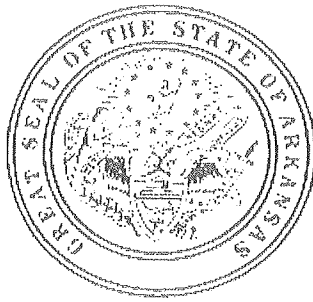


# ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



## REGULATION NO. 2

REGULATION ESTABLISHING WATER  
QUALITY STANDARDS FOR SURFACE  
WATERS OF THE STATE OF ARKANSAS

INITIAL DRAFT

SUBMITTED TO THE PC&E COMMISSION IN JAN. 2007

EXHIBIT "A"

Arkansas Pollution Control and Ecology Commission  
Regulation No. 2, As Amended

**Regulation Establishing  
Water Quality Standards for Surface Waters  
of the State of Arkansas**

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## Plate GC-2 (Gulf Coastal Plain)

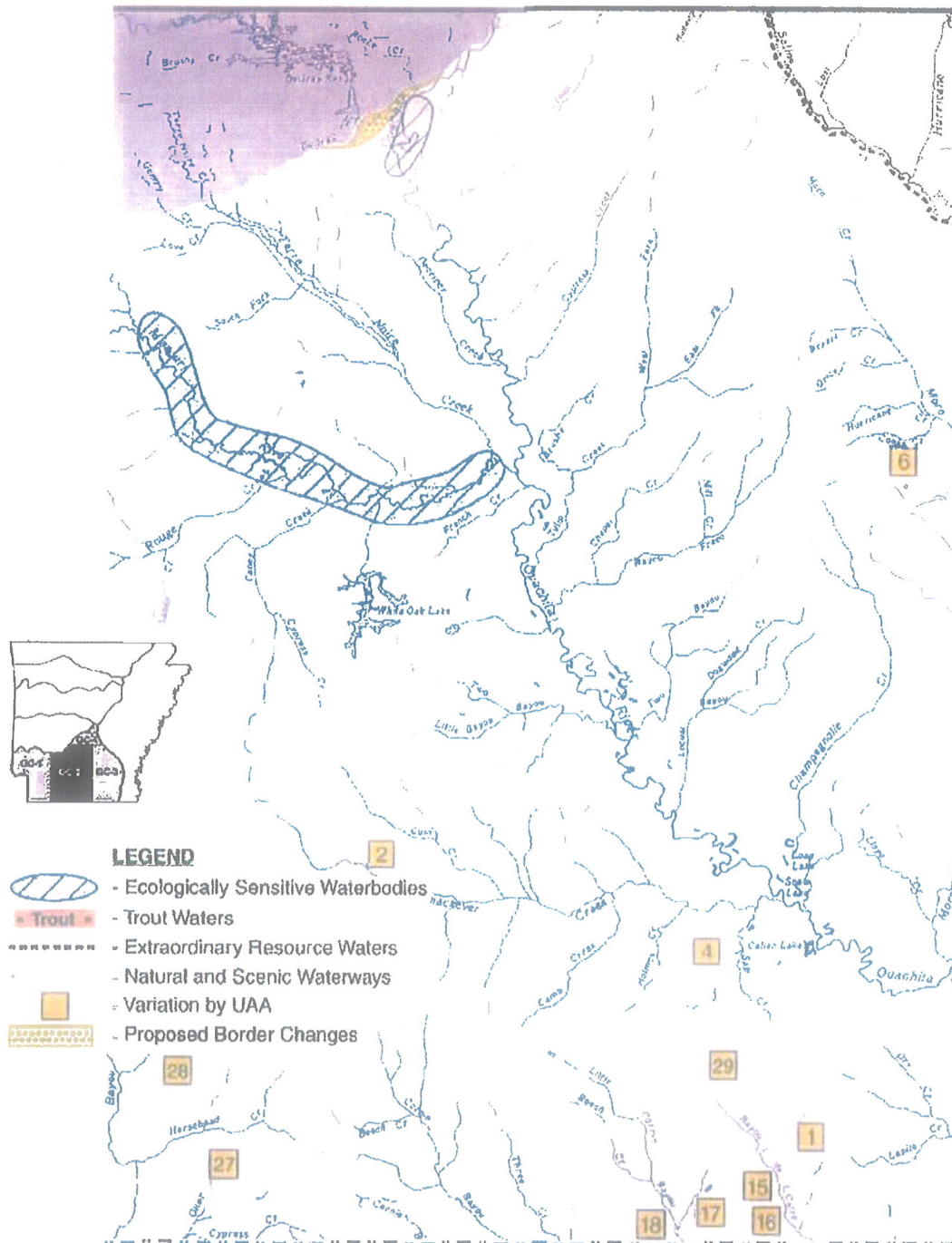


EXHIBIT "A"

Use Variations Supported by UAA

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Town Creek below Acme tributary - no domestic water supply(GC-4,#14)  
Unnamed trib. from Acme - no domestic water supply(GC-4,#14)  
Gum Creek - no domestic water supply use(GC-2,#15)  
Bayou de Loutre from Gum Creek to State line - no domestic water supply use(GC-2,#16)  
Walker Branch - no domestic water supply use(GC-2,#17)  
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Holly Creek - no domestic water supply use(GC-4,#20)  
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Lost Creek - no domestic water supply use(GC-4,#22)  
Albemarle unnamed trib (AUT) to Horsehead Creek - no domestic water supply use(GC-2,#27)  
Horsehead Creek from AUT to mouth - no domestic water supply use(GC-2,#27)  
Dismukes Creek and Big Creek to Bayou Dorcheat -- no domestic water supply  
Boggy Creek-No domestic water supply use (GC-2)

**SPECIFIC STANDARDS: GULF COASTAL ECOREGION**  
(Plates GC-1, GC-2, GC-3, GC-4)

	<u>Typical Streams</u>	<u>Spring Water Streams</u>	<u>Lakes and Reservoirs</u>
