

EXHIBIT B

LEGISLATIVE QUESTIONNAIRE

**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: Ryan Benefield, Interim Chief
CONTACT PERSON: Ryan Benefield, Interim Chief
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PHONE NO.: 501/682-0655 **FAX NO.:** 501/682-0910 **E-MAIL:** benefield@adeq.state.ar.us
NAME OF PRESENTER AT COMMITTEE MEETING: Marcella Taylor
PRESENTER E-MAIL: mtaylor@mwlaw.com

TO: Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
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 dissolved mineral standards of the Arkansas Water Quality Standards (WQS) for a segment of 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.
3. Is this rule required to comply with federal statute or regulations?
Yes ___ No X
4. Was this rule filed under the emergency provisions of the Administrative Procedure Act?
Yes ___ No X

If yes, what is the effective date of the emergency rule? N/A

When does the emergency rule expire? N/A

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes _____ No _____ N/A

Is this a new Rule? Yes _____ No X

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

Does this repeal an existing rule: Yes _____ No X If yes, a copy of the repealed rule is to be included with your completed questionnaire.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.

5. Is this an amendment to an existing rule? Yes X No _____ If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substance changes.

See Attachments A (blackline of the affected pages of APCEC Regulation No. 2) and B (executive summary).

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 the rule? Why is it necessary?

The purpose of the proposed rule is to amend APCEC Regulation No. 2 to modify the water quality criteria for chloride, sulfate and total dissolved solids (TDS) for the White River from the outfall of Fayetteville's Paul R. Noland Wastewater Treatment Plant 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; and TDS from 160 mg/L to 440 mg/L

The rule is necessary to modify the dissolved mineral criteria to levels that reflect current and historic water quality conditions, are appropriate for the City of Fayetteville's wastewater treatment operations, and are protective of the designated uses. The site-specific water quality criteria modifications will not adversely affect the aquatic life communities or the designated uses of the receiving waters. 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. Will a public hearing be held on this proposed rule? Yes X No _____ If yes, please complete the following:

Date: February, 2014 on a date to be determine by ADEQ

Time: to be determined by ADEQ

Place: Washington County, Arkansas at a location to be determined by ADEQ

9. When does the public comment period expire for permanent promulgation? (Must provide a date.)

The period for receiving all written comments by the public shall conclude ten (10) business days after the date of the public hearing pursuant to Arkansas Pollution Control and Ecology Commission Regulation No. 8, Section 8.806(C), unless an extension of time is granted. Thus, the public comment period will expire during the week of March 3, 2014.

10. What is the proposed effective date of this proposed rule? (Must provide a date.)

The regulation becomes effective twenty days after filing of the final regulation as adopted by the Commission with the Secretary of State.

11. Do you expect the rule to be controversial? Yes _____ No If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment of these rules? Please provide the position (for or against) if known.

For or Neutral:

*Arkansas Department of Environmental Quality
Arkansas Department of Health
Arkansas Natural Resources Commission
Region VI, US Environmental Protection Agency
Arkansas Game and Fish Commission*

Against:

Unknown

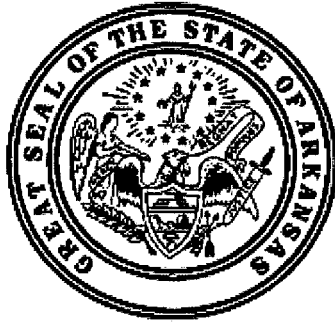
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Attachment A

To

Exhibit B

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 October 25, 2013

banks and/or bottoms of the watercourses or adversely affect any of the associated biota. As a guideline, oil and grease shall not exceed 10 mg/l average or 15 mg/l maximum when discharging to surface waters. No mixing zones are allowed for discharges of oil and grease.

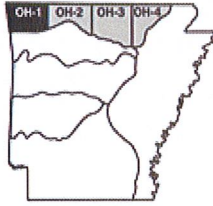
Reg. 2.511 Mineral Quality

(A) Site Specific Mineral Quality Criteria






Mineral quality shall not be altered by municipal, industrial, other waste discharges or instream activities so as to interfere with designated uses. The following limits apply to the streams indicated, and represent the monthly average concentrations of chloride (Cl⁻), sulfate (SO₄⁼) and total dissolved solids (TDS).

