

STATEMENT OF JOINT PRINCIPLES AND ACTIONS

WHEREAS the States of Arkansas and Oklahoma share a number of streams and rivers that flow from Arkansas into Oklahoma, six (6) of which are designated as Scenic Rivers in the State of Oklahoma;

WHEREAS the States of Arkansas and Oklahoma share a common goal of improving water quality within the States' shared watersheds;

WHEREAS the States of Arkansas and Oklahoma agree that excess nutrients from point and non-point sources can result in nutrient surplus for phosphorus and nitrogen;

WHEREAS excess phosphorus in watersheds is known to degrade water quality and threaten aquatic life;

WHEREAS Arkansas and Oklahoma agree that reducing the amount of phosphorus present in the States' shared watersheds will further the States' shared goal of improving water quality;

WHEREAS, in an effort to reduce the amount of phosphorus present in its Scenic Rivers, the State of Oklahoma has passed, and submitted to the United States Environmental Protection Agency for approval under Section 303(c) of the Clean Water Act, a total phosphorus criterion of .037 mg/l for its six (6) Scenic Rivers, modified by an implementation schedule that allows dischargers to undertake interim actions designed to improve water quality in the Scenic Rivers consistent with achieving compliance with the State of Oklahoma's .037 mg/l criterion for phosphorus, by 2012;

WHEREAS, Arkansas has steadfastly insisted and maintains that the .037 mg/l criterion for total phosphorus is neither attainable nor appropriate;

WHEREAS, Arkansas and Oklahoma agree that individual but coordinated strategies to meet water quality goals is in the best interest of both States;

The States of Arkansas and Oklahoma, acting through their environmental agencies, including, but not limited to, the Arkansas Department of Environmental Quality, the Arkansas Soil and Water Conservation Commission, the Oklahoma Secretary of Environment, the Oklahoma Water Resources Board, the Oklahoma Department of Environmental Quality and the Oklahoma Scenic Rivers Commission, are working together to reduce phosphorus in the shared Scenic Rivers Watersheds. In furtherance of that goal, the States of Arkansas and Oklahoma, acting through their environmental agencies, enter into this Statement of Joint Principles and Actions.

ARKANSAS LEGISLATION

In furtherance of the States' shared phosphorus reduction goals, the Arkansas General Assembly enacted significant legislation to improve the States' shared watersheds. Consequently, the Arkansas Soil and Water Conservation Commission is committed to developing regulations to implement the following recently passed Arkansas legislation:

- Act 1059 of 2003, requiring the Arkansas Soil and Water Conservation Commission to develop and implement programs to certify the minimal competence and knowledge of persons preparing nutrient management plans and of persons making nutrient application, including the proper utilization of litter,
- Act 1060 of 2003, requiring the Arkansas Soil and Water Conservation Commission to operate an annual registration program to assemble and maintain information on the number, composition, and practices of poultry feeding operations in the state, including the land application practices used by each individual poultry feeding operation, as well as the amount of litter stored, applied and transferred by each operation, and
- Act 1061 of 2003, declaring certain areas, including the Illinois River Watershed, to be nutrient surplus areas for phosphorus and nitrogen, and making it a violation of State law to apply designated nutrients within a nutrient surplus area except in compliance with a nutrient management plan approved by the Arkansas Soil and Water Conservation Commission or at a protective rate established by Arkansas Soil and Water Conservation Commission.

LITTER REMOVAL/REUSE TECHNIQUES

The States of Arkansas and Oklahoma, acting through their environmental agencies, will jointly pursue funding, including federal grants or other federal funding, for various litter removal and reuse techniques, such as:

- the development of a litter bank;
- burning litter for energy;
- the use of biological treatment (e.g. the Stamper Project);
- pelletization to produce a marketable fertilizer product: and

- transportation of excess litter from the affected watersheds.

JOINT PHOSPHORUS INDEX

The States of Arkansas and Oklahoma, acting through their environmental agencies, are working together toward development of a Joint Phosphorus Index by August 2004. The States will consider utilization of the Joint Phosphorus Index for the development of Nutrient Management Plans.

DATA COLLECTION

Although information collected pursuant to Act 1060 of the 2003 Arkansas General Assembly, quantifying the amount of litter stored, applied and transferred by individual poultry feeding operations is made confidential under the statute, the Arkansas Soil and Water Conservation Commission will prepare detailed compilations and summaries of this information and make these compilations and summaries available upon request to the public, the Oklahoma Environmental Agencies and EPA .

The Arkansas Soil and Water Conservation Commission will work with Oklahoma in determining the format for these compilations and summaries (e.g., information by county, geographic area or watershed), as well as the amount of detail necessary to address Oklahoma's reasonable concerns. Similarly, Oklahoma will work with Arkansas to provide comparable information for poultry operations in Oklahoma.