Temperature °C (°F)*	30 (86)	30 (86)	32 (89.6)
Ouachita River			
(state line to Little Missouri River)	32 (89.6)		
Red River	32 (89.6)		
Turbidity (NTU)(primary/storm)	21/32	21/32	25/45
Red River(primary/storm)	50/150		
Minerals	see Reg. 2.511		see Reg. 2.511
Dissolved Oxygen (mg/l)**	<u>Pri.</u>	<u>Crit.</u>	see Reg. 2.505
<10 mi <sup>2</sup> watershed	5	2	
10 mi <sup>2</sup> - 500 mi <sup>2</sup>	5	3	
>500 mi <sup>2</sup> watershed	5	5	
All sizes	6	5	
All other standards	(same as statewide)		

\* Increase over natural temperatures may not be more than 2.8°C (5°F).

\*\* At water temperatures ≤10°C or during March, April and May when stream flows are 15 CFS and greater, the primary season D.O. standard will be 6.5 mg/l. When water temperatures exceed 22°C, the critical season D.O. standard may be depressed by 1 mg/l for no more than 8 hours during a 24-hour period

#### Variations Supported by UAA

Loutre Creek - from headwaters to railroad bridge, critical season D.O. standard - 3 mg/l; primary season - 5 mg/l; from railroad bridge to mouth, critical season D.O. - 2 mg/l (GC-2, #1)

Unnamed tributary to Smackover Creek - headwaters to Smackover Creek, year round D.O. criteria - 2 mg/l (GC-2, #2)

Unnamed tributary to Flat Creek - from headwaters to Flat Creek, year round D.O. criteria - 2 mg/l (GC-2, #4)

Dodson Creek - from headwaters to confluence with Saline River, critical season D.O. standard - 3 mg/l (GC-4, #5)

Jug Creek - from headwaters to confluence with Moro Creek, critical season D.O. standard - 3 mg/l (GC-2, #6)

Lick Creek - from headwaters to Millwood Reservoir, critical season D.O. standard - 2 mg/l (GC-1, #7)

Coffee Creek and Mossy Lake - exempt from Reg. 2.406 and Chapter Five (GC-3, #8)