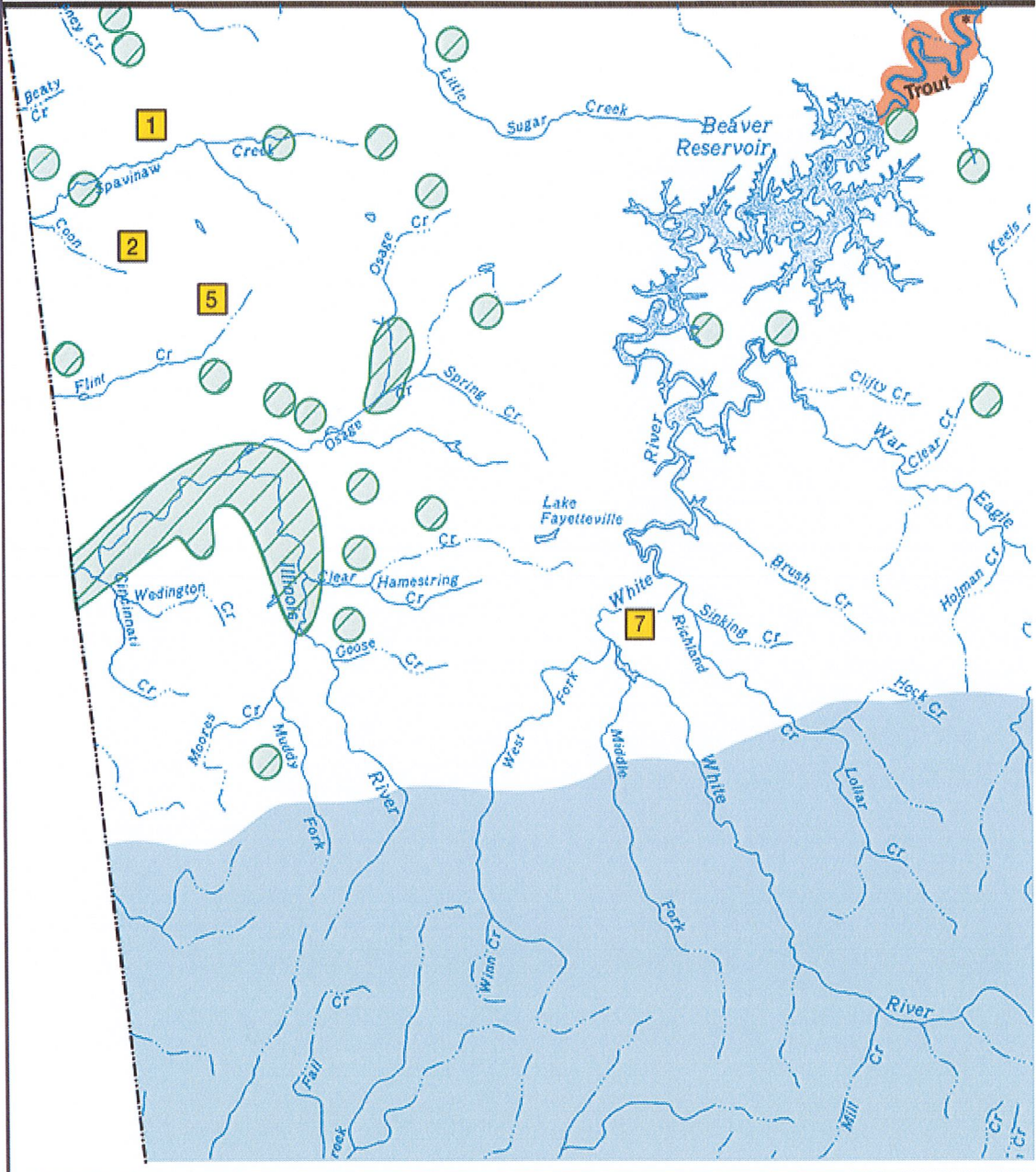
<u>Stream</u>	<u>Concentration-mg/L</u>		
	<u>Cl⁻</u>	<u>SO₄⁼</u>	<u>TDS</u>
Arkansas River Basin			
Arkansas River (Mouth to L&D #7)	250	100	500
Bayou Meto (Rocky Branch to Bayou Two Prairie)	64*	ER	ER
Bayou Meto (mouth to Bayou Two Prairie)	95**	45**	ER
Bayou Two Prairie (mouth to Rickey Branch)	95**	45**	ER
Rocky Branch Creek	64*	ER	ER
Little Fourche Creek (Willow Springs Branch to Fourche Creek)	ER	ER	179
Willow Springs Branch (McGeorge Creek to Little Fourche Creek)	ER	112	247
McGeorge Creek (headwaters to Willow Springs Branch)	ER	250	432
Arkansas River (L&D #7 to L&D #10)	250	100	500
Cadron Creek	20	20	100
Arkansas River (L&D #10 to Oklahoma line, including Dardanelle Reservoir)	250	120	500
James Fork	20	100	275
Illinois River	20	20	300
Poteau River from Business Hwy 71 to Stateline	120	60	500
Unnamed trib at Waldron	150	70	660
White River Basin			
White River (Mouth to Dam #3)	20	60	430
<u>White River (from River Mile 17.25 to River Mile 11.6)</u>	<u>60</u>	<u>100</u>	<u>440</u>
Big Creek	20	30	270
Unnamed trib from Frit Ind.	ER	48*	ER
Cache River	20	30	270
Bayou DeView (from Mouth to AR Hwy 14)	48	37.3	411.3
Bayou Deview (from AR Hwy 14 to Whistle Ditch)	48	38	411.3
Big Creek (from Whistle Ditch to mouth of Unnamed trib)	58	49	ER
Unnamed trib to Big Creek	71	60	453
Lost Creek Ditch	20	30	270

Plate OH-1 (Ozark Highlands)



LEGEND

-  - Ecologically Sensitive Waterbodies
-  - Trout Waters
-  - Extraordinary Resource Waters
-  - Natural and Scenic Waterways
-  - Variation by UAA



Attachment B

To

Exhibit B

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) 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, 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 at River Mile 17.25 to immediately downstream of the confluence of Richland Creek at River Mile 11.6 as follows: Cl from 20 mg/L to 60 mg/L; SO₄ from 20 mg/L to 100 mg/L; and TDS from 160 mg/L to 440 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 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."