

EXHIBIT D

COMPLIANCE WITH ACT 143 OF 2007

Marcy Taylor

From: O'Malley, Michael [OMALLEY@adeq.state.ar.us]
Sent: Thursday, March 11, 2010 1:45 PM
To: pbrown@arkansasedc.com
Cc: Marcy Taylor
Subject: FW: City Water and Light Plant of the City of Jonesboro
Attachments: Package to AEDC.PDF

Ms. Brown:

You may recall that I have forward to you for your review a couple of third party rulemakings that were filed with the Arkansas Pollution Control and Ecology Commission.

I am attaching for your review another third party rulemaking that will be filed with the Commission in April 2010. Ms. Marcy Taylor of the Mitchell Williams Law Firm represents the third-party, City Water and Light Plant of the City of Jonesboro.

I would appreciate your reviewing the proposed amendments to Regulation No. 2. If you find that it meets your requirements, I would appreciate receiving a letter from you that will allow the Commission to proceed with the initiation of the rulemaking process.

Please feel free to contact me at 682-7892 or Ms. Taylor with any questions you may have or with any additional information you may require.

I would like to request that you confirm receipt of this package so I will know it arrived safely.

Thanks you for your assistance.

Michael O'Malley
Administrative Hearing Officer
101 East Capitol Ave, Suite 205
Little Rock, Arkansas 72201
501-682-7892

-----Original Message-----

From: Marcy Taylor [mailto:MTaylor@mwlaw.com]
Sent: Wednesday, March 10, 2010 3:31 PM
To: O'Malley, Michael
Subject: City Water and Light Plant of the City of Jonesboro

Dear Judge O'Malley:

City Water and Light Plant of the City of Jonesboro (CWL) will be filing a Petition to Initiate a Third-Party Rulemaking to amend Arkansas Pollution Control & Ecology (APCEC) Regulation No. 2. Pursuant to the *Regulations Formatting and Drafting Guidelines* and the requirements of Act 143 of 2007, attached is a letter addressed to Ms. Patricia Brown of the Arkansas Economic Development Commission (AEDC) seeking a determination that CWL's requested amendment does not impact small businesses. Attached to the letter to AEDC are the following: blacklined copy of the proposed amendment to Regulation No. 2 and the Economic Impact Statement of Proposed Rules or Regulations, EO 05-04: Regulatory Flexibility.

Please forward the information to AEDC for their review and approval. It is my hope to be able to submit the rulemaking Petition to APCEC for consideration at the April Commission meeting. Thank you for your assistance with this.

Marcy

MITCHELL WILLIAMS

Marcella J. Taylor

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Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

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March 10, 2010

Ms. Patricia Brown
Division Director
Arkansas Economic Development Commission
Arkansas Department of Economic Development
One Capitol Mall
Little Rock, AR 72201

Re: Economic Impact/Environmental Benefit Analysis
City Water and Light Plant of the City of Jonesboro
Third Party Rulemaking Petition before the Arkansas Pollution Control
& Ecology Commission

Dear Ms. Brown:

City Water and Light Plant of the City of Jonesboro (CWL) intends to petition the Arkansas Pollution Control & Ecology Commission (APCEC) to amended APCEC Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas. A copy of the proposed amendment and the Economic Impact Statement of Proposed Rules or Regulations, EO 05-04: Regulatory Flexibility are attached for your review. Additional documentation, including a copy of the *Use Attainability Analysis, Bayou DeView, Big Creek, Craighead County, Arkansas*, the study supporting the request to amend APCEC Regulation No. 2, is available for your review upon request. This is being submitted to AEDC pursuant to the requirements of Act 143 of 2007.

CWL is not requesting a change to the actual water quality of the affected streams. Rather the water quality standards changes requested by CWL—(a) modification of the chloride, sulfate and total dissolved solids (TDS) standards for an Unnamed Tributary to Big Creek; (b) modification of the chloride and sulfate standards for Big Creek from the mouth of the Unnamed Tributary to the mouth of Lost Creek; and (c) modification of the chloride, sulfate and TDS standards for Bayou DeView to match Delta Ecoregion standards—reflect current and historic conditions in the affected streams.

