

BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

Secretary
Arkansas Pollution Control and Ecology
101 East Capitol, Suite 875
Little Rock, AR 72201
Filed 1/17/17 AG

IN RE: REQUEST BY CITY OF FAYETTEVILLE)
PAUL R. NOLAND WASTEWATER)
TREATMENT PLANT)
TO INITIATE RULEMAKING TO) DOCKET NO. 13-010-R
AMEND REGULATION NO. 2)

**PETITIONERS' SUBSTITUTED EXHIBIT D TO ITS AMENDED
PETITION TO INITIATE THIRD-PARTY RULEMAKING AND
REQUEST FOR A SECOND PUBLIC NOTICE AND HEARING**

Petitioner, City of Fayetteville Paul R. Noland Wastewater Treatment Plant
("Fayetteville"), hereby substitutes the attached Exhibit D for the Exhibit D which was attached
to its Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 and
Request for a Second Public Notice and Hearing filed on January 13, 2017.

Respectfully submitted,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, PLLC
425 W. Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201-3525
(501) 688-8800
mtaylor@mwlaw.com

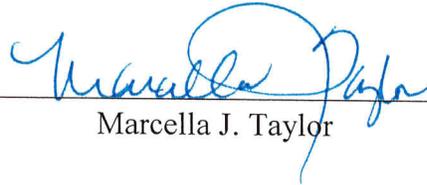
By: 
Marcella J. Taylor, AR Bar No. 82156
Allan Gates, AR Bar No. 72040

Counsel for the City of Fayetteville

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2017, I served a copy of the foregoing Petitioners' Substituted Exhibit A to its Amended Petition to Initiate Third-Party Rulemaking and Request for a Second Public Notice and Hearing on the following by United States Postal Service, postage prepaid and by electronic service:

Michael McAlister, Esq.
Supervising Attorney
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
mcalister@adeq.state.ar.us



Marcella J. Taylor

EXHIBIT D

**LEGISLATIVE QUESTIONNAIRE
AND
FINANCIAL IMPACT STATEMENT**

**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 Caleb Osborne
CONTACT PERSON Caleb Osborne
ADDRESS 5301 Northshore Drive, North Little Rock, AR 72118
PHONE NO. 682-0665 FAX NO. 682-0880 E-MAIL osbornec@adeq.state.ar.us
NAME OF PRESENTER AT COMMITTEE MEETING Allan Gates/Caleb Osborne
PRESENTER E-MAIL agates@mwlaw.com osbornec@adeq.state.ar.us

INSTRUCTIONS

- A. Please make copies of this form for future use.
- B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis
Administrative Rules Review Section
Arkansas Legislative Council
Bureau of Legislative Research
One Capitol Mall, 5th Floor
Little Rock, AR 72201

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. What is the subject of the proposed rule? Modification of the Arkansas Water Quality Standards (WQS) for a segment of the White River from the Noland Wastewater Treatment Plant outfall to ADEQ Monitoring Station WH10052.

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes No
If yes, please provide the federal rule, regulation, and/or statute citation. _____

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes No
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

5. Is this a new rule? Yes No

If yes, please provide a brief summary explaining the regulation. _____

Does this repeal an existing rule? Yes No

If yes, a copy of the repealed rule is to be 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. _____

Is this an amendment to an existing rule?

Yes

No

If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. Act 472 of 1949, as amended, ARK. CODE ANN. § 8-4-101, et seq. and Ark. Act 401 of 1997, ARK. CODE ANN. § 8-5-901 et seq.

7. What is the purpose of this proposed rule? Why is it necessary? The purpose of the proposed rule is to amend APCEC Regulation No. 2 to modify the chloride, sulfate and total dissolved solids ("TDS") water quality criterion for a portion of the White River from the outfall of the Noland Wastewater Treatment Plant to ADEQ monitoring Station WH10052.

The rule is necessary to modify the chloride, sulfate and TDS criteria to levels that reflect current and historic water quality conditions which are affected by naturally occurring conditions. The site-specific water quality criteria modifications will not adversely affect the aquatic life. There are no economically feasible treatment technologies capable of reducing the dissolved mineral concentration to levels of the current standards in the affected segment of the White River.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b). http://www.adeq.state.ar.us/regs/drafts/draft_regs.htm

9. Will a public hearing be held on this proposed rule? Yes No

If yes, please complete the following:

Date: March 27, 2017

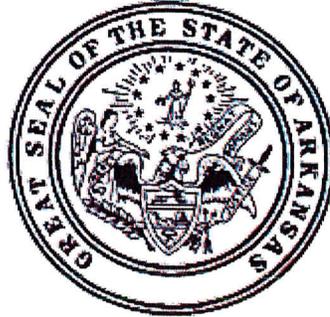
Time: 6:00 p.m

Walker Community Room of the
Fayetteville Public Library
401 W. Mountain St.

