



its effluent, and includes the following condition:

#### Total Dissolved Solids

This permit is issued for three years with a requirement for monitoring and reporting for Total Dissolved Solids. Before this permit is reissued, i.e., prior to or upon the expiration date, the Department will re-evaluate the need for inclusion of effluent limitations for this parameter after reviewing the most current Regulation No. 2, CPP, the 303(d) list of the impaired streams, and the submitted Discharge Monitoring Reports and progress reports. If it is determined that effluent limitations for this parameter are required, no schedule of compliance to meet these limitations will be allowed and limits will be effective immediately upon the effective date of the renewal permit.

Within 60 days from the effective date of this permit, the Permittee shall submit to ADEQ a workplan addressing all options for achieving compliance with water quality standards for Total Dissolved Solids. These options must include, but are not limited to: source reduction, outfall relocation, treatment alternatives, and/or revision of the Arkansas Water Quality Standards. The workplan must include the chosen options along with alternative options in the event the chosen option is not successful. A milestone schedule must be included which outlines when the work will begin on the project, when the project is anticipated to be completed (not to exceed 3 years from the effective date), and interim dates for completion of significant steps in the project.

Upon approval by ADEQ, the submitted milestone schedule shall be incorporated into this permit by reference and will be enforceable. The workplan shall be signed in accordance with Part III.D.11 and submitted to the attention of:

Arkansas Department of Environmental Quality  
Water Division  
Discharge Permits Section  
5301 North Shore Drive  
North Little Rock, AR 72118-5317

5. Huntsville submitted the required work plan, which was approved by ADEQ. Huntsville implemented the work plan, and issued a final report, entitled City of Huntsville, Arkansas Section 2.306 Site Specific Water Quality Study: Town Branch, Holman Creek, and War Eagle Creek ("the Study"). The Study has been submitted to and approved by ADEQ. As part of the work plan activities, Huntsville and its major industrial user investigated and implemented all feasible source removal/pollution prevention measures to reduce TDS and its component minerals, chlorides and sulfates, from the wastewater, and investigated additional

source reduction/pollution prevention measures and treatment technologies for further reductions of chlorides, sulfates and TDS from the wastewater. Further reductions in chlorides, sulfates and TDS from the wastewater were found to be not economically or technologically practical or feasible. The Study recommends the amendments to Regulation No. 2 that are proposed for this rulemaking as outlined in Paragraph 10 below, which are necessary to accommodate important economic and social development.

6. Under the Federal Clean Water Act, Arkansas has primary authority to develop and implement its water quality standards consisting of designated uses and water quality criteria for water bodies within its boundaries. 33 U.S.C. § 1313. The State designates one or more uses for its waterbodies, and develops water quality criteria to protect these designated uses. 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. §§ 131.10 and 131.11. These criteria are generally expressed as a specific numeric value for each pollutant. 40 C.F.R. § 131.11. Arkansas' designated uses and criteria must be reviewed and approved by EPA. 33 U.S.C. § 1313(c)(3)-(4).

7. Pursuant to APCEC Regulation No. 2, the three above named watercourses which are at issue herein are assigned the following designated uses and have the following assigned mineral criteria:

#### **Town Branch**

Designated Uses:

Secondary Contact Recreation  
Industrial and Agricultural Water Supply  
Seasonal Arkansas River Valley fishery  
Domestic Water Supply Use

Mineral Criteria:

Chloride 17.3 mg/L, sulfate 22.7 ml/L, and TDS 250 mg/L

#### **Holman Creek and War Eagle Creek:**

Designated Uses:

Primary Contact Recreation  
Industrial and Agricultural Water Supply  
Perennial Arkansas River Valley fishery  
Domestic Water Supply Use

Mineral Criteria:

Chloride 17.3 mg/L, sulfate 22.7 mg/L, and TDS 250 mg/L

The domestic water supply use is a designated, but not an existing use for Town Branch and Holman Creek.

8. States are authorized to change their designated uses and associated criteria. States are to perform a "use attainability analysis" ("UAA") prior to changing one of the fishable/swimmable designated uses for a waterbody or adopting a sub-category of the fishable/swimmable uses. 40 C.F.R. §131.10. This rulemaking does not propose any changes to the designated fishable/swimmable uses. Accordingly, no UAA is required.

