

BEFORE THE ARKANSAS POLLUTION CONTROL & ECOLOGY COMMISSION

IN RE: REQUEST BY UMETCO MINERALS)
CORPORATION TO INITIATE RULEMAKING TO) DOCKET NO. _____
AMEND REGULATION NO. 2)

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

Petitioner, UMETCO Minerals Corporation ("UMETCO"), for its Petition to Initiate Third Party Rulemaking to Amend Regulation No. 2, states the following:

INTRODUCTION

This Petition is submitted pursuant to Section 2.306 of the Arkansas Pollution Control and Ecology Commission ("Commission") Regulation No. 2, Section 3.4 of Commission Regulation No. 8 and the continuing planning process. As set forth more fully below in Paragraph 4, UMETCO is requesting: (a) modifications to the chloride, sulfate and total dissolved solids ("TDS") criteria of the Arkansas Water Quality Standards for Wilson Creek (i) at a point approximately 0.85 mile upstream from Outfall 001 (at the UMETCO property line) to Outfall 001 and (ii) downstream of Outfall 001 to Lake Catherine; and (b) remove the domestic water supply use designation for Wilson Creek.

BACKGROUND

The UMETCO mining site comprises approximately 375 acres located north of Highway 270 five miles east from Hot Springs, Garland County, Arkansas. The mining operations for vanadium ore were conducted from 1961 until 1964 by Union Carbide Corporation, which created the subsidiary corporation UMETCO. UMETCO is currently reclaiming the open-cut vanadium mine known as the "Wilson Mine," which includes a water treatment facility known as the East Wilson Pond. As part of the reclamation, all flow in Wilson Creek was diverted into the East Wilson Pond for treatment and release.

The Arkansas Department of Environmental Quality ("ADEQ") has issued an NPDES permit to UMETCO for discharges from the East Wilson Pond into Wilson Creek at a discharge point designated as Outfall 001. Wilson Creek flows into Lake Catherine and to the Ouachita River. The current NPDES permit became effective September 28, 2007, and the numeric limits for chloride, sulfate and TDS will become effective on September 28, 2010. Analytical data for TDS, sulfate and chloride indicates the discharge will not meet permit limitations.

UMETCO seeks to amend the existing site specific mineral quality criteria for Wilson Creek as follows:

1. The NPDES Permit as issued to UMETCO authorizes the discharge of treated flows of surface water drainage as part of the waste water treatment system for the mine reclamation project. UMETCO has undertaken a Use Attainability Analysis titled "Wilson Creek Minerals Water Quality Standards Evaluation" and a subsequent "Update to the December 2004 Wilson Creek Minerals Water Quality Standards Evaluation" (collectively, the "UAA") for Wilson Creek to assess whether water quality upstream and downstream of the discharge from Outfall 001 will support the Ouachita Mountain Ecoregion's aquatic life and other designated uses. This study indicates that the current TDS, chloride and sulfate concentrations in Wilson Creek supports attainable aquatic life uses and site specific water quality criteria for minerals are justified.

2. The applicable Wilson Creek Arkansas Water Quality Criteria are as follows:

Chloride	15 mg/L
Sulfate	20 mg/L
TDS	142 mg/L

3. Pursuant to Regulation No. 2, the water courses at issue herein are assigned the following designated areas:

Seasonal Ouachita Mountain Ecoregion Fishery
Secondary contact recreation;
Domestic Water Supply.

These designated uses are assigned by default in Regulation No. 2

4. Through this Petition, UMETCO is requesting the following amendments to Commission Regulation No. 2:

(a) Modify the dissolved minerals criteria for the reach of Wilson Creek from a point approximately 0.85 mile upstream of Outfall 001, downstream to Outfall 001:

TDS from 142 mg/L to 543 mg/L
Sulfate from 20 mg/L to 260 mg/L
Chloride from 15 mg/L to 56 mg/L

(b) Downstream of Outfall 001 on Wilson Creek to Lake Catherine:

TDS from 142 mg/L to 543 mg/L
Sulfate from 20 mg/L to 260 mg/L
Chloride from 15 mg/L to 56 mg/L

(c) Remove the Domestic Water Supply use designation for Wilson Creek. A black-lined version of the specific changes which are requested in Regulation No. 2 is attached hereto as Exhibit "A" and is incorporated herein.