Place: Fayetteville, AR

**ATTACHMENT A TO
LEGISLATIVE QUESTIONNAIRE
(MARK UP OF PROPOSED AMENDMENT TO
APCEC REGULATION No. 2)**

ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



REGULATION NO. 2

REGULATION ESTABLISHING WATER QUALITY STANDARDS FOR SURFACE WATERS OF THE STATE OF ARKANSAS

INITIAL DRAFT

Submitted to the Arkansas Pollution Control and Ecology Commission on January 27, 2017

<u>Stream</u>	<u>Concentration-mg/L</u>		
	<u>Cl⁻</u>	<u>SO₄⁼</u>	<u>TDS</u>
Little Red River (including Greers Ferry Reservoir)	20	30	100
Black River	20	30	270
Strawberry River	20	30	270
Spring River	20	30	290
Eleven Point River	20	30	270
Stennitt Creek	ER	ER	456*
South Fork Spring River	20	30	270
Myatt Creek	20	30	270
Current River	20	30	270
White River (Dam #3 to Missouri line, including Bull Shoals Reservoir)	20	20	180
Buffalo River	20	20	200
Crooked Creek	20	20	200
White River (Missouri line to headwaters, including Beaver Reservoir)	20	20	160
<u>White River from Noland WWTP to 0.4 miles downstream (WR-02)</u>	<u>44†</u>	<u>79†</u>	<u>362†</u>
<u>White River from WR-02 to WH10052</u>	<u>30†</u>	<u>40†</u>	<u>237†</u>
Kings River	20	20	150
West Fork White River	20	20	150
St. Francis River Basin			
St. Francis River (Mouth to 36° N. Lat.)	10	30	330
L'Anguille River	20	30	235
Tyronza River (headwaters to Ditch No. 6 confluence)	20	30	350
Ditch No. 27	ER	480	1200
Ditch No. 6 (mouth to Ditch No. 27 confluence)	ER	210	630
Tyronza River (mouth to Ditch No. 6 confluence)	20	60	350
Little River	20	30	365
Pemiscot Bayou	20	30	380
St. Francis River (36° N. Lat. to 36° 30' N. Lat.)	10	20	180
Ouachita River Basin			
Bayou Bartholomew	50	20	500
Chemin-A-Haut Creek	50	20	500
Overflow Creek	20	30	170
Bayou Macon	30	40	330
Boeuf River	90	30	460
Big Cornie Creek	230	30	500
Little Cornie Creek	200	10	400
Three Creeks	250	10	500
Little Cornie Bayou	200	20	500
Unnamed trib from GLCC 003	538*	35*	519*
Unnamed trib to Little Cornie Bayou	305*	ER	325*
Little Cornie Bayou from unnamed trib to State Line	215*	25*	500*
Walker Branch	180*	ER	970*

Seasonal Ozark Highlands aquatic life use - all streams with watersheds of less than 10 mi² except as otherwise provided in Reg. 2.505

Perennial Ozark Highlands aquatic life use - all streams with watersheds of 10 mi² and larger and those waters where discharges equal or exceed 1-cfs

*As designated in the National Wild and Scenic Rivers System

**Except for those waters with designated use variations supported by Use Attainability Analysis or other investigations.

Site Specific Designated Use Variations Supported by Use Attainability Analysis or Other Investigations

- Railroad Hollow Creek - no fishable/swimmable uses (OH-1, #1)
- Columbia Hollow Creek - seasonal aquatic life use March-June (OH-1, #2)
- Curia Creek - below first waterfall, perennial aquatic life use (OH-4, #3)
- Moccasin Creek – below Arkansas Highway 177, perennial aquatic life use (OH-3, #4)
- Stennitt Creek- from Brushy Creek to Spring River, no domestic water supply use (OH-4, #6)

SPECIFIC STANDARDS: OZARK HIGHLANDS ECOREGION
(Plates OH-1, OH-2, OH-3, OH-4)

	<u>Streams</u>		<u>Lakes and Reservoirs</u>
Temperature °C (°F)*	29 (84.2)		32 (89.6)
Trout waters	20 (68)		
Turbidity (NTU) (base/all)	10/17		25/45
Minerals	see Reg. 2.511		see Reg. 2.511
Dissolved Oxygen**	<u>Pri.</u>	<u>Crit</u>	see Reg. 2.505
<10 mi ² watershed	6	2	
10 to 100 mi ²	6	5	
>100 mi ² watershed	6	6	
Trout waters	6	6	

All other standards (same as statewide)