There will be no cost to state government associated with the proposed amendment and no regulatory burden such as fees, reporting requirements, or the obtaining of any regulatory permit will be imposed on any small business because of the modification of these minerals standards. The proposed amendment will not create any barrier to entry. No additional requirements will be imposed on any small business by the proposed amendment and no small

Ms. Patricia Brown
March 10, 2010
Page 2

business will be required to implement any changes because of the proposed amendment. The requested changes will have no impact on any small business. It will impact only CWL.

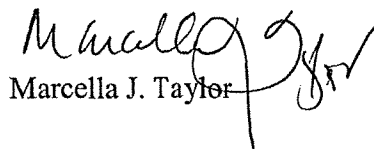
Please review the prepared amendment to APCEC Regulation No. 2, and provide your approval of same pursuant to Act 143 of 2007 as amended by Act 809 of 2009.

Should you have any questions regarding this matter or need any further information, please do not hesitate to contact me.

Sincerely,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

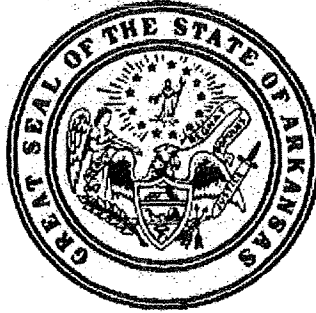
By


Marcella J. Taylor

MJT:ce
Enclosures

cc: The Honorable Michael O'Malley (w/encls.)

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 2

REGULATION ESTABLISHING WATER QUALITY STANDARDS FOR SURFACE WATERS OF THE STATE OF ARKANSAS

INITIAL DRAFT

Submitted to the Arkansas Pollution Control and Ecology Commission on April 23, 2010

banks and/or bottoms of the watercourses or adversely affect any of the associated biota. As a guideline, oil and grease shall not exceed 10 mg/l average or 15 mg/l maximum when discharging to surface waters. No mixing zones are allowed for discharges of oil and grease.

Reg. 2.511 Mineral Quality

(A) Site Specific Mineral Quality Criteria

Mineral quality shall not be altered by municipal, industrial, other waste discharges or instream activities so as to interfere with designated uses. The following limits apply to the streams indicated, and represent the monthly average concentrations of chloride (Cl⁻), sulfate (SO₄⁼) and total dissolved solids (TDS).

<u>Stream</u>	<u>Concentration-mg/L</u>		
	<u>Cl⁻</u>	<u>SO₄⁼</u>	<u>TDS</u>
Arkansas River Basin			
Arkansas River (Mouth to L&D #7)	250	100	500
Bayou Meto (Rocky Branch to Bayou Two Prairie)	64*	ER	ER
Bayou Meto (mouth to Bayou Two Prairie)	95**	45**	ER
Bayou Two Prairie (mouth to Rickey Branch)	95**	45**	ER
Rocky Branch Creek	64*	ER	ER
Arkansas River (L&D #7 to L&D #10)	250	100	500
Cadron Creek	20	20	100
Arkansas River (L&D #10 to Oklahoma line, including Dardanelle Reservoir)	250	120	500
James Fork	20	100	275
Illinois River	20	20	300
Poteau River from Business Hwy 71 to Stateline	120	60	500
Unnamed trib at Waldron	150	70	660
White River Basin			
White River (Mouth to Dam #3)	20	60	430
<u>Unnamed trib to Big Creek</u>	<u>71</u>	<u>60</u>	<u>453</u>
Big Creek	20	30	270
<u>Big Creek from unnamed trib to Whistle Ditch</u>	<u>48</u>	<u>37.3</u>	ER
<u>Bayou DeView from Whistle Ditch to AR Hwy 14</u>	<u>48</u>	<u>38</u>	<u>411.3</u>
<u>Bayou DeView from AR Hwy 14 to its mouth</u>	<u>48</u>	<u>37.3</u>	<u>411.3</u>
Unnamed trib from Frit Ind.	ER	48*	ER
Cache River	20	30	270
Lost Creek Ditch	20	30	270
Bayou DeView	20	30	270
Little Red River (including Greers Ferry Reservoir)	20	30	100
Black River	20	30	270
Strawberry River	20	30	270
Spring River	20	30	290

