

EXHIBIT B

Questionnaire for Filing Proposed Rules and Regulations With the Arkansas Legislative Council and Joint Interim Committees And Executive Summary

**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: Steve Drown
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PHONE NO.: 501-682-0655 **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?

*Arkansas Pollution Control and Ecology Commission, Regulation No. 2, Regulation
Establishing Water Quality Standards for Surface Waters of the State of Arkansas*

2. Is this rule required to comply with federal statute or regulations?
Yes _____ No X

3. 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 Procedure Act? Yes _____ No X

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Does this repeal an existing rule: Yes _____ No X If yes, a copy of the repealed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 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.

4. 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.

5. 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.

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

The purpose of the proposed rule is to amend the Arkansas Pollution Control and Ecology Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas, to modify the minerals criteria as follows:

- 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 ranch and Fourche Creek as follows:*
 - Sulfate: NO CHANGE*
 - TDS from 138 mg/L to 179 mg/L*

The proposed rule is necessary to modify the dissolved mineral criteria for the above listed stream segments to levels that are appropriate and protective of the designated and existing uses. These water quality standard modifications will not adversely affect the aquatic life communities and existing fisheries.

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

Date: Week of , 2009

Time: To be determined by ADEQ

Place: Commission Room, Arkansas Department of Environmental Quality, 5301 Northshore Drive, North Little Rock, Arkansas 72118

8. 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 _____, 2009.

9. 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.

10. Do you expect the rule to be controversial? Yes _____ No X If yes, please explain.

11. Please give the names of persons, groups, or organizations that you expect to comment on 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
Region VI, US Environmental Protection Agency*

Against:

Unknown

EXECUTIVE SUMMARY

McGeorge Contracting Co., Inc. (McGeorge) is requesting a modification of the Arkansas Water Quality Standards (WQS) set forth in Regulation No. 2 of the Arkansas Pollution Control and Ecology Commission. McGeorge requests modification of the sulfate and total dissolved minerals (TDS) dissolved mineral water quality criteria for McGeorge Creek to its confluence with Willow Springs Branch, Little Fourche Creek between confluences with Willow Springs Branch and Fourche Creek, and Little Fourche Creek between confluences with Willow Springs Branch and Fourche Creek. The specific amendments to Regulation No. 2 requested by McGeorge are set forth more fully below.

McGeorge has operated a kaolin clay mine site in Little Rock, Pulaski County, Arkansas from (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. 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 (NPDES Permit). On November 1, 2004 McGeorge was issued a renewal of the NPDES Permit, which imposed ecoregion based effluent limitations for dissolved minerals; e.g. total dissolved solids (TDS), with a compliance period to allow McGeorge to collect the information necessary to demonstrate that the ecoregion uses can be maintained at increased levels of sulfates and TDS. The proposed rulemaking will enable McGeorge to continue discharging sulfate and TDS through Outfalls 001 and 002 at the same levels as have traditionally been discharged.

The effluent from Outfalls 001 and 002 discharges into McGeorge Creek. The aquatic life field studies conducted in 2008 show that despite the fact that the watercourses are seasonal wet weather tributaries with small watersheds which limit the development of biotic communities, the designated aquatic life use and the biological integrity of the watercourses is being maintained downstream of the discharges. Further recent whole effluent toxicity testing demonstrates that there is no toxicity as a result of the dissolved mineral concentrations.

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, McGeorge is requesting the following modification to 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 ranch and Fourche Creek as follows:*
- *Sulfate: NO CHANGE*
 - *TDS from 138 mg/L to 179 mg/L*

This Request is supported by the following:

- The aquatic life field studies conducted in 2008 show that the discharges from Outfalls 001 and 002 support the ecoregion aquatic life (fisheries) uses.
- A toxicity evaluation indicates that observed toxicity is not due to dissolved minerals; e.g. sulfate and TDS. Accordingly, the discharges from Outfalls 001 and 002 will have no adverse effect on the aquatic life communities of the affected watercourses;
- There is no current economically feasible treatment technology for the removal of 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 solid waste 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.