5. On August 28, 2009, UMETCO submitted to ADEQ the 2004 "Wilson Creek Minerals Water Quality Standards Evaluation" and the 2009 "Addendum to the December 2004

Wilson Creek Minerals Water Quality Standards Evaluation" (collectively, the "UAA") for review. ADEQ informed UMETCO by letter dated March 5, 2010 (attached hereto as Exhibit "H") that the UAA satisfies the requirements outlined in Regulation No. 2.303, 2.306 and the 2000 State of Arkansas Continuance Planning Process Chapter IX. The UAA is filed contemporaneously herewith as Exhibit "F." This document fully satisfies the information requests for amending Regulation No. 2

6. The UAA supports this petition as follows:

(a) Current chloride, sulfate and TDS levels do not appear to limit aquatic life (fishery or micro-invertebrates) based on biological surveys conducted as part of the UAA.

(b) The domestic water supply use designations for Wilson Creek were assigned by default and are not representative of an existing use and are not attainable due to seasonal low flow conditions.

(c) The UMETCO discharges do not limit the attainability of water supply uses, as to the extent that they occur. The TDS and chloride concentrations from UMETCO's discharges support the existing and attainable uses in Wilson Creek and Lake Catherine.

(d) The alternatives to changing the water quality criteria for Wilson Creek are economically prohibitive. The benefits of water treatment are minimal, with little or no change to fish and macroinvertebrate communities in Wilson Creek.

7. On May 6, 2010, FTN Associates Ltd. conducted a fish sampling study in Wilson Creek Cove of Lake Catherine to evaluate the possible effects of the UMETCO discharge from Outfall 001 in Wilson Creek on the fish community in Wilson Creek Cove. This study comprised a qualitative fish sampling of the fish population to evaluate the kinds of fish species present in the cove and the abundance based on the available habitat. The fish sampling results indicate that the numbers and types of species captured and observed on Wilson Creek Cove are consistent with an abundant and diverse fish community. FTN Associates Ltd.'s Technical Memorandum describing the fish sampling and results is attached hereto as Exhibit "G".

8. The Questionnaire for Filing Proposed Rules and Regulations with the Arkansas Legislative Council and Joint Interim Committee is attached hereto as Exhibit "B" and is incorporated herein.

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

10. UMETCO has reviewed Executive Order 05-04 and has determined that the request does not affect small businesses for the following reasons:

(a) The rulemaking does not represent a change from current conditions or current water quality in Lake Catherine, which meet state water quality standards;

(b) This rulemaking will not increase the loading of the affected watercourses but rather will establish the water quality criteria for Wilson Creek at a level consistent with

current conditions, as adjusted by the reclamation measures implemented by UMETCO to reduce the past concentrations. The proposed adoption of site-specific water quality criteria will not impact any agricultural or business usages of the affected watercourses;

(c) The aquatic life studies of the affected stream segments demonstrate that the proposed criteria change will maintain the designated fishery use. Therefore, no economic impact analysis by the Arkansas Department of Economic Development is required.

(d) A memorandum on the applicability of the Executive Order 05-04 and the absence of any effect or impact on any small business was submitted to the Arkansas Economic Development Commission ("AEDC") in compliance with Act 143 of 2007. This memorandum is attached hereto as Exhibit "D". Upon review, the AEDC responded by letter dated April 20, 2010 as to the applicability of Act 143 of 2007, and indicating AEDC's determination sufficient steps have been taken in the proposed rulemaking to protect the interests of small businesses. The AEDC letter is attached hereto as Exhibit "D".

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

12. The Arkansas Natural Resources Commission has provided documentation of the UAA and has indicated that the requested changes do not conflict with the Arkansas Water Plan. The Arkansas Department of Health has been provided documentation of the UAA and has indicated that none of the described watercourses herein, Wilson Creek to Lake Catherine, has been approved as, or is being considered as, domestic water sources. The Arkansas Department of Health by letter dated May 5, 2010, has withdrawn its concerns as to the proposed changes to water quality criteria. This letter is attached hereto as Exhibit "I".

13. The Minute Order to initiate rulemaking is attached hereto as Exhibit "J" and incorporated herein.

WHEREFORE, UMETCO, respectfully requests that the Commission initiate a rulemaking to amend Regulation No. 2 in the manner requested in paragraph 4, above.

Respectfully submitted,

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By 


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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June, 2010, I served a copy of the foregoing Petition To Initiate Third-Party Rulemaking To Amend Regulation No. 2 on the following by United States Postal Service, postage prepaid:

Ms. Dawn Guthrie
Chief Counsel
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118



William A. Eckert