Stream**Concentration-mg/L**

	<u>Cl⁻</u>	<u>SO₄⁼</u>	<u>TDS</u>
Eleven Point River	20	30	270
Stennitt Creek	ER	ER	456*
South Fork Spring River	20	30	270
Myatt Creek	20	30	270
Current River	20	30	270
White River (Dam #3 to Missouri line, including Bull Shoals Reservoir)	20	20	180
Buffalo River	20	20	200
Crooked Creek	20	20	200
White River (Missouri line to headwaters, including Beaver Reservoir)	20	20	160
Kings River	20	20	150
West Fork White River	20	20	150
St. Francis River Basin			
St. Francis River (Mouth to 36° N. Lat.)	10	30	330
L'Anguille River	20	30	235
Tyronza River (headwaters to Ditch No. 6 confluence)	20	30	350
Ditch No. 27	ER	480	1200
Ditch No. 6 (mouth to Ditch No. 27 confluence)	ER	210	630
Tyronza River (mouth to Ditch No. 6 confluence)	20	60	350
Little River	20	30	365
Pemiscot Bayou	20	30	380
St. Francis River (36° N. Lat. to 36° 30' N. Lat.)	10	20	180
Ouachita River Basin			
Bayou Bartholomew	50	20	500
Chemin-A-Haut Creek	50	20	500
Overflow Creek	20	30	170
Bayou Macon	30	40	330
Boeuf River	90	30	460
Big Cornie Creek	230	30	500
Little Cornie Creek	200	10	400
Three Creeks	250	10	500
Little Cornie Bayou	200	20	500
Unnamed trib from GLCC 003	538*	35*	519*
Unnamed trib to Little Cornie Bayou	305*	ER	325*
Little Cornie Bayou from unnamed trib to State Line	215*	25*	500*
Walker Branch	180*	ER	970*
Gum Creek	104*	ER	311*
Bayou de L'Outre above Gum Creek	250	90	500
Bayou de L'Outre below Gum Creek	250	90	750
Ouachita River (Louisiana line to Camden)	160	40	350
Saline River	20	40	120

Stream**Concentration-mg/L**

	<u>Cl⁻</u>	<u>SO₄⁼</u>	<u>TDS</u>
Saline River east bifurcation at Holly Creek	ER	250	500
Hurricane Cr above Hurricane Lake Dam	20	250	500
Hurricane Cr from Hurricane Lk. Dam to Ben Ball Brdg	125	730	1210
Hurricane Cr from Ben Ball Bridge to Hwy.270	125	700	1200
Hurricane CR from Hwy 270 to Saline River	100	500	1000
Alcoa unnamed tribs to Hurricane Cr.	125	700	1100
Dry Lost Creek and tribs	ER	560	880
Lost Creek to Little Lost Creek	ER	510	820
Lost Creek below Little Lost Creek	ER	300	550
Holly Creek	30	860	1600
Moro Creek	30	20	260
Smackover Creek	250	30	500
Haynes Creek from mouth of Flat Creek to Smackover creek	360*	55*	855*
Flat Creek from mouth of UTA to Haynes Creek	165*	67*	560*
Unnamed trib A to Flat Creek from mouth of EDCC 001 ditch to confluence with Flat Creek	16*	80*	315*
Confluence with unnamed trib A to Flat Creek	23*	125*	475*
Bayou de L'Outre Creek above Loutre Creek	180	ER	970
Unnamed trib UT004 from GLCC	014*	ER	311*
Unnamed trib UT002 from GLCC	278*	90*	500*
Loutre Creek- from Hwy 15 South to the confluence of Bayou de Loutre	256*	997*	1756*
Bayou de Loutre – from Loutre Creek to the discharge for the City of El Dorado - South facility	264*	635*	1236*
Bayou de Loutre – from the discharge for the City of El Dorado-South downstream to the mouth of Gum Creek	250*	431*	966*
Bayou de Loutre – from the mouth of Gum Creek downstream to the mouth of Boggy Creek	250*	345*	780*
Boggy Creek - from the discharge for Clean Harbors El Dorado LLC to the confluence of Bayou de Loutre	631*	63*	1360*
Bayou de Loutre- from the mouth of Boggy Creek downstream to the mouth of Hibank Creek	250*	296*	750*
Bayou de Loutre – from the mouth of Hibank Creek downstream to the mouth of Mill Creek	250*	263*	750*
Bayou de Loutre – from the mouth of Mill Creek downstream to the mouth of Buckaloo Branch	250*	237*	750*
Bayou de Loutre- from the mouth of Buckaloo Branch downstream to the mouth of Bear Creek	250*	216*	750*
Bayou de Loutre – from the mouth of Bear Creek downstream to the final segment of Bayou de Loutre	250*	198*	750*
Bayou de Loutre (Final segment) – from the mouth of	250*	171*	750*

