

BEFORE THE ARKANSAS COMMISSION ON
POLLUTION CONTROL & ECOLOGY

IN RE: CITY OF HUNTSVILLE PETITION)
TO INITIATE RULEMAKING TO AMEND) DOCKET NO. 13-006-R
REGULATION NO. 2)

CITY OF HUNTSVILLE'S
STATEMENT OF BASIS AND PURPOSE

The City of Huntsville ("Huntsville") for its Statement of Basis and Purpose, states:

1. The Arkansas Pollution Control and Ecology Commission (APCEC) is given the power and duty to promulgate rules and regulations implementing the powers and duties of the Arkansas Department of Environmental Quality (ADEQ) and APCEC, including regulations prescribing water quality standards (WQS). ARK. CODE ANN. § 8-4-202(a) and (b).

2. ARK. CODE ANN. § 8-4-202(c) provides that any person has the right to petition the APCED for an amendment of any rule or regulation. On June 13, 2013, Huntsville filed its Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2, and the Continuing Planning Process, which was amended on July 12, 2013 and July 24, 2013. On July 26, 2013, the ACPCEC entered Minute Order No. 13-23 granting Huntsville's Petition (referred to herein as the "Initial Petition") and initiated rulemaking on the changes proposed to Regulation No. 2 by Huntsville.

3. Huntsville's Initial Petition sought site specific criteria for chloride, sulfate and total dissolved Solids (TDS) for Town Branch from the discharge of the Huntsville Wastewater Treatment Plant (WWTP) to the confluence with Holman Creek, Holman Creek from the confluence with Town Branch to War Eagle Creek, and War Eagle Creek from the confluence with Town Branch.

4. Through its Initial Petition Huntsville requested that the Commission amend APCEC Regulation No. 2 to establish site specific mineral criteria, and remove the domestic water supply use from certain stream segments as follows:

Town Branch from Point of Discharge of the City of Huntsville WWTP downstream to the confluence with Holman Creek			Holman Creek from the confluence with Town Branch downstream to the confluence with War Eagle Creek			War Eagle Creek from the confluence with Holman Creek to Clifty Creek.			<u>War Eagle Creek downstream from the confluence with Clifty Creek to Beaver Lake</u>		
Site Specific Criteria Proposed			Site Specific Criteria Proposed			Site Specific Criteria Proposed			Site Specific Criteria Proposed		
Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)
185	525	41	185	525	41	130	407	30	<u>97</u>	<u>337</u>	<u>24</u>

- A critical background flow of 4.0 cfs should be applied by listing Town Branch, Holman Creek, and War Eagle Creek (with asterisks) in Reg. 2.511. Critical background flows of 7.2 and 10.9 the (7Q10 flows for War Creek at the Holman creek and Clifty Creek confluence, respectively) should be applied for War Eagle Creek.
- Removal of the Domestic Water Supply use for Town Branch beginning at Latitude 36.112330°, Longitude- 93.732833° and extending downstream to its confluence with Holman Creek at Latitude 36.0118158°, Longitude- 93.736039°; and for Holman Creek beginning at its confluence with Town Branch at Latitude 36.118158°, Longitude - 93.736039° and extending downstream to its confluence with War Eagle Creek at Latitude 36.140824°, Longitude -93.729594°.
- A caveat was added to the War Eagle Creek segments stating that at such time as Act 954 of 2013 is implemented using average flow and an average flow can be calculated for War Eagle Creek the site specific criteria shall revert to the Ecoregion values.

5. Based on comments submitted on the Initial Petition, and an amendment to Regulation No. 2 that changed the criteria flow from 4 cfs to harmonic mean, Huntsville and

ADEQ reached an agreement to recalculate the proposed site-specific criteria, which was reflected in a Response to Comments filed on August 15, 2017. Because the revised proposal differed from the proposal contained in its Initial Petition the Commission directed Huntsville to file an Amended Petition and requested a second public hearing and public comment period (“Amended Petition”). Minute Order 17-19 (August 25, 2017) The Amended Petition (filed as the Third Amended Petition) was filed on October 10, 2017, and the second public hearing was held on November 13, 2017 in Huntsville, Arkansas. The second public comment period ended on December 4, 2017.

