

**IN RE: CITY OF HUNTSVILLE PETITION** )  
**TO INITIATE RULEMAKING TO AMEND** ) **DOCKET NO. \_\_\_\_\_**  
**REGULATION NO. 2** )

3. Treated municipal wastewater is discharged from Outfall 001, as authorized by the Arkansas Department of Environmental Quality (ADEQ) under National Pollutant Discharge Elimination System (NPDES) Permit No. AR0022004 that was effective on June 1, 2011 (“the Permit”). Outfall 001 discharges to Town Branch, which flows into Holman Creek, which flows

War Eagle Creek.

4. The Permit requires Huntsville to monitor and report the concentration of TDS in its effluent, and includes the following condition:

Total Dissolved Solids

This permit is issued for three years with a requirement for monitoring and reporting for Total Dissolved Solids. Before this permit is reissued, i.e., prior to or upon the expiration date, the Department will re-evaluate the need for inclusion of effluent limitations for this parameter after reviewing the most current Regulation No. 2, CPP, the 303(d) list of the impaired streams, and the submitted Discharge Monitoring Reports and progress reports. If it is determined that effluent limitations for this parameter are required, no schedule of compliance to meet these limitations will be allowed and limits will be effective immediately upon the effective date of the renewal permit.

Within 60 days from the effective date of this permit, the Permittee shall submit to ADEQ a workplan addressing all options for achieving compliance with water quality standards for Total Dissolved Solids. These options must include, but are not limited to: source reduction, outfall relocation, treatment alternatives, and/or revision of the Arkansas Water Quality Standards. The workplan must include the chosen options along with alternative options in the event the chosen option is not successful. A milestone schedule must be included which outlines when the work will begin on the project, when the project is anticipated to be completed (not to exceed 3 years from the effective date), and interim dates for completion of significant steps in the project.

Upon approval by ADEQ, the submitted milestone schedule shall be incorporated into this permit by reference and will be enforceable. The workplan shall be signed in accordance with Part III.D.11 and submitted to the attention of:

Arkansas Department of Environmental Quality  
Water Division  
Discharge Permits Section  
5301 North Shore Drive  
North Little Rock, AR 72118-5317

5. Huntsville submitted the required work plan, which was approved by ADEQ. Huntsville implemented the work plan, and issued a final report, entitled City of Huntsville, Arkansas Section 2.306 Site Specific Water Quality Study: Town Branch, Holman Creek, and War Eagle Creek ("the Study") was submitted to and approved by ADEQ. The Study includes

documentation supporting the following significant findings that the designated fishery uses will be fully maintained and protected, and that all existing uses will be maintained and fully protected:

- The designated Fishery Uses for Town Branch, Holman Creek and War Eagle Creek are being maintained.
- The whole effluent toxicity testing results for the Huntsville wastewater treatment facility indicates no toxicity associated with minerals.
- The habitat quality of each of the stream reaches at issue is adequate to support the designated fishery use.
- The upstream/downstream biological assessment supports the determination of full attainment of the fishery use.
- The fish collections for each of the creeks evaluated were typical of Ozark Highlands Ecoregion fisheries, supporting the determination of full attainment of the designated fishery use.

6. Through its initial Petition, Huntsville requested the following amendments to the mineral criteria for the Town Branch, Holman Creek and War Eagle Creek in APCEC Regulation No. 2:

Town Branch from Point of Discharge of the City of Huntsville WWTP downstream to the confluence with Holman Creek			Holman Creek from the confluence with Town Branch downstream to the confluence with War Eagle Creek			War Eagle Creek from the confluence with Holman Creek to Clifty Creek.			<u>War Eagle Creek downstream from the confluence with Clifty Creek to Beaver Lake</u>		
Site Specific Criteria Proposed			Site Specific Criteria Proposed			Site Specific Criteria Proposed			Site Specific Criteria Proposed		
Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)
185	525	41	185	525	41	130	407	30	<u>97</u>	<u>337</u>	<u>24</u>

- A critical background flow of 4.0 cfs should be applied by listing Town Branch, Holman Creek, and War Eagle Creek (with asterisks) in Reg. 2.511. Critical background flows of 7.2 and 10.9 the (7Q10 flows for War Creek at the Holman creek and at the Clifty Creek

confluence, respectively) should be applied for War Eagle Creek.

- Removal of the Domestic Water Supply use for Town Branch beginning at Latitude 36.112330°, Longitude- 93.732833° and extending downstream to its confluence with Holman Creek at Latitude 36.0118158°, Longitude- 93.736039°; and for Holman Creek beginning at its confluence with Town Branch at Latitude 36.118158°, Longitude - 93.736039° and extending downstream to its confluence with War Eagle Creek at Latitude 36.140824°, Longitude -93.729594°.

7. On July 26, 2013 the Commission granted Huntsville's Petition to Initiate Third Party Rulemaking to Amend Regulation No. 2 (Petition). A public hearing was held on October 28, 2013 in Huntsville, Arkansas. The public comment period ended on November 12, 2013.

8. Thirty-two (32) comments were filed on the Petition during the comment period, and additional comments were submitted by the United States Environmental Protection Agency (EPA) after the close of the comment period.