<u>Stream</u>	<u>Concentration-mg/L</u>		
	<u>Cl⁻</u>	<u>SO₄⁼</u>	<u>TDS</u>
Bear Creek to the Arkansas/Louisiana State Line			
Ouachita River (Camden to Carpenter Dam)	50	40	150
Town Creek below Acme tributary	ER	200	700
Unnamed trib from Acme	ER	330	830
Little Missouri River	10	90	180
Muddy Fork Little Missouri	ER	250	500
Bluff Creek and unnamed trib.	ER	651*	1033*
Garland Creek	250	250	500
South Fork Caddo	ER	60	128
Back Valley Creek	ER	250	500
Ouachita River (Carpenter Dam to Headwaters, including Lake Ouachita tributaries)	10	10	100
Red River Basin			
Bayou Dorcheat	100	16*	250
Albemarle unnamed trib (AUT) to Horsehead Creek	137*	ER	383*
Horsehead Creek from AUT to mouth	85*	ER	260*
Cypress Creek	250	70	500
Crooked Creek	250	10	500
Dismukes Creek	26	ER	157
Big Creek from Dismukes to Bayou Dorcheat	20	ER	200
Bois d'Arc Creek from Caney Creek to Red River	113*	283*	420*
Caney Creek	113*	283*	420*
Bodcau Creek	250	70	500
Poston Bayou	120	40	500
Kelley Bayou	90	40	500
Red River from Oklahoma to confluence with Little River	250	200	850
Red River from Little River to Louisiana	250	200	500
Sulphur River	120	100	500
Days Creek	250	250	500
McKinney Bayou	180	60	480
Little River	20	20	100
Saline River	20	10	90
Mine Creek from Hwy 27 to Millwood Lake	90	65	700
Cossatot River	10	15	70
Upper Rolling Fork	20	20	100
Rolling Fork from unnamed trib A to DeQueen Lake	130	70	670
Unnamed tribs A and A1 at Grannis	135	70	700
Mountain Fork	20	20	110
Mississippi River (Louisiana line to Arkansas River)	60	150	425
Mississippi River (Arkansas River to Missouri line)	60	175	450

ER - ecoregion standard

* - based on critical background flow of 4 cfs

** - These limits shall apply to all tributaries of Bayou Meto and Bayou Two Prairie listed in Appendix A
Any modification of these values must be made in accordance with Reg. 2.306.

(B) Ecoregion Reference Stream Minerals Values

The following values determined from Arkansas' least-disturbed ecoregion reference streams are considered to be the maximum naturally occurring levels. For waterbodies not listed above, any discharge which results in instream concentrations more than 1/3 higher than these values for Cl and SO_4^- or more than 15 mg/l, whichever is greater, is considered to be a significant modification of the water quality. Similarly, such modification exists if the following TDS values are exceeded after being increased by the sum of the increases to Cl and SO_4 . Such modifications may be made only in accordance with Reg. 2.306.