9. Under Regulation 2.306, the Commission can "choose[] to establish less stringent water quality criteria without affecting a fishable/swimmable use." In this case, "[t]he Commission may allow a modification of the water quality criteria. . .to accommodate important economic or social development in a local area, if existing uses are maintained and protected fully . . ." This rulemaking is submitted pursuant to Regulation 2.306 because it proposes to remove a designated but not existing domestic water supply use, and all existing uses will be maintained and fully protected.

10. The Study includes documentation supporting the following significant findings that the designated fishery uses will be fully maintained and protected, and that all existing uses will be maintained and fully protected:

- The designated Fishery Uses for Town Branch, Holman Creek and War Eagle Creek are being maintained.

- The whole effluent toxicity testing results for the Huntsville wastewater treatment facility indicate no toxicity associated with minerals.
- The habitat quality of each of the stream reaches at issue is adequate to support the designated fishery use.
- The upstream/downstream biological assessment supports the determination of full attainment of the fishery use.
- The fish collections for each of the creeks evaluated were typical of Ozark Highlands Ecoregion fisheries, supporting the determination of full attainment of the designated fishery use.

11. The Study includes documentation supporting the finding that removal of the domestic water supply use and modification of the dissolved mineral water quality criteria are necessary to accommodate important economic and social development in the Huntsville area.

12. Through this Petition, Huntsville is requesting the following amendments to the mineral criteria for the Town Branch, Holman Creek and War Eagle Creek in APCEC Regulation No. 2:

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		
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)
185	525	41	185	525	41	185	525	41

- 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.
- 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°.

13. Under Regulation 8.809, the documents required to approve Huntsville's requested changes to Regulation No. 2 are listed below, enclosed, and incorporated by reference in this Petition:

**Exhibit A.** Marked-up copy of the pages in Regulation No. 2 showing the requested regulatory changes. Regulation 8.808(A)(2).

**Exhibit B.** Legislative Questionnaire of requested revisions to Regulation No. 2. Regulation 8.808(A)(3).

**Exhibit C.** Financial Impact Statement of requested revisions to Regulation No. 2. Regulation 8.808(A)(4).

**Exhibit D.** Memorandum Regarding Submittal of Environmental Impact Statement to Arkansas Economic Development Commission. Regulation 8.808(A)(5).

**Exhibit E.** Economic Impact / Environmental Benefit Analysis. Regulation 8.808(A)(6).

**Exhibit F.** City of Huntsville, Arkansas Section 2.306 Site Specific Water Quality Study: Town Branch, Holman Creek, and War Eagle Creek ("the Study"). The Study summarizes the technical information in support of this petition, and recommends that the Commission remove the domestic water supply use and adopt revised dissolved minerals criteria. It contains the information required by Regulation 2.306 and the CPP.

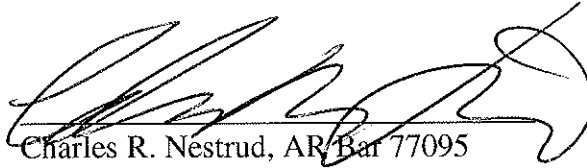
**Exhibit G.** Proposed Minute Order to Initiate Rulemaking. Regulation 8.808(A)(7).

WHEREFORE, Huntsville, requests that the Commission initiate a rulemaking to amend Regulation No. 2 in the manner requested in Paragraph 12, above.

Respectfully submitted,

CHISENHALL, NESTRUD & JULIAN, P.A.  
400 West Capitol, Suite 2840  
Little Rock, AR 72201  
Telephone: 501-372-5800  
Facsimile: 501-372-4941

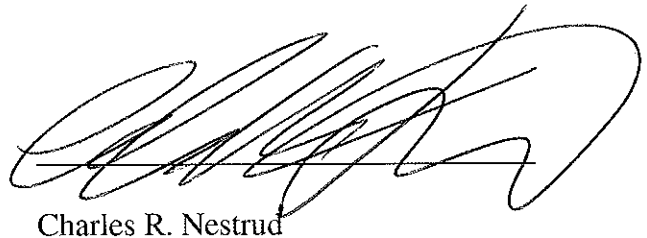
By:

  
Charles R. Nestrud, AR Bar 77095

**CERTIFICATE OF SERVICE**

I, Charles R. Nestrud, state that I have, on this 13 day of June, 2013, hand-delivered a copy of the foregoing Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 to:

Ms. Tammara Harrelson  
Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, AR 72118.

  
Charles R. Nestrud