Red River from Oklahoma to confluence with Little River - total dissolved solids - 850 mg/l (GC-1, #9)

Bluff Creek and unnamed trib. - sulfates 651 mg/l; total dissolved solids 1033 mg/l (GC-1, #10)

Muddy Fork Little Missouri River - sulfates 250 mg/l; total dissolved solids 500 mg/l (GC-1, #24)

Little Missouri River - sulfates 90 mg/l; total dissolved solids 180 mg/l (GC-1, #25)

Mine Creek from Highway 27 to Millwood Lake - chlorides - 90 mg/l; sulfates - 65 mg/l; TDS - 700 mg/l (GC-1, #11)

Caney Creek - chlorides 113 mg/l; sulfates 283 mg/l; total dissolved solids 420 mg/l (GC-1, #12)

Bois d'Arc Creek from Caney Creek to Red River - chlorides 113 mg/l; sulfates 283 mg/l; dissolved solids 420 mg/l (GC-1, #13)

Town Creek below Acme tributary - sulfates 200 mg/l; TDS 700 mg/l (GC-4, #14)

Unnamed trib. from Acme - sulfates 330 mg/l; TDS 830 mg/l (GC-4, #14)

Gum Creek - chlorides 104 mg/L; TDS 311 mg/L (GC-2, #15)

Bayou de Loutre from Gum Creek to State line - Chlorides 250 mg/l; TDS solids 750 mg/l (GC-2, #16)

Walker Branch - chlorides 180 mg/l; total dissolved solids 970 mg/l (GC-2, #17)

Ouachita River - from Ouachita River mile (ORM) 223 to the Arkansas-Louisiana border (ORM 221.1), site specific seasonal D.O. criteria: 3 mg/L June and July; 4.5 mg/L August; 5 mg/L September through May. These seasonal criteria may be unattainable during or following naturally occurring high flows, (i.e., river stage above 65 feet measured at the lower gauge at the Felsenthal Lock and Dam, Station No. 89-o, and also for the two weeks following the recession of flood waters below 65 feet), which occurs from May through August. Naturally occurring conditions which fail to meet criteria should not be interpreted as violations of these criteria (GC-3, #26)

Alcoa unnamed trib. to Hurricane Cr. And Hurricane Cr. - see Reg. 2.511 (CG-4, #19)

Holly Creek - See Reg. 2.511 (CG-4, #20)

Saline River bifurcation - see Reg. 2.511 (GC-4, #23)

Dry Lost Creek and tributaries - see Reg. 2.511 (GC-4, #21)

Lost Creek - see Reg. 2.511 (GC-4, #22)

Albemarle unnamed trib (AUT) to Horsehead Creek - chlorides 137 mg/l; TDS 383 mg/l (GC-2, #27)

Horsehead Creek from AUT to mouth - chlorides 85 mg/l; TDS 260 mg/l (GC-2, #27)

Bayou Dorcheat - sulfates 16 mg/l (GC-2, #27)

Dismukes Creek - chlorides 26 mg/L; TDS 157 mg/L (GC-2, #28)

Big Creek from Dismukes to Bayou Dorcheat - chlorides 20 mg/L; TDS 200 mg/L (GC-2, #28)

Bayou de Loutre from Great Lakes outfall to Loutre Creek - maximum water temperature 96°F (GC-2, #29)

Unnamed tributary of Lake June below Entergy Couch Plant to confluence with Lake June - maximum water temperature 95 degrees F (limitation of 5 degrees above natural temperature does not apply) (GC-1, #30).

Boggy Creek - Chlorides 631 mg/L; Sulfates 63 mg/L; TDS 1,330 mg/L; and Selenium 15.6 ug/L

QUESTIONNAIRE  
FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL  
AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY: Arkansas Department of Environmental Quality  
DIVISION: Water Division  
DIVISION DIRECTOR: Martin Maner  
CONTACT PERSON: Martin Maner  
ADDRESS: 8001 National Drive, Little Rock, AR 72219  
PHONE NO.: 501-682-0654 FAX NO.: 501-682-0910

TO: Donna K. Davis  
Subcommittee on Administrative Rules and Regulations  
Arkansas Legislative Council  
Bureau of Legislative Research  
Room 315, State Capitol  
Little Rock, AR 72201

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1. What is the short title of this rule?