CALCULATED ECOREGION REFERENCE STREAM VALUES (mg/l)

Ecoregion	Chlorides	Sulfates	TDS
Ozark Highlands	17.3	22.7	250
Boston Mountains	17.3	15	95.3
Arkansas River Valley	15	17.3	112.3
Ouachita Mountains	15	20	142
Gulf Coastal Plains	18.7	41.3	138
Delta	48	37.3	411.3

(C) Domestic Water Supply Criteria

In no case shall discharges cause concentrations in any waterbody to exceed 250, 250 and 500 mg/l of chlorides, sulfates and total dissolved solids, respectively, or cause concentrations to exceed the applicable limits in the streams to which they are a tributary, except in accordance with Reg. 2.306.

Reg. 2.512 Ammonia

Total ammonia nitrogen (N) shall not exceed those values and frequency of occurrence established in the following tables:

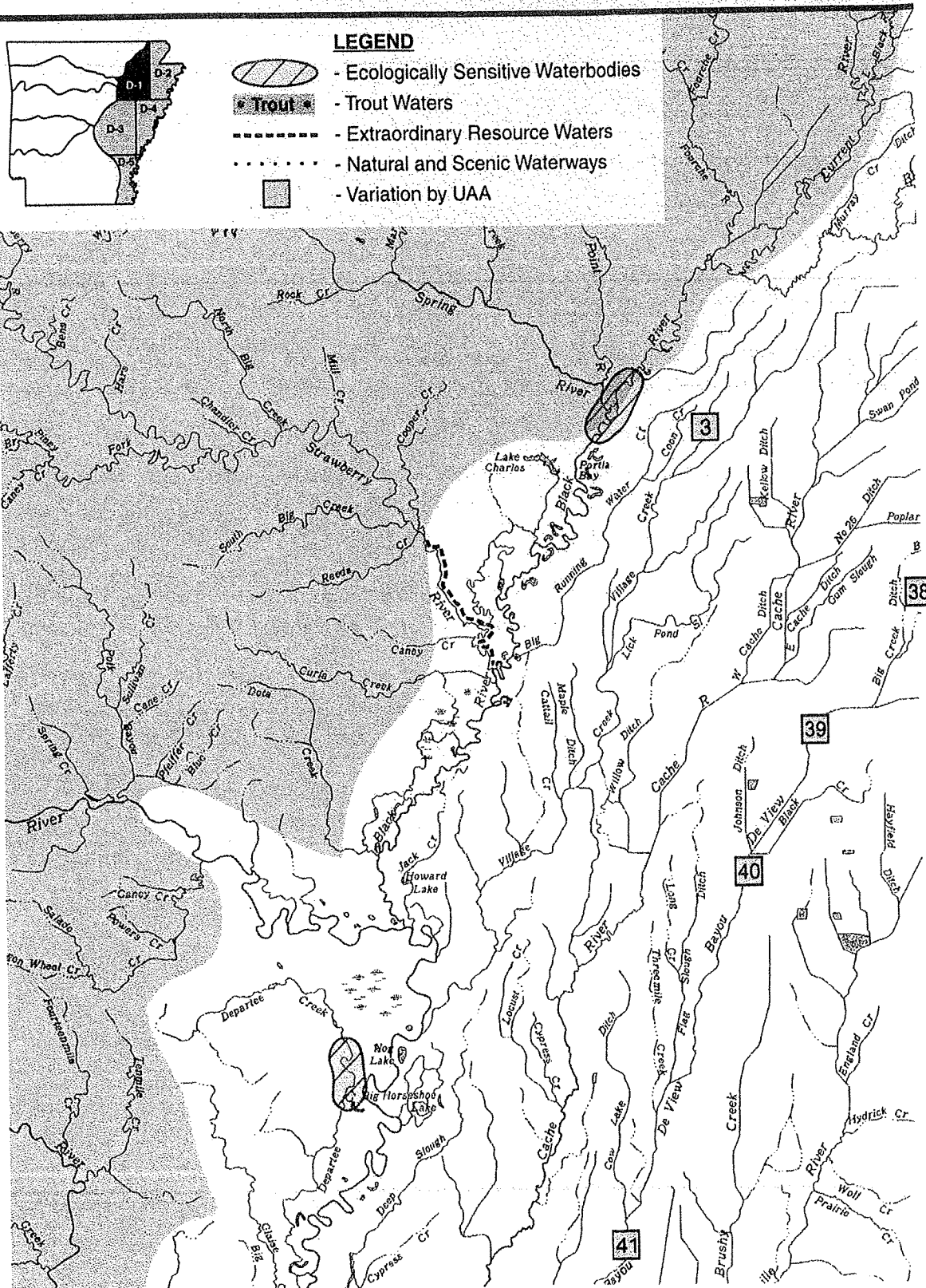
- (A) The one-hour average concentration of total ammonia nitrogen shall not exceed, more than once every three years on the average, the acute criterion as shown in the following table:

