters sent via e-mail to Stakeholder representatives including materials for review
5/9/12 – E-mail to computer services division for the Triennial Review website to go live and have a link on the ADEQ Home Page in the Hot Topics section.
http://www2.adeq.state.ar.us/water/branch_planning/wqs_review.htm
5/14/12 - Stakeholder workgroup meeting
5/24/12 – News Release
6/4/12 – Stakeholder workgroup meeting
6/15/12 – News Release
6/18/12 – Stakeholder workgroup meeting
7/3/12 – News Release
7/9/12 - Stakeholder workgroup meeting
7/19/12 – News Release
7/23/12 - Stakeholder workgroup meeting
8/6/12- Stakeholder workgroup meeting
12/5/12 – News Release
12/10/12- Stakeholder workgroup meeting

Rulemaking

The formal rulemaking to amend Regulation 2 was initiated at the February 22, 2013 Commission meeting. Prior notice of this Commission meeting was provided through a press release, issued February 15, 2013, and on the Commission's website. Both the Commission's

press release and the website listed changes to Regulation 2 as an agenda item to be taken up by the Commission at its February 22, 2013 meeting.

The rulemaking process to amend Regulation 2 was initiated on February 22, 2013 by Commission Minute Order 13-12. This rulemaking was assigned Docket #13-003-R, filings for which can be accessed through the Commission's website at the following link: http://www.adeq.state.ar.us/regs/drafts/reg02/13-003-R/ .

Notice of the comment period and the dates and locations of the public hearings were published twice in a newspaper of statewide circulation on February 27 and 28, 2013. The Commission held four public hearings during April of 2013 to receive comments on the proposed changes to Regulation 2. The scheduled public hearings on Regulation 2 were as follows:

- April 15, Jonesboro: Allen Park Community Center, 3609 Race Street, 6 p.m.
- April 18, Fayetteville: Room 219, Fayetteville City Administration Building, 113 W. Mountain Street, 6 p.m.
- April 22, El Dorado: South Arkansas Community College, East Campus, Workforce Development Building, 3696 E. Main Street, 6 p.m.
- April 24, Arkansas Department of Environmental Quality (ADEQ) Headquarters Building Commission Room, 5301 Northshore Drive, North Little Rock, 2 p.m.

The public comment period which began on February 27, 2013, ended on May 8, 2013. The public notice for the proposed changes to Regulation 2 noted that oral and written statements could be provided at the public hearings, and written and electronic mail comments could be provided by regular mail or email to: reg-comment@adeq.state.ar.us. The public notice also noted that copies of the proposed Regulation 2 changes were available for public inspection at the ADEQ's North Little Rock office and at ADEQ information depositories located in public libraries at Arkadelphia, Batesville, Blytheville, Camden, Clinton, Crossett, El Dorado, Fayetteville, Forrest City, Fort Smith, Harrison, Helena, Hope, Hot Springs, Jonesboro, Little Rock, Magnolia, Mena, Monticello, Mountain Home, Pocahontas, Russellville, Searcy, Stuttgart, Texarkana, and West Memphis; in campus libraries at the University of Arkansas at Pine Bluff and the University of Central Arkansas at Conway; and in the Arkansas State Library, 900 West Capitol, Suite 100, Little Rock. In addition, it was noted that a copy of the draft regulation showing the proposed changes, along with related support documents, were available for viewing or downloading at the ADEQ website located at: www.adeq.state.ar.us/water/branch_planning?wqs_review.htm. .

Additionally, two press releases were issued on March 6, 2013 and April 3, 2013, announcing the public hearings and the opportunity for the public to comment on the proposed changes to Regulation 2.

Finally, it should be noted that Arkansas law[2] requires notice of regulation changes to be mailed or emailed to all persons who have requested advance notice of rulemaking proceedings. ADEQ maintains the lists and sends out the notices. Mr. Grisham has never asked to be provided such notice of any regulation changes by either mail or email.

[2] Ark. Code Ann. § 8-4-202 (d)(1)(C).

If you have questions concerning the public participation opportunities associated with the 2013 Triennial Review, please let me know.

Thank you.
Ellen Carpenter
Water Division Chief