

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

**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 )**

**CITY OF FAYETTEVILLE'S  
STATEMENT OF BASIS AND PURPOSE**

The City of Fayetteville ("Fayetteville") 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 October 11, 2013, Fayetteville filed its Petition to Initiate Third-Party Rulemaking to Amend APCEC Regulation No. 2. Fayetteville'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, and the Continuing Planning Process. On October 25, 2013, the APCEC entered Minute Order No. 13-32 granting Fayetteville's Petition and initiated rulemaking on the changes proposed to Regulation No. 2 by Fayetteville.

3. Fayetteville's Petition sought a change in the chloride, sulfate and total dissolved solids (TDS) criteria for the White River from the discharge of the Paul R. Noland Wastewater

Treatment Plant (Noland WWTP) to immediately downstream of the confluence of Richland Creek.

4. Through its Petition Fayetteville requested that the Commission amend APCEC Regulation No. 2 to establish minerals criteria for the affected segment of the White River 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

5. Following comments by and discussions with ADEQ, Fayetteville agreed with ADEQ’s request to split the reach of the White River and seek separate TDS, sulfate and chloride criteria for each segment. Because the “split reach” proposal differed from the proposal contained in its Original Petition, Fayetteville filed an Amended Petition on January 13, 2017, and requested a second public hearing and public comment period (“Amended Petition”). On January 27, 2017, the Commission granted Fayetteville’s Amended Petition and APCEC Minute Order No. 17-04 ordered a new public comment period and public hearing.

6. Through its Amended Petition Fayetteville requested that the Commission amend APCEC Regulation No. 2 to establish minerals criteria for the affected segment of the White River 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

7. Fayetteville’s Petition and Amended Petition 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 data established that:
  - setting the chloride, sulfate and TDS at the site-specific levels requested in this stream segment will not cause acute or chronic toxicity;
  - setting the chloride, sulfate and TDS at the site-specific levels in this stream segment will fully support the aquatic life of the segments; and
  - setting the chloride, sulfate and TDS at the site-specific levels requested in this stream segment 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 fully support 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 requested in paragraph 10, 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."

Respectfully submitted,

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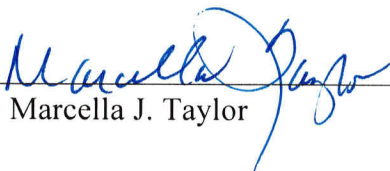
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**Counsel for the City of Fayetteville**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of April, 2017, I served a copy of the foregoing Statement of Basis and Purpose on the following by electronic service:

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