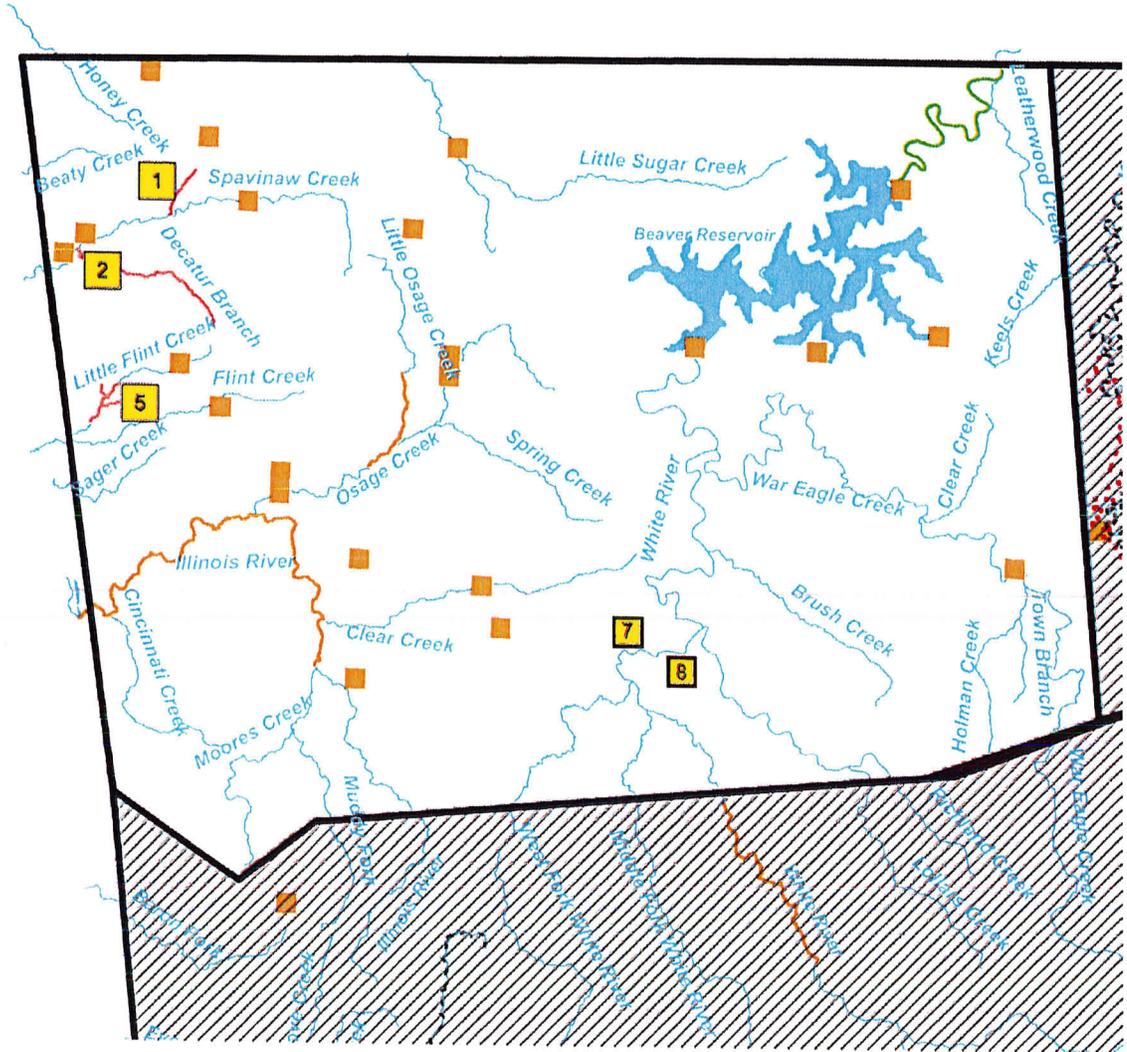
Site Specific Standards Variations Supported by Use Attainability Analysis

- Railroad Hollow Creek: from headwaters to Spavinaw Creek - year-round dissolved oxygen - 2 mg/L (OH-1, #1)
- Curia Creek - below first waterfall, critical season dissolved oxygen 6 mg/L (OH-4, #3)
- Moccasin Creek - below Highway 177, critical season D.O. 5mg/L (OH-3, #4)
- SWEPCO Reservoir - maximum temperature 54°C (limitation of 2.8°C above natural temperature does not apply) (OH-1, #5)
- Stennitt Creek - from Brushy Creek to Spring River, total dissolved solids = 456 mg/L (OH-4, #6)
- White River - from Noland WWTP to 0.4 miles downstream (WR-02), chloride = 44 mg/L, sulfate = 79 mg/L, TDS = 362 mg/L (OH-1, #7) †**
- White River - from WR-02 to WH10052, chloride = 30 mg/L, sulfate = 40 mg/L, TDS = 237 mg/L (OH-1, #8) †**

Plate OH-1 (Ozark Highlands)



