

EXHIBIT D

COMPLIANCE WITH ACT 143 OF 2007

MITCHELL | WILLIAMS

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June 12, 2013

Ms. Patricia Brown
Division Director
Arkansas Economic Development Commission
Arkansas Department of Economic Development
900 W. Capitol Ave.
Little Rock, AR 72201

Re: Economic Impact/Environmental Benefit Analysis
City of Fayetteville Paul R. Noland Wastewater Treatment Plant
Third Party Rulemaking Petition before the Arkansas Pollution Control
& Ecology Commission

Dear Ms. Brown:

City of Fayetteville Paul R. Noland Wastewater Treatment Plant (Fayetteville) intends to petition the Arkansas Pollution Control & Ecology Commission (APCEC) to amend APCEC Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas. A copy of the proposed amendment and the Economic Impact Statement of Proposed Rules or Regulations, EO 05-04: Regulatory Flexibility are attached for your review. Additional documentation, including a copy of the *White River Use Attainability Analysis – Fayetteville, Arkansas*, the study supporting the request to amend APCEC Regulation No. 2, is available for your review upon request. This is being submitted to AEDC pursuant to the requirements of Act 143 of 2007.

Fayetteville is not requesting a change to the actual water quality of the affected streams. Rather the water quality standards changes requested by Fayetteville—modification of the chloride, sulfate and total dissolved solids water quality standards for the White River from the outfall of the Noland WWTP at River Mile 17.25 to immediately downstream of the confluence of Richland Creek at River Mile 11.6—reflect current and historic conditions in the affected streams.

There will be no cost to state government associated with the proposed amendment and no regulatory burden such as fees, reporting requirements, or the obtaining of any regulatory permit will be imposed on any small business because of the modification of these minerals standards. The proposed amendment will not create any barrier to entry. No additional requirements will be imposed on any small business by the proposed amendment and no small business will be required to implement any changes because of the proposed amendment. The requested changes will have no impact on any small business. It will impact only Fayetteville.

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Please review the prepared amendment to APCEC Regulation No. 2, and provide your approval of same pursuant to Act 143 of 2007 as amended by Act 809 of 2009.

Should you have any questions regarding this matter or need any further information, please do not hesitate to contact me.

Sincerely,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

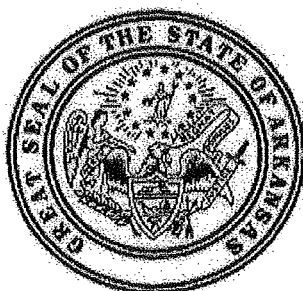
By


Marcella J. Taylor

MJT:ce
Enclosures

cc: The Honorable Charles Moulton (w/encls.)

**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 _____, 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 (SO₄²⁻) and total dissolved solids (TDS).

<u>Stream</u>	<u>Concentration-mg/L</u>		
	<u>Cl⁻</u>	<u>SO₄²⁻</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

Use Variations Supported by UAA or Other Investigations

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

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)* Trout waters	29 (84.2) 20 (68)	32 (89.6)
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)

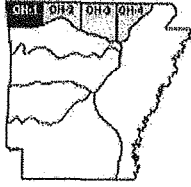
Variations Supported by UAA

- 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 D.O. 6 mg/l (OH-4, #3)
- Moccasin Creek - below Highway 177, critical season D.O. 5mg/l (OH-3, #4)
- SWEPSCO 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, TDS = 456 mg/l (OH-4, #6)
- White River - from River Mile 17.25 to River Mile 11.6, chloride = 60 mg/L, sulfate = 100 mg/L, TDS = 440 mg/L (OH-1, #7)**






* Increase over natural temperatures may not be more than 2.8°C (5°F).

