

**BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**IN RE: REQUEST BY THE CITY OF HARRISON)
AND THE CITY OF YELLVILLE)
TO INITIATE RULEMAKING TO) DOCKET NO. 15-002-R
AMEND REGULATION NO. 2)**

Secretary
Arkansas Pollution Control and Ecology
101 East Capitol, Suite 205
Little Rock, AR 72201
Filed 11/15/16

REQUEST TO PROCEED

The Cities of Harrison and Yellville, Arkansas respectfully request the Commission's permission to proceed with their Third Party Rulemaking without addressing the two independent questions the Commission posed for public comment. In support of this Request to Proceed, the Cities state:

1. On August 28, 2015, the Arkansas Pollution Control and Ecology Commission (the Commission) entered Minute Order No. 15-18 granting the Cities' Petition To Initiate Rulemaking to Amend Regulation No. 2. The Cities' Petition sought to amend the minerals water quality criteria for a portion of Crooked Creek.

2. Minute Order No. 15-18 established the schedule for proceeding with the rulemaking, including public comment and public hearing. In addition to public comments on the amendment to Regulation No. 2 sought by the Cities, the Commission requested public comment on two independent questions:

- a. Whether the proposed new criteria should be rounded up to the nearest whole number for Chloride and Sulfate and up to the nearest multiple of ten for Total Dissolved Solids.
- b. Whether the proposed new criteria should be revised to correspond to the 99th percentile of relevant instream data.

3. Ten sets of comments were submitted during the public comment period, including one submitted by ADEQ. All ten commenting parties addressed the two independent questions posed by the Commission. Six of the commenters offered no comments at all on the criteria changes requested by the Cities. Two of these six, Beaver Water District and Friends of the North Fork and White Rivers, urged that the Commission's independent questions be considered in a separate process due to the statewide application of the questions.

4. Four of the ten commenting parties offered comments on the criteria changes requested by the Cities. Three of the four did not oppose the changes in question.

5. The Cities and ADEQ have completed and filed their responses to the comments that were addressed to the criteria changes requested in the Cities' Third Party Rulemaking. The Cities take no position on the independent questions posed by the Commission, and they do not propose to offer a response to the comments others have offered on these questions. ADEQ filed a second response to the comments which addressed the two independent questions posed by the Commission.


6. At this point in time the Cities are ready to proceed with legislative review and final Commission action on the water quality criteria changes requested in their Third Party Rulemaking, but it is unclear whether it is appropriate for them to do so while the independent questions remain pending. To clarify this situation, the Cities request the Commission's permission to proceed with their Third Party Rulemaking independent of whatever actions the Commission may choose to take with respect to the two independent questions upon which it sought public comment.

7. Attached hereto as Exhibit A is a proposed Minute Order granting the Cities' request.

WHEREFORE, the Cities of Harrison and Yellville respectfully request that they be allowed to proceed to finalize the Rulemaking request independent of the two questions upon which the Commission sought public comment.

Respectfully submitted,

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By: 
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Marcella J. Taylor, AR Bar No. 82156

Counsel for the Cities of Harrison and Yellville

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, 2016, I served a copy of the foregoing Motion to Proceed electronically and by U.S. Postal Delivery on the following:

Michael McAlister, Esq.
Attorney Supervisor
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
mcalister@adeq.state.ar.us



Allan Gates

EXHIBIT A

PROPOSED MINUTE ORDER

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT-Regulation No. 2
Water Quality Standards
Third-Party Rulemaking
CITY OF HARRISON AND
CITY OF YELLVILLE
WASTEWATER TREATMENT PLANTS**

DOCKET NO. 15-002-R

MINUTE ORDER NO. 16-____

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1. On August 28, 2015, the Arkansas Pollution Control and Ecology Commission (the Commission) entered Minute Order No. 15-18 granting the Cities' Petition To Initiate Rulemaking to Amend Regulation No. 2 to amend the minerals water quality criteria for a portion of Crooked Creek. The Order established the schedule for proceeding with the rulemaking, including public comment and public hearing, and in addition to public comments on the amendment to Regulation No. 2 sought by the Cities, the Commission requested public comment on two independent questions.

2. Of the ten comments submitted during the public comment period, six offered no comments at all on the criteria changes requested by the Cities, while all ten commenters addressed the two independent questions posed by the Commission with two urging that the Commission's independent questions be considered in a separate process due to the statewide application of the questions.

3. The Cities are ready to proceed with legislative review and final Commission action on the water quality criteria changes requested in their Third Party Rulemaking and have requested the Commission's permission to proceed with the Third Party Rulemaking independent of whatever actions the Commission may choose to take with respect to the two independent questions.

4. Upon consideration of the circumstances presented, the Commission agrees that the Cities may proceed with their Third Party Rulemaking independent of the Commission's two questions.

The Commission grants the Cities' request to proceed and finalize the Third Party Rulemaking independent of the two questions raised by the Commission.

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COMMISSIONERS:

_____ **J. Bates**
_____ **L. Bengal**
_____ **C. Gardner**
_____ **W. Stites**
_____ **J. Chamberlin**
_____ **A. Henry**

_____ **J. Fox**
_____ **M. Goggins**
_____ **R. Reynolds**
_____ **B. White**
_____ **B. Holland**
_____ **J. Crow**

Chairman, S. Moss, Jr.

SUBMITTED BY: Allan Gates

DATE PASSED: December 2, 2016.