6. Through its Amended Petition Huntsville requested that the Commission amend APCEC Regulation No. 2 to establish site specific minerals criteria for the affected stream segments as follows:

Town Branch from Point of Discharge of the City of Huntsville WWTP downstream to the confluence with Holman Creek			Holman Creek from the confluence with Town Branch downstream to the confluence with War Eagle Creek			War Eagle Creek from the confluence with Holman Creek to Clifty Creek.			<u>War Eagle Creek downstream from the confluence with Clifty Creek to Beaver Lake</u>		
Site Specific Criteria Proposed			Site Specific Criteria Proposed			Site Specific Criteria Proposed			Site Specific Criteria Proposed - NONE		
Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)
223	779	61	180	621	48	39	248	17 ¹	13 ¹	24 ¹	17 ¹

¹ Existing Ecoregion Reference Stream Value, no revision

7. The initial proposal to remove the domestic water supply designation has not changed, and remains as follows:

- Removal of the Domestic Water Supply use for Town Branch beginning at Latitude 36.112330°, Longitude- 93.732833° and extending downstream to its confluence with Holman Creek at Latitude 36.0118158°, Longitude- 93.736039°; and for Holman Creek beginning at its confluence with Town Branch at Latitude 36.118158°, Longitude -93.736039° and extending downstream to its confluence with War Eagle Creek at Latitude 36.140824°, Longitude -93.729594°.

8. Huntsville's Initial Petition and Amended Petition are supported by the following:

- Huntsville is not seeking a change from historical water quality conditions in the stream requests at issue; rather Huntsville seeks a site-specific modification which allows the Huntsville WWTP to be compliant with its NPDES Permit while making certain that its effluent does not limit the attainment of any of the designated uses of the stream segments.
- Site specific data established that:
 - Setting the chloride, sulfate and TDS at the site-specific levels requested in these stream segments will not cause acute or chronic toxicity;
 - Setting the chloride, sulfate and TDS at the site-specific levels in these stream segments will fully support the aquatic life of the segments; and
 - Setting the chloride, sulfate and TDS at the site-specific levels request in these stream segments will not impair War Eagle Creek or Beaver Lake.
- All sampling locations influenced by Huntsville WWTP's discharge showed the presence of ecoregion key and indicator species and species composition consistent with the attainment of a Ozark Highlands fishery designated use. The requested changes will fully support the aquatic life communities;
- Toxicity testing on *Ceriodaphnia dubia* and *Pimphales promelas* using Huntsville WWTP effluent of the effluent showed no significant lethal or sub-lethal toxicity in either test organism at concentrations exceeding the levels requested herein;
- There are no current economically feasible treatment technologies for the removal of the minerals. Reverse osmosis and electrodialysis reversal treatment technology does exist. However, this technology is not cost effective and generates a concentrated brine which is environmentally difficult to dispose of. The

technology is not required to meet the designated uses and even if implemented would produce no significantly increased environmental protection.

- The basis for site-specific standards is provided in 40 CFR 131.10(g). Huntsville's request for the modifications requested in paragraphs 6 and 7, above is supported by 40 CFR 131.10(g)(6) which provides that the state may establish site-specific criteria less stringent than ecoregion value criteria if controls more stringent than those required by section 301(b) and 306 of the Clean Water Act would result in substantial and widespread economic and social impact.
- 40 CFR 131.11(b)(1)(ii) provides states with the opportunity to adopt water quality standards that are "modified to reflect site-specific conditions."

Respectfully submitted,

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By:



Charles R. Nestrud, AR Bar # 77095

CERTIFICATE OF SERVICE

I, Charles R. Nestrud, state that I have, on this 29 day of January, 2018, a copy of the foregoing Statement of Basis and Purpose on the following by electronic mail:

Mr. Michael McAlister
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Charles R. Nestrud