

**BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

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AR. POLLUTION CONTROL
& ECOLOGY COMMISSION
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IN RE: REQUEST BY ALCOA INC.)
TO INITIATE RULEMAKING TO) DOCKET NO. 10-006-R
AMEND REGULATION NO. 2)

ALCOA INC.'S
STATEMENT OF BASIS AND PURPOSE

Alcoa Inc. ("Alcoa") for its Statement of Basis and Purpose, states:

1. The Arkansas Pollution Control and Ecology Commission (APCEC) is given the power and duty to promulgate rules and regulations implementing the powers and duties of the Arkansas Department of Environmental Quality (ADEQ) and APCEC, including regulations prescribing water quality standards (WQS). ARK. CODE ANN. § 8-4-202(a) and (b).

2. ARK. CODE ANN. § 8-4-202(c) provides that any person has the right to petition the APCEC for an amendment of any rule or regulation. On September 3, 2010, Alcoa filed its Petition to Initiate Third-Party Rulemaking to Amend APCEC Regulation No. 2. Alcoa's Petition was submitted pursuant to, and in compliance with Section 2.306 of APCEC Regulation No. 2, Section 8.809 of APCEC Regulation No. 8, the Continuing Planning Process, and Alcoa's NPDES Permit No. AR0000582, Section IB. On September 24, 2010, the APCEC entered Minute Order No. 10-36 granting Alcoa's Petition and initiated rulemaking on the changes proposed to Regulation No. 2 by Alcoa.

3. Alcoa's Petition sought a change in the WQS for selenium in Holly Creek to reflect current and historic conditions in Holly Creek during the term of an Environmental Improvement Project ("EIP") which is authorized by the ADEQ pursuant to Ark. Code Ann. § 8-

5-901 *et seq.* and by APCEC Regulation No. 2, § 2.105 and Appendix B and is required by Alcoa's NPDES Permit.

4. Through its Petition Alcoa requested that the Commission amend APCEC Regulation No. 2 to establish a chronic selenium standard of 17 µg/l for Holly Creek for the life of the EIP or until such time as a technically and economically feasible treatment or source reduction technology can be developed.


5. Alcoa's Petition is supported by the following:

- Alcoa's NPDES Permit No. AR0000582, Section IB requires Alcoa to carry out the EIP and seek the requested change in the chronic selenium standard for Holly Creek.
- Alcoa is not seeking a change in what are current and historic water quality conditions in Holly Creek; rather it seeks a temporary modification to the chronic water quality standard for selenium as it carries out the EIP. The selenium concentrations in Holly Creek are believed to represent historical conditions and not a recent change in stream conditions.
- There is not a currently known economically and technically feasible water treatment technology or source reduction strategy to reduce the selenium in Alcoa's discharge enough to meet the chronic water quality standard for selenium.
- Performing the necessary research, development and implementation of economically and technically feasible water treatment technologies and/or source reduction strategies is the logical approach to reducing selenium in the discharge while maintaining the existing fishery in Holly Creek.
- The regulatory basis for the EIP-based temporary modification of the chronic selenium water quality standard is provided in 40 CFR 131.10(g), three factors of which are applicable to the Alcoa site:
 - 40 CFR 131.10(g)(3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;
 - 40 CFR 131.10(g)(5) Physical conditions related to the natural features of the water body, such as the lack of proper substrate, cover, flow, depth, pools, riffles and the like, unrelated to water quality, preclude attainment of aquatic life protection uses;

- 40 CFR 131.10(g)(6) Controls more stringent than those required by section 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.
- 40 CFR 131.11(b)(1)(ii) provides states with the opportunity to adopt water quality criteria that are “modified to reflect site-specific conditions.”

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2011, I served a copy of the foregoing Statement of Basis and Purpose on the following by electronic service:

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Marcella J. Taylor