*Same as in Financial Impact Statement*

2. What is the subject of the proposed rule?

*Modification of the chloride, sulfate, total dissolved solids (TDS) and selenium criteria of the Arkansas Water Quality Standards (WQS) and removal of the designated, but not existing, domestic water supply use for Boggy Creek.*

3. Is this rule required to comply with federal statute or regulations?

Yes \_\_\_\_\_ No X

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?

Yes \_\_\_\_\_ No X

If yes, what is the effective date of the emergency rule? \_\_\_\_\_

When does the emergency rule expire? \_\_\_\_\_

Will this emergency rule be promulgated under the permanent provisions of the Administrative

Administrative Procedure Act? Yes \_\_\_\_\_ No \_\_\_\_\_

Is this a new Rule? Yes \_\_\_\_\_ No   X  

If yes, please provide a brief summary explaining the regulation

Does this repeal an existing rule: Yes \_\_\_\_\_ No   X   If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.

5. Is this an amendment to an existing rule? Yes   X   No \_\_\_\_\_ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substance changes.

*See Attachments A and B.*

6. Cite the state law that grants the authority for this proposed rule. If codified, please give the Arkansas Code citation.

*Act 472 of the Acts of Arkansas 1949, as amended. ARK. CODE ANN. §8-4-101, et seq.*

7. What is the purpose of the rule? Why is it necessary?

*This Petition is submitted pursuant to Section 2.306 of Arkansas Pollution Control and Ecology Commission ("APCEC") Regulation No. 2, Section 3.4 of APCEC Regulation No. 8 and the Continuing Planning Process. Clean Harbors Environmental Services, Inc. ("Clean Harbors") is requesting modifications to the selenium, chloride, sulfate, and total dissolved solids ("TDS") criteria of the Arkansas Water Quality Standards and removal of the designated, but not existing, domestic water supply use for Boggy Creek.*

*Clean Harbors operates a hazardous waste treatment and incinerator facility in El Dorado, Arkansas, which had provided environmental remediation of existing contamination caused by petroleum operations. The facility discharges treated wastewater and offsite stormwater through two outfalls (007 and 009) and stormwater and non-process water through one outfall (001) all as authorized by the Arkansas Department of Environmental Quality (ADEQ) under National Pollution Discharge Elimination System (NPDES) Permit No. AR0037800. Boggy Creek is the ultimate receiving stream for outfalls 007 and 009, and flows southward to its confluence with Bayou de Loutre which flows into the Ouachita River in Louisiana.*

*Clean Harbors operates a water treatment facility that collects previously contaminated groundwater containing elevated levels of total dissolved solids and*



selenium. The source evaluation indicates that selenium occurs in groundwater under the site, in surface runoff from the site and in upstream segments to Boggy Creek. The source of the selenium is believed to be primarily due to previous refining operations. Clean Harbors does not discharge TDS, chloride or selenium in toxic amounts into Boggy Creek. The existing selenium concentrations in Boggy Creek are not harmful to aquatic life and no downstream effects are apparent in Bayou de Loutre. Fish tissue and sediment data indicate selenium residuary in fish in Boggy Creek and Bayou de Loutre are below levels at which adverse affects begin to occur in sensitive fish species.

Clean Harbors requests the Arkansas Pollution Control and Ecology Control Commission to amend Regulation No. 2, to remove the domestic drinking water supply use designation for Boggy Creek. Clean Harbors is further asking APCEC to modify the dissolved minerals criteria as follows:

*For Boggy Creek:*

*TDS from 123 mg/L to 1,360 mg/L*

*Sulfate from 41 mg/L to 63 mg/L*

*Chloride from 19 mg/L to 631mg/L*

*Selenium from 5µg/L to 15.6 µg/L*

*These water quality standard modifications will not adversely affect the aquatic life communities and existing fisheries.*