Blue Point Ditch- – chlorides 95 mg/l; sulfates 45 mg/l
 Big Ditch – chlorides 95 mg/l; sulfates 45 mg/l
 Main Ditch – chlorides 95 mg/l; sulfates 45 mg/l
 Plum Bayou– chlorides 95 mg/l; sulfates 45 mg/l
 Crooked Creek Ditch – chlorides 95 mg/l; sulfates 45 mg/l
 Indian Bayou Ditch – chlorides 95 mg/l; sulfates 45 mg/l
 Caney Creek Ditch – chlorides 95 mg/l; sulfates 45 mg/l
 Salt Bayou Ditch – chlorides 95 mg/l; sulfates 45 mg/l
 Bradley Slough – chlorides 95 mg/l; sulfates 45 mg/l
 Tupelo Bayou – chlorides 95 mg/l; sulfates 45 mg/l
 Dennis Slough – chlorides 95 mg/l; sulfates 45 mg/l
 Buffalo Slough – chlorides 95 mg/l; sulfates 45 mg/l
 Flynn Slough – chlorides 95 mg/l; sulfates 45 mg/l
 Boggy Slough – chlorides 95 mg/l; sulfates 45 mg/l
 Bear Bayou – chlorides 95 mg/l; sulfates 45 mg/l
 Bubbling Slough – chlorides 95 mg/l; sulfates 45 mg/l
 Five Forks Bayou – chlorides 95 mg/l; sulfates 45 mg/l
 Government Cypress Slough – chlorides 95 mg/l; sulfates 45 mg/l
 Brushy Slough – chlorides 95 mg/l; sulfates 45 mg/l
 Tipton Ditch – chlorides 95 mg/l; sulfates 45 mg/l
 Hurricane Slough – chlorides 95 mg/l; sulfates 45 mg/l
 Newton Bayou – chlorides 95 mg/l; sulfates 45 mg/l
 West Bayou – chlorides 95 mg/l; sulfates 45 mg/l
 Brownsville Branch– chlorides 95 mg/l; sulfates 45 mg/l
 Eagle Branch– chlorides 95 mg/l; sulfates 45 mg/l
Unnamed tributary to Big Creek – chlorides 71 mg/l, sulfates 60 mg/l, TDS 453 mg/l (D-1, #38)
Big Creek from mouth of unnamed trib to mouth of lost creek – chloride 58 mg/l, sulfates 49 mg/l (D-1, #39)
Bayou DeView from Whistle Ditch to AR Hwy 14 – chloride 48 mg/l, sulfates 38 mg/l, TDS 411.3 mg/l (D-1, #40)
Bayou DeView from AR Hwy 14 to its mouth – chloride 48 mg/l, sulfates 37.3 mg/l, TDS 411.3 (D-1, #41)

* Increase over natural temperatures may not be more than 2.8°C (5°F).

** When water temperatures exceed 22°C, the critical season D.O. standard may be depressed by 1 mg/l for no more than 8 hours during a 24-hour period.

