



October 15, 2014

Mr. Walter L. Baker, PE
Utah Division of Water Quality
P.O. Box 144870
Salt Lake City, UT 84114-4870
uwqcomments@utah.gov

Re: Supplemental Comments from ATK Launch Systems, Inc. on Utah Division of Water Quality's (DWQ) Change in Proposed Rule: Technology-Based Phosphorus Effluent Limits (DAR File No. 38530, Utah Admin. R317-1-3)

Dear Mr. Baker:

ATK Launch Systems, Inc.'s (ATK) submits the following supplemental comments on the above-reference Change in Proposed Rule (CPR1). These supplemental comments incorporate ATK's initial comments (submitted on August 1, 2014) by reference (initial comments).

Narrowed Exceptions (Now Variances). CPR1 would eliminate all exceptions to the proposed technology standard and would, instead, provide for flexibility under the rule as achieved through variances that would be periodically reviewed. The revised characterization of exceptions as limited variances is confounding in at least two ways. First, it would improperly broaden the applicability of the rulemaking by, among other things, eliminating the de minimis exception. ATK maintains that there are circumstances where a de minimis exception is appropriate. For example, no technology-based limit or loading cap should apply if a discharge does not result in increased loading of phosphorus to the receiving water. As noted in ATK's initial comments, the de minimis exception could be directly relevant to ATK given existing data indicating that Blue Springs (the source of Blue Creek) potentially has ambient phosphorus concentrations up gradient from the ATK facilities. As such, ATK maintains that nutrient concentrations in discharges with phosphorus related to -- or no different from -- concentrations in the intake water should be accepted from the rule (as opposed to requiring ATK to seek a variance - which lacks specificity, based on showing that limits and a cap "are clearly unnecessary"). In fact, ATK recommends that same exception be available to discharges that use chemicals necessary for proper cooling tower operation. As further explained below, the use of nutrient-based chemicals in cooling towers is efficient and effective and may not be able to be

replaced for a reasonable cost. The de minimis exception would provide defensible flexibility to the rule's applicability.¹

Second, to the extent those exceptions to the rule would be eliminated or amended or characterized as variances, a discharging industrial source could be required to treat flows with background nutrient concentrations unrelated to the discharger's operations. ATK suggests that the exceptions to the nutrient rule be retained and the variance provisions specifically drafted to reflect circumstances that require periodic review.²

Economic Hardship. The proposed economic hardship provisions recognize detailed qualifying criteria for discharges from publicly owned treatment works (POTWs). The provision has also been properly revised to reflect a willingness to consider "other demonstrations of economic hardship on a case-by-case basis." CPR1, R317-1-3.3.C.1.b. ATK supports the proposed change to allow for site-specific economic hardship considerations. To that end, ATK reiterates its views (more fully detailed in the initial comments) that DWQ has not fully considered economic implications of the proposed rulemaking on industry. Based on information provided by a water treatment chemical vendor, phosphonates and polymers have become the mainstay of the treatment products considered "state-of-the-art" as they are used for corrosion and deposition control in boilers and cooling towers. Costs associated with these water treatment products would substantially increase if phosphonates, in particular, were removed from available options for the treatment of water in boilers and cooling towers. ATK suggests that DWQ consider the economic impact this rule will have on water treatment chemicals which are widely used by industry.

Proposed Self-Monitoring. ATK understands that the proposed rulemaking would waive monitoring for nitrogen, phosphorus and other constituents if "a discharging treatment works demonstrates to the Director that there is no reasonable potential to discharge nitrogen or phosphorus." CPR1, R317-1-3.3.D.3. In fact (and in contrast), the National Pollutant Discharge Elimination System (NPDES) regulations clarify that the burden for assessing reasonable potential is on the Director, not the discharger. 40 CFR 122.44(d) (1) (ii). The CPR1's seeming shift of the burden from DWQ to the discharger, e.g., industry, does so without considering the cost to industry. ATK recommends DWQ clarify that the burden for evaluating reasonable potential is on the Director; dischargers can, of course, provide information to support the Director's determination.

¹ . Notably, other states, such as Colorado, provide specific exceptions to the numeric effluent limitations relative to nutrients. Those exceptions cover discharges for which nutrients originate in intake water or exist as a result of the use of chemicals shown to be necessary for proper operation of cooling towers. *See, e.g.*, 5 CCR 1002-85.5(3) (b). Indeed (and as suggested in these comments), the Colorado provisions distinguish (and provide for) both exceptions and variances from the nutrient standards. *Id.* at 85.5(3) (c).

² ATK supports the proposed new proposed variance (R317-1-3.3.C.2.d) allowing innovative and alternative approaches that are "equivalent" to technology-based limits.

October 15, 2014

Page Three

Additional Rulemaking. ATK recognizes and appreciates that there is a subsequent change in proposed rule (CPR2) that will delay the implementation of the proposed self-monitoring pending assessment of reasonable potential. In particular, the reported information indicates that CPR2 would delay the implementation of the self-monitoring requirements for phosphorus, nitrogen and other constituents by six months, i.e., to July 1, 2015. DWQ has indicated that “[t]his delay will allow time for [DWQ] to complete an evaluation of [33 named industrial facilities including ATK] to determine their reasonable potential to discharge phosphorus above the proposed 1 mg/L limit.” Memorandum from Paul Krauth, PE to Walt Baker (September 15, 2015). The additional time for the Director to assess reasonable potential better tracks the burden of proof identified above. ATK understands that CPR2 will be issued for a separate public comment period to expire November 15, 2014.

ATK appreciates the efforts DWQ has made to consider its comments so far and to specifically document the ways it is addressing nutrient waste loading. Thank you for your additional consideration of these supplemental comments.

Sincerely,



George Gooch, Manager
Environmental Services