8. Will a public hearing be held on this proposed rule? Yes   X   No        If yes, please complete the following:

Date: Week of   March 19  , 2007

Time: To be determined by ADEQ

Place: El Dorado, Arkansas at a location to be determined by ADEQ

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)

*The period for receiving all written comments by the public shall conclude ten (10) business days after the date of the public hearing pursuant to Arkansas Pollution Control and Ecology Commission Regulation No. 8, Part 3, Section 2.2.3, unless an extension of time is granted. Thus, the public comment period will expire during the week of   April 2  , 2007.*

10. What is the proposed effective date of this proposed rule? (Must provide a date.)

*The regulation becomes effective twenty days after filing of the final regulation as adopted by the Commission with the Secretary of State.*

11. Do you expect the rule to be controversial? Yes \_\_\_\_\_ No   X   If yes, please explain.
12. Please give the names of persons, groups, or organizations that you expect to comment of these rules? Please provide the position (for or against) if known.

*For or Neutral:*

*Arkansas Department of Environmental Quality*

*Arkansas Department of Health*

*Arkansas Natural Resources Conservation Commission*

*Arkansas Environmental Federation*

*Region VI, US Environmental Protection Agency*

*Against:*

*Unknown*

Use Variations Supported by UAA

Bois d'Arc Creek from Caney Creek to Red River - no domestic or industrial water supply use(GC-1,#13)  
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Dismukes Creek and Big Creek to Bayou Dorcheat - no domestic water supply  
**Boggy Creek-No domestic water supply use (GC-2)**

**SPECIFIC STANDARDS: GULF COASTAL ECOREGION**  
(Plates GC-1, GC-2, GC-3, GC-4)

	<u>Typical Streams</u>	<u>Spring Water Streams</u>	<u>Lakes and Reservoirs</u>
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Minerals	see Reg. 2.511		see Reg. 2.511
Dissolved Oxygen (mg/l)**	<u>Pri.</u>	<u>Crit.</u>	see Reg. 2.505
<10 mi <sup>2</sup> watershed	5	2	
10 mi <sup>2</sup> - 500 mi <sup>2</sup>	5	3	
>500 mi <sup>2</sup> watershed	5	5	
All sizes	6	5	
All other standards	(same as statewide)		

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Boggy Creek - Chlorides 631 mg/L; Sulfates 63 mg/L; TDS 1,330 mg/L; and Selenium 15.6 ug/L

### Summary of the Proposed Rule Change

Modification of the chloride, sulfate, total dissolved solids (TDS) and selenium criteria of the Arkansas Water Quality Standards (WQS) and removal of the designated, but not existing, domestic water supply use for Boggy Creek as follows:

For Boggy Creek:

TDS from 123 mg/L to 1,360mg/L  
Sulfate from 41 mg/L to 63 mg/L  
Chloride from 19 mg/L to 631 mg/L  
Selenium from 5µg/L to 15.6 µg/L

ATTACHMENT "B"

## FINANCIAL IMPACT STATEMENT

[PLEASE ANSWER ALL QUESTIONS COMPLETELY]

**Department:** Arkansas Department of Environmental Quality

**Division:** Water Division

**Person Completing this Statement:** William A. Eckert, representing third-party petitioner, Clean Harbors Environmental Services, Inc.

**Telephone No.:** 501-379-1712 **Facsimile No.:** 501-379-1701

**e-mail:** aeckert@qgtb.com

To comply with Act 1104 of 1995, please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**Short Title of this Rule:** A proposed change to Arkansas Pollution Control and Ecology Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, to modify the selenium and minerals criteria and to remove the domestic drinking water supply use designation for Boggy Creek (Union County) Arkansas.

1. Does this proposed, amended or repealed rule or regulation have a financial impact?  
Yes \_\_\_\_\_ No X \_\_\_\_\_
2. If you believe that the development of a financial impact statement is so speculative as to be cost prohibited, please explain.
3. If the purpose of this rule or regulation is to implement a federal rule or regulation, please give the incremental cost for implementing the regulation. Please indicate if the cost provided is the cost of the program.