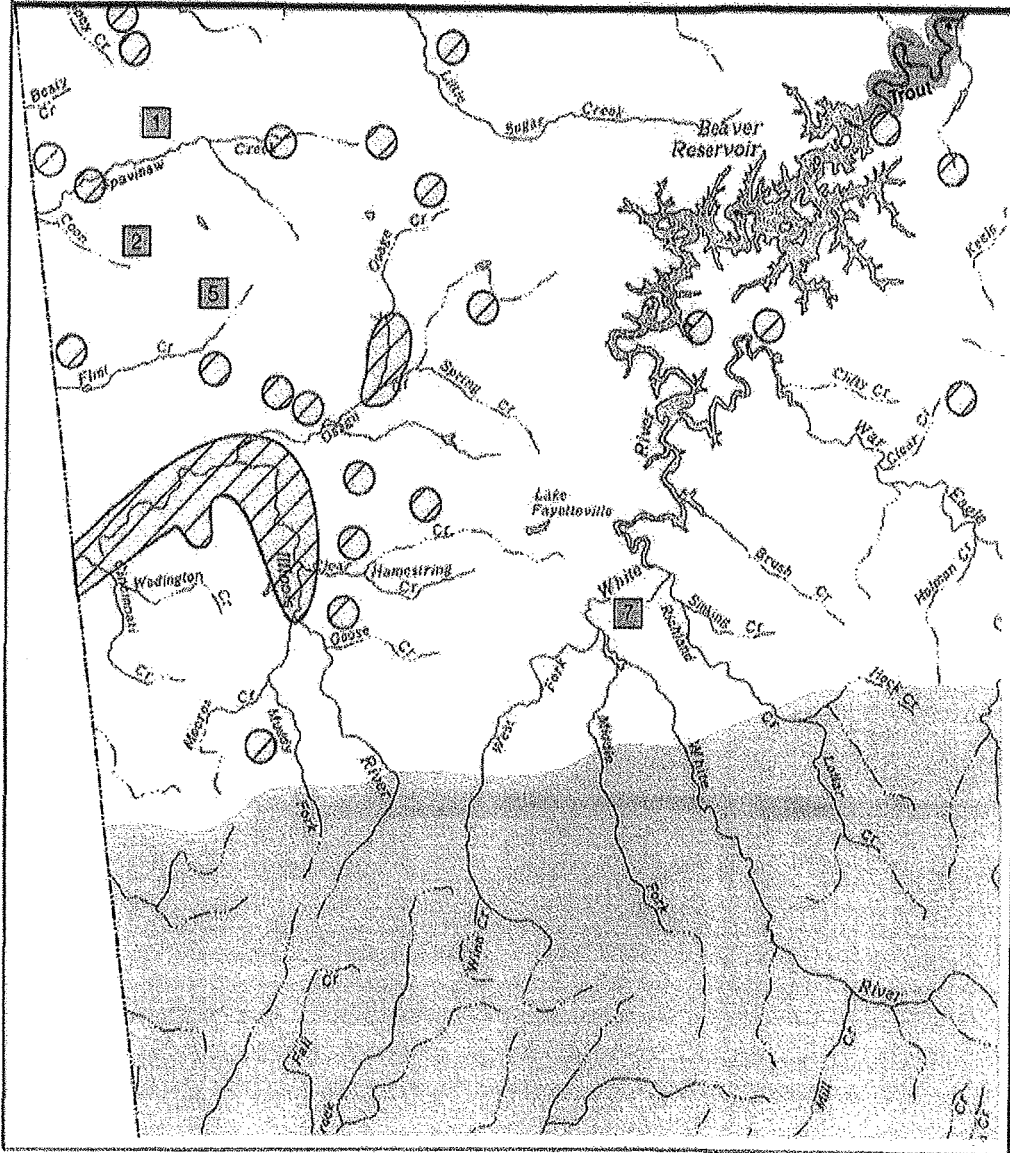
** At water temperatures ≤10°C or during March, April and May when stream flows are 15 CFS and greater, the primary season D.O. standard will be 6.5 mg/l. When water temperatures exceed 22°C, the critical season D.O. standard may be depressed by 1 mg/l for no more than 8 hours during a 24-hour period.

