

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

IN RE: REQUEST BY McGEORGE)	
CONTRACTING CO., INC)	
TO INITATE RULEMAKING TO AMEND)	DOCKET NO.09-003-R
REGULATION NO. 2)	

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

Petitioner, McGeorge Contracting Co. Inc. ("McGeorge") for its Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 ("Petition") states:

1. This Petition is submitted pursuant to Ark. Code Ann Section 8-4-202(b)(3) which authorizes the Arkansas Pollution Control and Ecology Commission to adopt water quality standards for surface waters in the State of Arkansas; Section 2.306 of Arkansas Pollution Control and Ecology Commission (APCEC) Regulation No. 2 Arkansas Water Quality Standards (WQS), Section 3.4 of APCEC Regulation No. 8, and the Continuing Planning Process (CPP). As set forth more fully below in paragraph 7, McGeorge is requesting modifications of the following water quality standards, found at Appendix A, Section GC, which identifies the Designated Uses for the Gulf Coastal Ecoregion:

(a) the sulfate and total dissolved minerals (TDS) criteria of the WQS for (i) McGeorge Creek to confluence with Willow Springs Branch; and (ii) Willow Springs Branch between confluences with McGeorge Creek and Little Fourche Creek;

(b) TDS in Little Fourche Creek between confluences with Willow Springs Branch and Fourche Creek.

2. McGeorge has operated a kaolin clay mine site in Little Rock, Pulaski County,

Arkansas from approximately 2001, when it was purchased as an active kaolin clay mine from A.P. Green Industries, Inc., until present. Two active kaolin clay mine pits remain on the site.

3. Stormwater collects in the kaolin clay, pits, and is discharged as required through Outfalls 001 and 002, as authorized by the Arkansas Department of Environmental Quality (ADEQ) under McGeorge's National Pollutant Discharge Elimination System (NPDES) Permit No. AR00001503 (the "Permit."). Due to the close proximity of the outfalls with one another, they are treated as one with regards to the stream mineral concentrations and the proposed rulemaking changes described herein.

4. On November 1, 2004 McGeorge was issued a renewal of the Permit, which imposed, for the first time, ecoregion based effluent limitations for dissolved minerals; e.g. total dissolved solids (TDS). The ecoregion based effluent limitation for TDS in the Permit is based on ecoregion mineral criteria, and are 112.3 mg/l (monthly average) and 168.5 mg/l (daily max). Previously the Permit included dissolved mineral effluent limitations based on secondary drinking water limits. The secondary drinking water based effluent limitation for TDS in the previous Permit were based on the maintenance of the designated, but not existing, domestic water supply use, and were 500 mg/l (monthly average) and 750 mg/l (daily max). Because the ecoregion based effluent limitations resulted in more stringent permit limits, McGeorge was given a compliance period to achieve compliance with the new, more restrictive, water quality based effluent limitations, with interim limits equivalent to the prior effluent limits being in effect during the compliance period. McGeorge proceeded to collect the information necessary to seek a change to the ecoregion based water quality standards applicable to the receiving streams. On January 23, 2009 McGeorge and ADEQ entered into Consent Administrative Order

No. LIS 09-012 which extended the compliance period and interim limits pending completion of a third party rulemaking to revise the ecoregion based water quality limits, and to modify the Permit to incorporate the revised water quality standards.

5. Pursuant to APCEC Regulation No. 2, the watercourses at issue herein are assigned the following designated existing uses:

McGeorge Creek

- Secondary Contact Recreation (presumed as default)

Willow Creek Branch

- Primary and Secondary Contact Recreation (presumed as default)

Little Fourche Creek

- Primary and Secondary Contact Recreation (presumed as default)

6. Through this Petition, McGeorge is requesting the following amendments to APCEC Regulation No. 2:

- a. modify the dissolved minerals criteria for the McGeorge Creek to confluence with Willow Springs Branch as follows:
 - Sulfate from 41.3 mg/L to 257 mg/L
 - TDS from 138 mg/L to 432 mg/L
- b. modify the dissolved minerals criteria for Willow Springs Branch between confluences with McGeorge Creek and Little Fourche Creek as follows:
 - Sulfate from 41.3 mg/L to 112 mg/L
 - TDS from 138 mg/L to 247 mg/L
- c. modify the dissolved minerals criteria for Little Fourche Creek between confluences with Willow Springs Branch and Fourche Creek as follows:
 - Sulfate: NO CHANGE
 - TDS from 138 mg/L to 179 mg/L

7. Charles R. Nestrud of Chisenhall, Nestrud & Julian, P.A. (counsel for McGeorge) and/or Jim Malcolm of FTN Associates (environmental consultant for McGeorge) will be

available to answer questions concerning this proposed rulemaking. A red-lined version of the regulation showing the proposed changes is attached as Exhibit A and is incorporated by reference. A copy of the Legislative Questionnaire is attached as Exhibit B and is incorporated by reference. A copy of the Financial Impact Statement is attached as Exhibit C and is incorporated by reference. A copy of a letter to the Arkansas Economic Development Commission requesting approval of the proposed rule pursuant to Act 143 of 2007 as amended by Act 809 of 2009 is attached as Exhibit D and is incorporated by reference. A copy of the Economic Impact/Environmental Benefit Analysis is attached as Exhibit E and is incorporated by reference. McGeorge's "Use Attainability Analysis Report" (the "UAA Report") is attached as Exhibit F and is incorporated by reference. A copy of the Review Documentation from the Arkansas Natural Resources Commission, the Arkansas Department of Health and the Arkansas Game and Fish Commission is attached as Exhibit G and is incorporated by reference. Exhibits F and G fully satisfy the information requirements of Section 2.306 of Regulation No. 2 for Site Specific Criteria for amending Regulation No. 2. A copy of the proposed Minute Order to initiate the rulemaking is attached as Exhibit H and is incorporated by reference.

8. This Petition is supported by the following facts:

- The UAA Report shows that existing aquatic life is limited by habitat and will not be adversely affected by TDS and sulfate levels in McGeorge's discharge.
- There is no current economically feasible treatment technology for the removal of sulfate and 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 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.

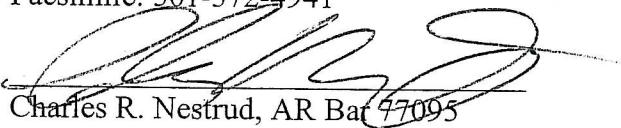
- Modification to the mineral criteria will not preclude the attainment of other designated and attainable uses (i.e. primary and secondary contact recreation, domestic, industrial and agricultural water supply).

WHEREFORE, McGeorge Contracting Company, requests that the Commission initiate a rulemaking to amend Regulation No. 2, and amend Regulation No. 2 in the manner requested in Paragraph 6 above.

Respectfully submitted

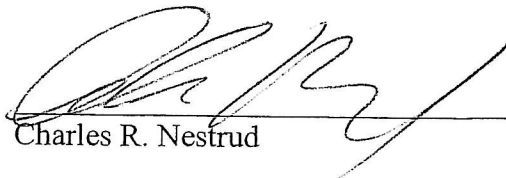
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By:


Charles R. Nestrud, AR Bar 77095

CERTIFICATE OF SERVICE

I, Charles R. Nestrud, state that I have, on this 1 day of ^{Sept}August, 2009 hand-delivered a copy of the foregoing Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 to Dawn Guthrie, Chief Counsel, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas 72118.


Charles R. Nestrud