**Current Fiscal Year**

General Revenue \_\_\_\_\_

Federal Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Special Revenue \_\_\_\_\_

Other (Specify) \_\_\_\_\_

Total 0 \_\_\_\_\_

**Next Fiscal Year**

General Revenue \_\_\_\_\_

Federal Funds \_\_\_\_\_

Cash Funds \_\_\_\_\_

Special Revenue \_\_\_\_\_

Other (Specify) \_\_\_\_\_

Total 0 \_\_\_\_\_

4. What is the total estimated cost by fiscal year to any party subject to the proposed, amended, or repealed rule or regulation? Identify the party subject to the proposed regulation, and explain how they are affected.

**Current Fiscal Year**

\$ 0 \_\_\_\_\_

**Next Fiscal Year**

\$ 0 \_\_\_\_\_

Clean Harbors Environmental Services, Inc. is seeking to amend Arkansas Pollution Control and Ecology Commission Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, to: (a) modify the chloride, sulfate, selenium, and total dissolved minerals (TDS) criteria of the Arkansas Water Quality Standards (WQS) for Boggy Creek; and (b) remove the designated, but not existing, domestic water supply use for from Boggy Creek.

5. What is the total estimated cost by fiscal year to the agency to implement this regulation?

Current Fiscal Year

\$ 0

Next Fiscal Year

\$ 0



QUATTLEBAUM, GROOMS, TULL & BURROW PLLC

## MEMORANDUM

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**TO:** Arkansas Pollution Control and Ecology Commission

**FROM:** Al Eckert

**DATE:** January 12, 2007

**SUBJECT:** Economic Impact/Environmental Benefit Analysis

---

Clean Harbors Environmental Services, Inc. ("Clean Harbors") has determined by on-site inspection of Clean Harbors' Outfall 009 and Boggy Creek that the proposed amendment to Regulation No. 2 does not affect small businesses. The surrounding watershed of Boggy Creek is a low lying, swampy, heavily wooded area. The uses of Boggy Creek are limited by physical factors such as lack of consistent flow, mud and silt bottom and a heavily wooded Riparian Zone. Small businesses are not located within this area and therefore no regulatory burden is imposed on small businesses such as fees, reporting requirements or obtaining regulatory permits. Since no small businesses are located along Boggy Creek which can be adversely affected by this amendment to Regulation No. 2, the determination whether the rule can be less costly for small businesses is not before the Commission. Therefore, Clean Harbors submits that no economic impact statement regarding the proposal is required under Executive Order 05-04 and no review by the Arkansas Department of Economic Development is required.

**EXHIBIT "D"**



**ECONOMIC IMPACT/ENVIRONMENTAL BENEFIT ANALYSIS**  
*Answer to best of the proponent's ability, as required by ADPCEC Regulation 8, Chapter 3.5*

**STEP 1: DETERMINATION OF ANALYSIS REQUIREMENT**  
(to be included in petition to initiate rulemaking)

1A. Is the proposal expressly addressed by a Federal requirement? **NO**

Yes. See 1B.

No. Economic Impact/Environmental Benefit Analysis is not required.

1B. If 1A is YES, is proposed regulation equivalent, or more stringent, or less stringent than federal requirement?

- If equivalent – Economic Impact/Environmental Benefit Analysis is not required.
- If more stringent - Economic Impact/Environmental Benefit Analysis is required.
- If less stringent - Economic Impact/Environmental Benefit Analysis is not required, but does require federal agency approval prior to adoption if the proposal is part of an authorized state program.

**STEP 2: THE ANALYSIS**  
(to be included in petition to initiate rulemaking, if required)

**2A. ECONOMIC IMPACT**

1. Who will be affected economically by this proposed rule, what are the costs associated with this rule, and who will bear the costs of this proposed rule? Define specific public and/or private entities.
2. What are the economic benefits associated with the proposed rule, who will benefit from this proposed rule and how?
3. List sources of information used to determine economic impacts to public and/or private entities.

4. List any fee changes imposed by this proposal, and justification for each.
5. What is the probable cost to ADEQ in manpower and associated resources to implement and enforce this proposed change, and what is the source of revenue supporting this proposed rule?
6. Is there a benefit or adverse impact to any other state agency to implement or enforce this proposed rule?
7. Are there any less costly, non-regulatory, or less intrusive methods that would achieve the same purpose of this proposed rule?