WATERSHED MONITORING

The States of Arkansas and Oklahoma, acting through their environmental agencies, will coordinate monitoring in partnership with the Arkansas/Oklahoma Arkansas River Compact Commission throughout the shared Oklahoma Scenic Rivers Watersheds based on a common protocol and will share all information/data resulting from such monitoring. The States will hold discussions aimed at arriving at the agreed upon monitoring protocol by August 2004.

The States will submit the agreed upon design to EPA for review and endorsement.

EPA has committed to seek to obtain federal funding for the agreed upon monitoring.

REOPENER PROVISION

Oklahoma periodically reevaluates all of its water quality standards. In particular,

Oklahoma will reevaluate Oklahoma's .037 mg/l criterion for total phosphorus in Oklahoma's Scenic Rivers by 2012, based on the best scientific information available at that time, and with the full, timely inclusion of officials from the State of Arkansas representing both point and non point source dischargers.

CONTROLS ON LARGER ENTITIES

The States of Arkansas and Oklahoma, acting through their environmental agencies, understand that point source dischargers will need time to achieve water quality improvements in the affected watersheds consistent with Oklahoma's criterion for total phosphorus. Therefore, the States, acting through their environmental agencies, will issue to the point source dischargers to the shared Oklahoma Scenic Rivers Watersheds with a design capacity of greater than 1 MGD, specifically the Cities of Fayetteville, Rogers, Springdale, Siloam Springs and Bentonville, Arkansas, National Pollutant Discharge Elimination System ("NPDES") permits reflecting an effluent limit for total phosphorus of 1 mg/l (30 day average) pursuant to the implementation schedule set out below. The City of Tahlequah, Oklahoma received an NPDES permit issued in 1992 requiring it to meet a total phosphorus effluent limit of 1 mg/l.

The States of Arkansas and Oklahoma, acting through their environmental agencies, will reissue the above-specified cities' NPDES permits on a normal five (5) year reissuance cycle, with the understanding that NPDES permits for these point source dischargers to the shared Oklahoma Scenic Rivers Watersheds issued in the year 2012 or beyond must include phosphorus limits stringent enough to meet applicable water quality standards.

Schedule for Large Cities

- Rogers – to meet 1 mg/l limit starting in 2004
- Springdale – expansion to meet 1 mg/l limit starting in 2007
- Siloam Springs – expansion to meet 1 mg/l limit starting in 2009
- Fayetteville – existing facility already complies; new facility to meet 1 mg/l limit once operational (circa 2005)
- Bentonville – new facility to meet 1 mg/l limit once operational (date unknown).

CONTROLS ON SMALLER ENTITIES

The State of Arkansas, acting through its environmental agencies, will work aggressively throughout the implementation period with those existing Arkansas entities with design capacities of less than 1 MGD but greater than or equal to .5 MGD to reduce the level of phosphorus in their discharges to the maximum extent possible through voluntary controls aimed at reaching either 1 mg/l total phosphorus or a phosphorus loading limit based on 1 MGD x 1 mg/l by the year 2012. The City of

Westville, Oklahoma is currently under a compliance order to meet a 1 mg/l limit within two (2) years.

NOTE: The States of Arkansas and Oklahoma, acting through their environmental agencies, understand that the above described controls do not apply to facilities, such as cooling water intake facilities, whose discharges do not contribute phosphorus to the receiving stream, so long as those facilities discharges do not contain increased concentrations of phosphorus.

WATERSHED PLAN

The States of Arkansas and Oklahoma, acting through their environmental agencies, will work together in partnership with the Arkansas-Oklahoma Arkansas River Compact Commission toward the goal of producing a Watershed Plan.

NOTE: EPA's Clean Water Act Section 319 guidance sets out nine (9) elements for a Watershed Plan.

GENERAL PROVISIONS

The parties understand that this document is not intended to create, diminish or waive any legal rights or obligations among the parties or any other person or entity not a party to this document, including individual farmers. Nothing in this document creates any rights or causes of action for any person, whether party to this document or not.

The parties recognize that a request by Oklahoma for more stringent NPDES permit concentration limits than those set out in this document, or a challenge by Arkansas to Oklahoma's phosphorus standard, would terminate this document. If a third party brings a lawsuit inconsistent with the terms of this document, both parties will indicate to the Court their support for the terms of this document.

EPA has told the parties this document represents a very positive step by the States, acting through their environmental agencies, toward improving water quality in the shared Oklahoma Scenic Rivers Watersheds, which is consistent with achieving compliance with the State of Oklahoma's .037 mg/l criterion for total phosphorus in the State's Scenic Rivers.

The States of Arkansas and Oklahoma, acting through their environmental agencies, understand that as parties to this document, they intend to respect and follow the commitments made herein, and that so long as all commitments made herein are

met, the parties will continue to seek progress under this document toward achieving improvements in water quality.

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