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

**IN RE: REQUEST BY McGEORGE  
CONTRACTING CO., INC  
TO INITIATE RULEMAKING TO AMEND  
REGULATION NO. 2**

**DOCKET NO.** *09-003-R*

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

Petitioner, McGeorge Contracting Co. Inc. ("McGeorge") for its 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 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:

(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.

6. 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)

7. 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

8. A black-lined version of the specific changes which are requested to Regulation No. 2 is attached hereto as Exhibit "A" and is incorporated herein.

9. McGeorge's "Use Attainability Analysis Report" (the "UAA Report") is filed contemporaneously herewith as Exhibit H and is incorporated herein. This document fully satisfies the information requirements of Section 2.306 of Regulation No. 2 for Site Specific

Criteria for amending Regulation No. 2.

10. 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).

11. The Questionnaire for Filing Proposed Rules and Regulations with the Arkansas Legislative Council and Joint Interim Committee is attached hereto as Exhibit "B", with an Executive Summary attachment, and is incorporated herein.

12. The Financial Impact Statement is attached hereto as Exhibit "C" and is incorporated herein.

13. The Economic Impact/Environmental Benefit Analysis is attached hereto as Exhibit "D" and is incorporated herein.

14. McGeorge has reviewed Executive Order 05-04 and has determined that the



request herein does not affect small business for the following reasons: (a) there are no commercial operations located on or adjacent to the affected watercourses which use the waters; (b) while this rulemaking will increase the loadings for sulfate and TDS of the affected watercourses, there will be no impact to any agricultural or business usage of the affected watercourses as a result of the increase; and (c) the aquatic life studies of the affected stream segments demonstrate maintenance of designated fishery use. Therefore no economic impact analysis by the Arkansas Department of Economic Development is required.

15. Documentation supporting the changes requested by paragraph 7 above has been reviewed by the Arkansas Natural Resources Commission (ANRC), the Arkansas Game & Fish Commission (AGFC), and the Arkansas Department of Health and Human Services (ADHHS). The ANRC has provided documentation that the requested changes do not conflict with the Arkansas Water Plan. The ADHHS has provided documentation that neither McGeorge Creek nor Willow Springs Branch have been approved as, or are being considered as, domestic water sources. Copies of these agencies' documentation are attached hereto as **Exhibit E** and incorporated herein.

16. The proposed Minute Order to initiate rulemaking is attached hereto as **Exhibit F** and is incorporated herein.

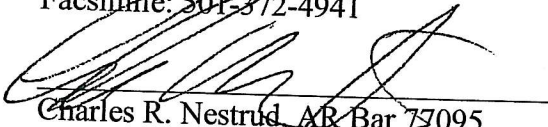
17. The proposed Public Notice for the hearing on this rulemaking is attached hereto as **Exhibit G** and is incorporated herein.

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 7 above.

Respectfully submitted

CHISENHALL, NESTRUD & JULIAN, P.A.  
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By:

  
Charles R. Nestrud, AR Bar 77095

**CERTIFICATE OF SERVICE**

I, Charles R. Nestrud, state that I have, on this 25 day of 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