

**BEFORE THE ARKANSAS COMMISSION ON
POLLUTION CONTROL & ECOLOGY 2007 JAN 10 AM 10: 17**

**IN RE: REQUEST BY EL DORADO)
CHEMICAL COMPANY TO)
INITIATE RULEMAKING TO AMEND) DOCKET NO. 06-009-R
REGULATION NO. 2)**

**EL DORADO CHEMICAL COMPANY'S PROPOSED
STATEMENT OF BASIS AND PURPOSE AND RESPONSIVENESS SUMMARY**

Pursuant to Ark. Code Ann. §8-4-202(d)(4)(C), and Regulation No. 8, Sections 3.4.4 and 3.6.2 and Minute Order 06-38, Petitioner, El Dorado Chemical Company ("EDCC"), submits the following Statement of Basis and Purpose and Responsiveness Summary, which is attached, for its proposed amendment to Regulation No.2, and its response to the public comments on its request.

1. Pursuant to Act 163 No. 1993 (Ark. Code Ann. §8-4-202(d)(4)(C)) and Regulation No. 8, Sections 3.4.4 and 3.6.2, each record of rulemaking shall contain a concise general statement of basis and purpose of the proposed rule and a responsive summary which groups public comments into similar categories, explaining why the Commission accepted or rejected the rationale of each category.

STATEMENT OF BASIS AND PURPOSE

2. The Arkansas Pollution Control and Ecology Commission (APCEC) is given the power and duty to promulgate rules and regulations implementing and effectuating 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).

3. Ark. Code Ann. § 8-4-202(c) provides that any person has the right to petition the

APCEC for an amendment of any rule or regulation. On August 31, 2006, EDCC filed its Petition to Initiate Third-Party Rulemaking to Amend APCEC Regulation No. 2. EDCC's Petition was submitted pursuant to, and in compliance with Section 2.306 of APCEC Regulation No. 2, Section 3.4 of APCEC Regulation No. 8, and the Continuing Planning Process. On September 22, 2006 the APCEC entered Minute Order No. 06-38 which granted EDCC's Petition and initiated rulemaking on the changes proposed to Regulation No. 2 by EDCC.

4. EDCC operates a chemical and fertilizer manufacturing and distributing facility in Union County on the north side of El Dorado, AR. The facility's single treated process water outfall (Outfall 001) discharges to an ephemeral unnamed tributary to another unnamed tributary of Flat Creek. The sources to Outfall 001 include surface drainage and process water from the production of nitric acid, sulfuric acid and ammonium nitrate. Discharges from Outfall 001 are authorized by NPDES Permit No. AR0000752 issued by the ADEQ.

5. The effluent limitations for chloride, sulfate and Total Dissolved Solids (TDS) in EDCC's NPDES Permit are based upon the maintenance of the designated, but not existing, domestic water supply use for the unnamed tributary of Flat Creek. The applicable Arkansas chloride, sulfate and TDS standards for the unnamed tributary are 14 mg/l, 31 mg/l and 123 mg/l respectively.

6. EDCC is specifically requesting the following amendments to APCEC Regulation No. 2:

- a. modify the dissolved minerals criteria for the unnamed tributary to the unnamed tributary of Flat Creek as follows:

TDS from 123 mg/L to 475 mg/L
sulfate from 31 mg/L to 125 mg/L
chloride from 14 mg/L to 23 mg/L, and

Remove Designated Domestic Water Supply Use

- b. modify the dissolved minerals criteria for unnamed tributary of Flat Creek to its confluence with Flat Creek as follows:

TDS from 123 mg/L to 315 mg/L
Sulfate from 31 mg/L to 80 mg/L
chloride from 14 mg/L to 16 mg/L, and

Remove Designated Domestic Water Supply Use

- c. modify the dissolved minerals criteria for Flat Creek from the mouth of the unnamed tributary to the mouth of Haynes Creek as follows:

TDS from 123 mg/L to 560 mg/L
Sulfate from 31 mg/L to 67 mg/L
chloride from 14 mg/L to 165 mg/L, and

Remove Designated Domestic Water Supply Use

- d. modify the dissolved minerals criteria for Haynes Creek from confluence of Flat and Salt Creeks downstream to its confluence with Smackover Creek as follows:

TDS from 123 mg/L to 855 mg/L
sulfate from 31 mg/L to 55 mg/L
chloride from 14 mg/L to 360 mg/L, and

Remove Designated Domestic Water Supply Use

7. In August 2006, EDCC submitted to ADEQ a document entitled *Section 2.306 Site Specific Water Quality Study for Chloride, Sulfate and TDS* in support of this Petition (hereinafter “the Study”). This document fully satisfied the information requirements of Section 2.306 of APCEC Regulation No. 2 for Site Specific Criteria for amending Regulation No. 2.

8. EDCC’s Petition is supported by the following facts:


- The domestic water supply use designations for the waterbodies listed in Section 5 of this document were assigned by default, are not existing uses, and are not attainable uses because the natural, ephemeral and low flow conditions prevent the attainment of the use;

- During the aquatic life field survey, the unnamed tributary into which Outfall 001 discharges maintains a seasonal fishery to the degree supported by the existing habitat and maintains an aquatic life use in downstream segments.
- The discharge from Outfall 001 passes the WET testing requirements of the NPDES permit at 100% effluent.
- Recent process improvements, emissions control equipment, improvements to site BMPs, spill prevention, facility containment improvements, recycle of internal process waters and the ground water conservation activities (moving from Sparta aquifer ground water to river water as a source water) have been responsible for the recent decreases in sulfates, chloride and TDS in the treated effluent discharged from Outfall 001.
- There is no current economically feasible treatment technology for the removal of chloride, sulfate, or TDS. Ion exchange and reverse osmosis treatment technologies do exist; however, these methods are not cost effective on a large scale basis, are prohibitively expensive, and generate a concentrated brine which is environmentally difficult to dispose of. Such treatment technology is not required to meet the existing uses and would not add any significant environmental protection.
- Proposed modifications to the mineral criteria will not preclude the attainment of the other designated uses.

Respectfully submitted

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By:



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CERTIFICATE OF SERVICE

I, Ann P. Faitz, state that I have, on this 10th day of January, 2007, hand-delivered a copy of the foregoing Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 to Ms. Ellen Carpenter, Arkansas Department of Environmental Quality, 8001 National Drive, Little Rock, AR 72219.



Ann P. Faitz

ATTACHMENT 1

RESPONSIVNESS SUMMARY
EL DORADO CHEMICAL COMPANY 3RD PARTY RULEMAKING
JANUARY 10, 2007

El Dorado Chemical Company (EDCC), for it Responsiveness Summary, states:

On November 13, 2006 a public hearing was held in El Dorado, Arkansas on EDCC's Third-Party Rulemaking Petition. Four (4) speakers presented comments during the public hearing with two comments submitted at that time. No other comments were received by ADEQ during the comment period.

Comment: One commenter, who also submitted his comments in written form, expressed support for the requested changes, but stated that the support should not be viewed as a weakening of opposition to the proposed El Dorado pipeline.

Response: EDCC appreciates the support for the requested changes.

Comment: One commenter stated that he opposed the request based upon the overall lack of enforcement of water quality standards.

Response: EDCC disagrees with the commenter's view that there is any overall lack of enforcement of water quality standards, although ADEQ's enforcement policies are unrelated to this rulemaking. This rulemaking establishes a water quality criteria, which will be applied in future NPDES permitting actions.

No other comments relevant to the rulemaking request were received.