

**BEFORE THE ARKANSAS COMMISSION ON
POLLUTION CONTROL & ECOLOGY**

IN RE: CITY OF HUNTSVILLE PETITION)
TO INITIATE RULEMAKING TO AMEND) **DOCKET NO. _____**
REGULATION NO. 2)

**SECOND AMENDMENT TO PETITION TO INITIATE THIRD-PARTY
RULEMAKING TO AMEND REGULATION NO. 2**

Petitioner, City of Huntsville (“Huntsville”), for its Second Amendment Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 (“Petition”) states:

1. This Petition is submitted pursuant to Section 2.306 of Arkansas Pollution Control and Ecology Commission (APCEC) Regulation No. 2, Section 8.809 of APCEC Regulation No. 8, and the Continuing Planning Process (“CPP”). As set forth more fully below, Huntsville is requesting modifications to the chloride, sulfate and total dissolved minerals (TDS) criteria of the Arkansas Water Quality Standards (WQS) for certain stream segments of Town Branch, Holman Creek and War Eagle Creek, and removal of the designated, but not existing, domestic water supply use for certain stream segments of Town Branch and Holman Creek.

2. Huntsville operates a municipal wastewater treatment facility on Highway 23 North of Huntsville in Madison County, Arkansas.

3. Treated municipal wastewater is discharged from Outfall 001, as authorized by the Arkansas Department of Environmental Quality (ADEQ) under National Pollutant Discharge Elimination System (NPDES) Permit No. AR0022004 that was effective on June 1, 2011 (“the Permit”). Outfall 001 discharges to Town Branch, which flows into Holman Creek, which flows War Eagle Creek.

4. The Permit requires Huntsville to monitor and report the concentration of TDS in 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 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 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 Ecorgeion values

13. Under Regulation 8.809, the documents required to approve Huntsville's requested changes to Regulation No. 2 were filed with the initial Petition to Initiate Third Party Rulemaking to Amend Regulation No. 2. Revisions to some of those exhibits are listed below, enclosed, and incorporated by reference in this Amendment to Petition by:

Amended Exhibit A. Marked-up copy of the pages in Regulation No. 2 showing the requested regulatory changes. Regulation 8.808(A)(2). Revised Pages 5-10, 5-13, and A-4.

Amended Exhibit B. Legislative Questionnaire of requested revisions to Regulation No. 2. Regulation 8.808(A)(3) and Addendum. **Attachment A to Exhibit B.** Executive Summary

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

Amended Exhibit D. Memorandum Regarding Submittal of Environmental Impact Statement to Arkansas Economic Development Commission. Proposed Rule of Initial Petition. Regulation 8.808(A)(5)

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

Amended 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. revised pages 4, 64,66, 67, 69,70 and 75 and letters received from the Arkansas Natural Resources Commission and from the Arkansas Department of Health, neither of which identify an existing domestic water supply use on the reaches of Town Branch or Holman Creek that are at issue in this Rulemaking).

Amended 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 1st day of August, 2013, hand-delivered a copy of the foregoing Second Amendment 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