

1/13/17 PLG

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

Secretary
Arkansas Pollution Control and Ecology
101
Little
Filed

**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)**

**AMENDED PETITION TO INITIATE THIRD-PARTY
RULEMAKING TO AMEND REGULATION NO. 2
AND REQUEST FOR A SECOND PUBLIC NOTICE AND HEARING**

Petitioner, City of Fayetteville Paul R. Noland Wastewater Treatment Plant

("Fayetteville"), for its Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 And Request for a Second Public Notice and Hearing states:

1. On October 11, 2013, the City of Fayetteville filed its Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 ("Original Petition"). Paragraphs 1 through 9 of the Original Petition are incorporated herein as if set forth word for word.

2. On October 25, 2013, the Commission granted Fayetteville's Petition. See Minute Order No. 13-22. A public hearing was held on February 3, 2014 in Fayetteville, Arkansas and the public comment period ended on February 27, 2014.

3. The Original Petition sought modification of the chloride, sulfate and total dissolved solids ("TDS") criteria for the White River from the outfall of Fayetteville's Paul R. Noland Wastewater Treatment Plant ("Noland WWTP") at River Mile 17.25 to immediately downstream of the confluence of Richland Creek at River Mile 11.6 as follows:

- chloride from 20 mg/L to 60 mg/L
- sulfate from 20 mg/L to 100 mg/L
- TDS from 160 mg/L to 440 mg/L

4. During the public comment period, ADEQ submitted written comments which stated that ADEQ had determined that, “[T]he aquatic life is not impacted by minerals and the aquatic life designated use is currently maintained.” But the Department further stated that the criteria proposed by Fayetteville “need[ed] to be re-evaluated to insure they reflect instream concentrations based on either the submitted data or the minerals concentrations measured over the past 23 years in monitoring data.”

5. During lengthy post-comment discussions between Fayetteville and ADEQ, ADEQ recommended that the City of Fayetteville revise its proposal to divide the affected river segment in two, with different criteria changes for the upstream and downstream segments.

6. Based on these post-comment discussions with ADEQ, Fayetteville has revised the criteria changes that it proposes. Specifically, Fayetteville agrees with the Department’s recommendation to divide the affected segment into two reaches, one from the Noland WWTP outfall to a point 0.4 miles downstream (WR-02), and another from WR-02 to ADEQ monitoring station WH10052 (WR-03). The new criteria proposed for the two segments are as follows:

<u>Revised Proposal</u>	<u>Chloride</u>	<u>Sulfate</u>	<u>Total Dissolved Solids</u>
Noland to WR-02	44 mg/L	79 mg/L	362 mg/L
WR-02 to WR-03	30 mg/L	40 mg/L	237 mg/L

A redline version of APCEC Regulation No. 2 showing the proposed changes is attached hereto as Exhibit A and incorporated herein by reference.

7. The changes set forth above in paragraph 6 are supported by an Addendum to the Use Attainability Analysis (“UAA”)¹ entitled “Re-evaluation of Proposed Minerals Site-Specific Water Quality Criteria for the White River near Fayetteville, Arkansas” which was submitted to

¹ The UAA is attached as Exhibit F to the Original Petition and is incorporated herein by reference.

ADEQ on December 12, 2016. The UAA Addendum is attached hereto as Exhibit B and incorporated herein.

8. Following submission of the UAA Addendum to ADEQ, ADEQ authorized Fayetteville to move forward with this amended third-party rulemaking.

9. On December 14, 2016 this Amended Petition was submitted to the Governor's Office for approval. On January 4, 2017, Fayetteville received approval from the Governor's Office. A copy of the January 4, 2017, correspondence from the Governor's Office is attached hereto as Exhibit C and incorporated herein by reference.

10. Fayetteville believes that the changes set forth in paragraph 6, above, require a new public notice and public comment period and respectfully requests that it be allowed to proceed with new public notice and public comment.

11. A copy of a revised Legislative Questionnaire and Financial Impact Statement is attached hereto as Exhibit D and incorporated herein by reference.

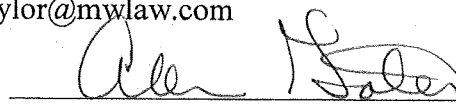
12. A copy of the correspondence from ADEQ is attached hereto as Exhibit E and incorporated herein by reference.

13. A copy of the proposed Minute Order to initiate rulemaking is attached as Exhibit F and incorporated herein by reference.

WHEREFORE, the City of Fayetteville requests that the Commission enter a Minute Order sending the revised water quality criteria set forth in paragraph 6 for public comment and a public hearing.

Respectfully submitted,

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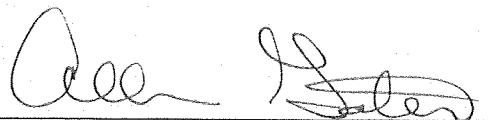
By: 
Allan Gates, AR Bar No. 72040
Marcella J. Taylor, AR Bar No. 82156

Counsel for the City of Fayetteville

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January, 2017, I served a copy of the foregoing Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 on the following by United States Postal Service, postage prepaid and by electronic service:

Michael McAlister, Esq.
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Allan Gates