Plate D-1 (Delta)



**ECONOMIC IMPACT STATEMENT
OF PROPOSED RULES OR REGULATIONS
E0 05-04: Regulatory Flexibility**

Department City Water and Light Plant of the City of Jonesboro

Division none

Contact Person Marcella J. Taylor

Date August 14, 2009

Contact Phone (501) 688-8851

Contact Email mtaylor@mwlaw.com

Title or Subject: Petition to Amend Arkansas Pollution Control & Ecology Commission Regulation No. 2, Arkansas Water Quality Standards

Benefits of the Proposed Rule or Regulation

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.
 - City Water and Light Plant of the City of Jonesboro (CWL) seeks to have the Total Dissolved Solids (TDS), Sulfate (SO₄) and Chloride (Cl) water quality standards set forth in Arkansas Pollution Control & Ecology Commission (APCEC) Regulation No. 2 amended to reflect the historic and current levels of those substances in an Unnamed Tributary of Big Creek (UT), into which CWL's NPDES Outfall 001 discharges, Big Creek (BC) from the mouth of the UT to Whistle Ditch, and a portion of Bayou DeView (BDV) from Whistle Ditch to its mouth in Craighead County.
 - This proposed change is needed to reflect actual and historic conditions and to allow CWL to stay in compliance with terms of its anticipated renewal NPDES permit.
 - No complaints motivated CWL to seek amendment of APCEC Regulation No. 2.
2. What are the top three benefits of the proposed rule or regulation?
 - Compliance by CWL with the anticipated NPDES permit limits.
 - Revised water quality standards which reflect actual conditions
 - Continued protection of the designated and attainable uses of the receiving streams.
3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?
 - If no action is taken to amend the water quality standards, future non-compliance with either NPDES permit limitations or current, unnecessarily stringent water quality standards will cause CWL to expend millions of dollars for treatment of their effluent water which, in turn, will not result in significantly more protective downstream water quality conditions and will generate a concentrated brine which is environmentally difficult to dispose of.
4. Describe the market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.
 - CWL has only 3 alternatives: modification of the water quality standards, treatment, or piping the water to a stream that holds the potential for dilution of minerals.
 - The only treatment technology for removal of minerals (reverse osmosis) is economically infeasible with an initial capital investment of \$6,500,000 and annual operating costs of \$4,400,000. Further this treatment technology generates a concentrated brine which is environmentally difficult to dispose of and it provides no significant environmental protection.
 - Discharge to a stream with potential for dilution is infeasible as there is no nearby waterbody which could serve as an appropriate receiving stream.

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of *collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting* associated with this new rule or regulation.
 - There is no cost to state government associated with this proposed new rule
6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.
 - Because CWL is seeking revisions which reflect historic and actual water quality, there will be no additional requirements for any small business due to this rule change. Further, any small business which could potentially be required to comply with the proposed rule or regulation is already being required to comply with the currently unnecessarily more stringent water quality standards for the affected streams.
 - According to information received from ANRC there are no registered water withdrawal users (small business or otherwise) from the affected streams and the streams and ADH confirms that the streams are not domestic water supply sources.
7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.
 - The proposed regulation does not create barriers to entry.
8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.
 - There are no additional requirements with which small business owners will have to comply.
9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.
 - The proposed regulation does not contain different requirements for different sized entities.
10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.
 - No small business owners will be required to implement changes because of the proposed regulation.
11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?
 - Both federal environmental laws and the environmental laws of most, if not all, states provide for the establishment and amendment of water quality standards, not only by the federal and state agencies, but also by third party petition. Although the actual numbers set forth in any federal or state promulgated water quality standards may vary one from the other, this proposed amendment to APCEC Regulation No. 2 would be comparable to water quality standards in other states.
12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.
 - CWL is not an agency and to the best of its knowledge, ADEQ has not yet received any input about the proposed rule or regulation. APCEC Regulation No. 8 requires submission

of this information to the public. Input will come about during the public comment period once the APCEC initiates the rule-making.