



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Waste Water Management, Inc. (Woodsland Edge Subdivision) Permits: Arkansas State Game and Fish Commission Request for Adjudicatory Hearing/Commission Review

Arkansas Environmental, Energy, and Water Law Blog

09/26/2016

The Arkansas State Game and Fish Commission ("AGFC") filed a September 16th Request for Adjudicatory Hearing & Commission Review ("Request") before the Arkansas Pollution Control and Ecology Commission ("Commission") regarding:

...the decision by the Arkansas Department of Environmental Quality ("ADEQ" or "the Department") to issue NPDES Permit No. AR0052621 and State Construction Permit No. AR0052621C to Waste Water Management, Inc., - Woodsland Edge Subdivision ("Woodsland Edge") on August 18, 2016.

AGFC's Request addresses a final Clean Water Act National Pollution Discharge and Elimination System ("NPDES") permit and state construction permit issued to Woodsland Edge authorizing construction of a wastewater treatment plant ("WWTP") and discharge into Lake Conway.

The Request includes a description of AGFC's ownership of Lake Conway. The 6,700-acre lake is described as:

...the largest owned by AGFC and the largest lake ever constructed by a state wildlife agency in the United States. Because of its large size, central location and excellent fishing, Lake Conway has been one of the most popular fishing locations in the state since it was constructed on Palarm Creek in 1948. Major sportfish pursued by anglers in Lake Conway include blue catfish, bluegill, channel catfish, crappie, flathead catfish, largemouth bass, and redear sunfish.

AGFC argues in its Request that it has a Land Use Policy applicable to Lake Conway. The Land Use Policy is stated to prohibit any discharges into the lake, including septic discharge, gray water, and discharge from individual sewage treatment systems.

The Request further describes AGFC's biologists concern that wastewater discharges into Lake Conway can be directly attributed to the growth of undesirable aquatic biota. A 1997 ADEQ study is stated to have concluded that elevated nutrient concentrations have "existed in Stone Dam Creek, which drains into Lake Conway, and were stimulating increased plant growth which, in turn, caused significant daily fluctuations in pH and dissolved oxygen."

AGFC and ADEQ staff are stated to have met in 2016 to discuss interest by one or more proposed subdivision developments interested in possibly discharging treated municipal sewage wastewater into Lake Conway or a creek draining into the lake. AGFC is stated to have subsequently voiced concerns about such discharges which included a copy of a study that had been prepared titled Lake Conway Water Quality and Sediment Study Report ("Report"). The Report findings are characterized as concluding that water conditions in Lake Conway were "eutrophic to hyper-eutrophic" based upon high concentrations of chlorophyll-a and total phosphorus, and recommended that sewage wastewater discharge into the lake be restricted.

The Woodsland Edge WWTP is described as originally being proposed to discharge up to 30,000 gallons per day of municipal wastewater into an unnamed tributary of Little Creek, which drains directly into Lake Conway. AGFC submitted comments which included the previously referenced study and expressed concerns about the potential detrimental effect to Lake Conway of such discharge. Comments in relation to the previously referenced permits (in the proposed stage) also stated that an alternative to the proposed discharge points was to connect to the existing permitted sewer-collection system operated by Conway Corporation.

AGFC's Request states that ADEQ responded to its comments on the two permits acknowledging an understanding of the position:

. . .but it was granting the permits anyway and "[t]o assess the nutrient contribution of the proposed facility, the Department has included monitoring and reporting requirements for Total Phosphorus and Nitrate + Nitrite Nitrogen [and the] data collected would be utilized in any future analysis of the nutrient loading of the Lake Conway watershed." Elsewhere in its Response to Comments, ADEQ did not identify a maximum nutrient loading capacity for the receiving waters and readily admitted that "it is uncertain exactly how many comparative discharges Lake Conway can accept before eutrophic conditions are reached."

AGFC argues that ADEQ's permitting decision was in contravention of the legal jurisdictional authority AGFC exercises pursuant to Amendment 35 of the Arkansas Constitution for the control, management, restoration, conservation and regulation of the fish and wildlife resources of the State, including for Lake Conway, which is owned and operated by AGFC in trust for the citizens of the State of Arkansas (referencing the previously referenced Land Use Policy). Concern is also expressed that the permitting decision contradicts the professional judgment of AGFC that the discharge poses an unacceptable risk of harm to the viability of Lake Conway (i.e., interferes with the primary purpose for wildlife conservation and recreational sportfishing.)

The remainder of the Request outlines AGFC's arguments that there are deficiencies associated with the permits and the process ADEQ undertook in issuing them.

[A copy of the Request can be downloaded here.](#)