LEGEND	
••	Extraordinary Resource Waters
••	Natural and Scenic Waterways
—	Variation by UAA
—	Ecologically Sensitive Waterbodies
■	ESW Caves, Springs, and Seeps
—	Trout Waters



**ATTACHMENT B TO
LEGISLATIVE QUESTIONNAIRE
(EXECUTIVE SUMMARY)**

EXECUTIVE SUMMARY

The City of Fayetteville owns and operates the Paul R. Noland Wastewater Treatment Plant (“Noland WWTP”) which discharges treated municipal wastewater under the provisions of NPDES Permit No. AR0020010 issued by ADEQ. The Noland WWTP treats the municipal wastewater from the cities of Fayetteville, Elkins, Greenland, sometimes Farmington and Johnson, as well as industrial and commercial enterprises, and discharges the treated wastewater via Outfall 001 to the White River in Washington County.

Because Fayetteville’s permit contains final discharge limits for chloride (Cl) sulfate (SO₄) and total dissolved solids (TDS) based upon Arkansas water quality standards for the White River, Fayetteville evaluated alternatives through a Use Attainability Analysis (UAA) and a UAA Addendum which included field studies, toxicity testing, mass balance modeling, engineering analysis of alternatives for discharge and treatment, and an analysis of designated uses for the White River.

Based upon the UAA and the UAA Addendum, Fayetteville is requesting the following site-specific modification to APCEC Regulation No. 2:

modify the Cl, SO₄ and TDS standards for the White River from the outfall of Fayetteville’s Noland WWTP outfall to a point 0.4 miles downstream (WR-02), as follows: Cl from 20 mg/L to 44 mg/L, SO₄ from 20 mg/L to 79 mg/L and TDS from 160 mg/L to 362 mg/L; and

modify the Cl, SO₄ and TDS standards for the White River from WR-02 to ADEQ Monitoring Station WH10052 (WR-03), as follows: Cl from 20 mg/L to 30 mg/L, SO₄ from 20 mg/L to 40 mg/L and TDS from 160 mg/L to 237 mg/L.

Fayetteville’s proposed site-specific modifications are supported by the following:

- Fayetteville is not seeking a change from historical water quality conditions in the White River; rather Fayetteville seeks a site-specific modification which allows the Noland WWTP to be compliant with its NPDES Permit while making certain that its effluent does not limit the attainment of any of the designated uses of the stream segments.
- UAA and UAA Addendum data established that:
 - setting the Cl, SO₄ and TDS at the site-specific levels requested will not cause acute or chronic toxicity in this stream segment;
 - setting the Cl, SO₄ and TDS at the site-specific levels requested will not impair existing or attainable designated uses, including aquatic life in this stream segment; and
 - setting the Cl, SO₄ and TDS at the site-specific levels will not impair Beaver Lake.
- All sampling locations influenced by Noland WWTP’s discharge showed the presence of ecoregion key and indicator species and species composition consistent with the

attainment of a Ozark Highlands fishery designated use. The requested changes will have no adverse effect on the aquatic life communities;

- Toxicity testing on *Ceriodaphnia dubia* and *Pimphales promelas* using Noland WWTP effluent and spiked samples of the effluent showed no significant lethal or sub-lethal toxicity in either test organism at concentrations exceeding the levels requested herein;
- There are no current economically feasible treatment technologies for the removal of the minerals. Reverse osmosis treatment technology does exist; however, this technology is not cost effective and generates a concentrated brine which is environmentally difficult to dispose of. The technology is not required to meet the designated uses and even if implemented would produce no significantly increased environmental protection.
- The basis for site-specific standards is provided in 40 CFR 131.10(g). Fayetteville's request for the modifications set forth above is supported by 40 CFR 131.10(g)(6) which provides that the state may establish less stringent criteria if controls more stringent than those required by section 301(b) and 306 of the Clean Water 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 standards that are "modified to reflect site-specific conditions."

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas Department of Environmental Quality
DIVISION Water Division
PERSON COMPLETING THIS STATEMENT Allan Gates
TELEPHONE NO. 688-8816 **FAX NO.** _____ **EMAIL:** agates@mwlaw.com

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

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.

1. Does this proposed, amended, or repealed rule have a financial impact? Yes No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

 - (b) The reason for adoption of the more costly rule;

 - (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

 - (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:
- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

General Revenue _____
Federal Funds _____
Cash Funds _____
Special Revenue _____
Other (Identify) _____

Total \$ 0

Total \$ 0

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$ 0

General Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____
 Total \$ 0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ 0

\$ 0

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

(1) a statement of the rule's basis and purpose;

(2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;

(3) a description of the factual evidence that:

(a) justifies the agency's need for the proposed rule; and

- (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
 - (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
 - (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
-
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
 - (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.
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-