## **2B. ENVIRONMENTAL BENEFIT**

1. What issues affecting the environment are addressed by this proposal?
2. How does this proposed rule protect, enhance, or restore the natural environment for the well being of all Arkansas?
3. What detrimental effect will there be to the environment or to the public health and safety if this proposed rule is not implemented?
4. What risks are addressed by the proposal and to what extent are the risks anticipated to be reduced?



# Arkansas Natural Resources Commission



J. Randy Young, PE  
Executive Director

101 East Capitol, Suite 350  
Little Rock, Arkansas 72201  
<http://www.anrc.arkansas.gov/>

Phone: (501) 682-1611  
Fax: (501) 682-3991  
E-mail: [anrc@arkansas.gov](mailto:anrc@arkansas.gov)

Mike Huckabee  
Governor

December 11, 2006

Mr. David Rupe, Project Scientist  
FTN Associates, Ltd.  
3 Innwood Circle, Suite 220  
Little Rock, Arkansas 72211-2492

**RE: Evaluation of Boggy Creek and the State Water Plan**

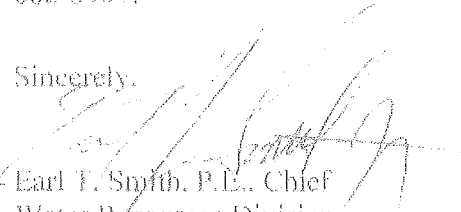
Dear Mr. Rupe:

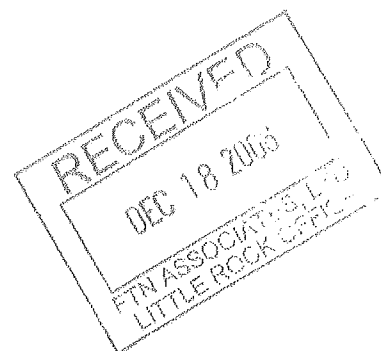
Thank you for this opportunity to evaluate Boggy Creek within the scope of your Use Attainability Analysis. The Arkansas Natural Resources Commission has responsibility for the regulation of the withdrawal of water from streams and reservoirs not within the jurisdiction of regulation by the Arkansas Department of Environmental Quality.

As you know, Boggy Creek - and all other waters of the State - are included within the State Water Plan. We have examined the water use data for Union County, Arkansas and have identified no registered agricultural, municipal or industrial diversions from Boggy Creek, a tributary of Bayou de Loutre. Therefore, the results of your use attainability analysis will not conflict with the Arkansas State Water Plan.

If you need any further assistance, or have any questions, please contact Steve Loop at (501)-682-3959.

Sincerely,

  
Earl T. Smith, P.E., Chief  
Water Resources Division



**EXHIBIT "F"**



# Arkansas Department of Health and Human Services

## Division of Health

Paul K. Halverson, DrPH, Director



Engineering Section – Environmental Health Branch – Center for Local Public Health

Postal Address	P. O. Box 1437, Slot H-37	Little Rock, AR 72203-1437	1-501-661-2623	TDD: 1-800-234-4399
Physical Address for UPS or Fedex	4815 West Markham St., Slot H-37	Little Rock, AR 72205	Fax: 1-501-661-2032	

December 11, 2006

David Rupe  
FTN Associates Ltd.  
3 Innwood Circle, Suite 220  
Little Rock, AR 72211-2492

RE: Clean Harbors discharge to Boggy Creek, El Dorado, Union County,  
Arkansas, FTN No. 6170-026

Dear Mr. Rupe,

A staff review has been made of the information received on the referenced project. The Engineering Section has no knowledge of any consideration of utilizing Boggy Creek or Bayou de Loutre as public water system source.

If you have any questions or comments, please coordinate them through Gerry Conley, 501-661-2067.

Sincerely,

  
Bob Makin, P.E.  
Assistant Director  
Engineering Section

BM:RH:RM:gc

Cc:

**EXHIBIT "F"**