9. Following the public comment period, Huntsville and ADEQ engaged in lengthy discussions which resulted in ADEQ requesting Huntsville to revise its proposed criteria changes to reflect in-stream concentrations and to utilize harmonic mean flow as the critical flow. Huntsville re-calculated the proposed criteria changes using the approach provided by ADEQ, which resulted in approximately 13 river miles of War Eagle Creek upstream of Beaver Lake being eliminated from the rulemaking, and revised (lowered) site specific criteria being proposed for stream reaches further upstream of Beaver Lake. Based on those discussions with ADEQ, Huntsville revised the Study and the proposed changes to Regulation No. 2 and is now proposing the following changes to Regulation No. 2:

Town Branch from Point of Discharge of the City of Huntsville WWTP downstream to the confluence with Holman Creek			Holman Creek from the confluence with Town Branch downstream to the confluence with War Eagle Creek			War Eagle Creek from the confluence with Holman Creek to Clifty Creek.		
Site Specific Criteria Proposed			Site Specific Criteria Proposed			Site Specific Criteria Proposed		
Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)	Chloride (mg/L)	TDS (mg/L)	Sulfate (mg/L)
223	779	61	180	621	48	39	248	17 <sup>1</sup>

<sup>1</sup> Existing Ecoregion Reference Stream Value, no revision

10. The initial proposal to remove the domestic water supply designation has not changed, and remains as follows:

- Removal of the Domestic Water Supply use for Town Branch beginning at Latitude 36.112330°, Longitude- 93.732833° and extending downstream to its confluence with Holman Creek at Latitude 36.0118158°, Longitude- 93.736039°; and for Holman Creek beginning at its confluence with Town Branch at Latitude 36.118158°, Longitude - 93.736039° and extending downstream to its confluence with War Eagle Creek at Latitude 36.140824°, Longitude -93.729594°.

11. A mark up of the current proposed changes to Regulation No. 2 is attached hereto and incorporated herein.

12. On August 15, 2017 Huntsville filed in this docket a Responsive Summary and Exhibits (“Responsive Summary”), which included a Revised Section 2.306 Site Specific Water Quality Study: Town Branch, Holman Creek, and War Eagle Creek (“Revised Study”). The Revised Study, as filed herein on August 15, 2017 is incorporated by reference.

13. Through Minute Order No. 13-23 the Commission requested Huntsville to conduct an additional review of the feasibility of treatment alternatives for the removal of dissolved solids (minerals) from the effluent of Huntsville’s existing wastewater treatment system. On October 21, 2013 Huntsville filed herein its *Supplemental Report: Feasibility of Treatment Alternatives for Total Dissolved Solids and Chloride (Supplemental Report)*. The

Responsive Summary further describes the activities of Huntsville's major industrial user. Huntsville and its major industrial user investigated and implemented all feasible source removal/pollution prevention measures to reduce TDS and its component minerals, chlorides and sulfates, from the wastewater, and investigated additional source reduction/pollution prevention measures and treatment technologies for further reductions of chlorides, sulfates and TDS from the wastewater. Further reductions in chlorides, sulfates and TDS from the wastewater were found to be not economically or technologically practical or feasible.

14. During discussion of Minute Order 17-19 ADEQ advised the Commission that it supports the new site specific criteria proposed by Huntsville.

15. On September 27, 2017 Huntsville received approval from the Governor's Office.

16. During the discussion that led to the adoption of Minute Order 17-19, several Commissioner's identified additional information that may be helpful in the Commission's understanding of the issues in this matter. In particular, it was suggested that a comparison of the historical and recent effluent data as reported by the Huntsville, and a comparison of the historical and recent downstream water quality monitoring data from the ADEQ water quality monitoring station would be helpful to compare the current effluent and current stream conditions to those present historically and during the Study. Attached hereto as Exhibit F is the *Evaluation of Huntsville effluent data and ADEQ ambient water quality monitoring data from WHI0070 (Holman Creek downstream of the Huntsville discharge) for chloride, sulfate, and TDS* ("Evaluation"). The Evaluation demonstrates that concentrations of chloride, sulfate, and TDS from ADEQ's Holman Creek monitoring station, located less than one mile downstream from the Huntsville discharge, have experienced no statistically significant change over time since the period of the aquatic life study. Additionally, concentrations of chloride, sulfate, and

TDS discharged by the City of Huntsville have either remained statistically similar or declined slightly since the study period, and the volume of effluent discharged has not experienced any statistically significant change since the study period.

17. Under Regulation 8.809, the documents required to approve Huntsville's requested changes to Regulation No. 2 have been revised to reflect current procedural requirements and current information, and are listed below, enclosed, and incorporated by reference in this Amendment to Petition by:

**Exhibit A. Proposed Rule.**

**Exhibit B. Governor's Approval.**

**Exhibit C. Legislative Questionnaire.**

**Exhibit D. Financial Impact Analysis.**

**Exhibit E. Economic Impact/Environmental Benefit Analysis.**

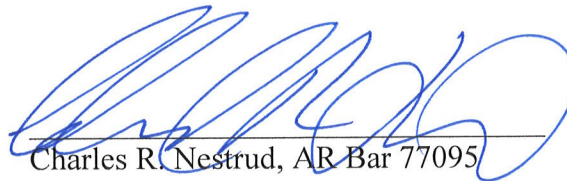
**Exhibit F. Evaluation.**

**Exhibit G. Minute Order 17-19.**

Respectfully submitted,

CHISENHALL, NESTRUD & JULIAN, P.A.  
400 West Capitol, Suite 2840  
Little Rock, AR 72201  
Telephone: 501-372-5800  
Facsimile: 501-372-4941

By:



Charles R. Nestrud, AR Bar 77095

**CERTIFICATE OF SERVICE**

I, Charles R. Nestrud, state that I have, on this 10 day of October, 2017, hand-delivered a copy of the foregoing Second Amendment Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 to:

Ms. Tammara Harrelson  
Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, AR 72118.

A handwritten signature in blue ink, appearing to read 'Charles R. Nestrud', is written over a horizontal line.

Charles R. Nestrud