Plate OH-1 (Ozark Highlands)



LEGEND

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



**ECONOMIC IMPACT STATEMENT
OF PROPOSED RULES OR REGULATIONS
EO 05-04: Regulatory Flexibility**

Department City of Fayetteville Noland Wastewater Treatment Plant Division none
Contact Person Marcella J. Taylor Date June 12, 2013
Contact Phone (501) 688-8851 Contact Email mtaylor@mwlaw.com

Title or Subject: Petition to Amend Arkansas Pollution Control & Ecology Commission Regulation No. 2, Arkansas Water Quality Standards

Benefits of the Proposed Rule or Regulation

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.
 - The City of Fayetteville Paul R. Noland Wastewater Treatment Plant seeks to have certain water quality criteria in Arkansas Pollution Control & Ecology Commission (APCEC) Regulation No.2 amended to reflect the historical and current levels of chloride, sulfate and total dissolved solids in the White River from the outfall of the wastewater treatment plant ("Noland WWTP") at River Mile 17.25 to immediately downstream of the confluence of Richland Creek at River Mile 11.6. This proposed change is needed to reflect actual conditions and to allow Fayetteville to be in compliance with the terms of its NPDES permit.
 - No complaints motivated The City of Fayetteville to seek amendment of APCEC Regulation No. 2.
2. What are the top three benefits of the proposed rule or regulation?
 - Revised water quality criteria which reflect actual conditions
 - Revised water quality criteria which are protective of the receiving streams,
 - Compliance with the current and anticipated NPDES permit limits by the City of Fayetteville.
3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?
 - If no action is taken to amend the water quality criteria future non-compliance with either NPDES permit limitations or the current stringent water quality criteria would force the City of Fayetteville and its ratepayers to expend hundreds of thousands, if not millions, of dollars for treatment of its effluent water. Such expenditures would not result in more protective downstream water quality or aquatic life conditions.
4. Describe the market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.
 - Fayetteville considered seven alternatives to modification of the water quality criteria: product substitution, recycle/reuse of effluent, land application of effluent, alternative discharge location, evaporation, ion exchange and membrane treatment (reverse osmosis).
 - Product substitution is not likely to reduce the level of the chloride, sulfate and total dissolved solids.
 - The alternate disposal alternatives of recycle/reuse of effluent, land application of effluent, alternative discharge location, and evaporation are not feasible for a variety of reasons, including the lack of any available users to take all of the effluent, the lack of land available for land application and climate which is not amenable to year-round land application, the lack of an alternative discharge location and regulatory issues in Oklahoma, as well as an inordinately high energy use and thus capital expenditure/O&M costs for evaporation.
 - Ion exchange is not a feasible solution because of its ineffectiveness to reduce total dissolved solids.
 - Membrane treatment using reverse osmosis treatment is economically infeasible with an initial capital

investment from \$188 million to \$396 million in addition to the annual O&M costs.

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting associated with this new rule or regulation.
 - There is no cost to state government associated with this proposed new rule.
6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.
 - There are no additional requirements for any small business due to this rule change. Further, any small business which could potentially be required to comply with the proposed rule or regulation is already being required to comply with the current more stringent water quality criteria for the affected stream.
7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.
 - The proposed regulation does not create any barriers to entry.
8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.
 - There are no additional requirements with which small business owners will have to comply.
9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.
 - The proposed regulation does not contain different requirements for different sized entities.
10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.
 - No small business owners will be required to implement changes because of the proposed regulation.
11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?
 - Both federal environmental laws and the environmental laws of most, if not all, states provide for the establishment and amendment of water quality criteria, not only by the federal and state agencies, but also by third party petition. This proposed regulation amendment would therefore be comparable to water quality standards in other states.
12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.
 - The City of Fayetteville is not an agency and has not yet received any input about the proposed rule or regulation. APCEC Regulation No. 8 and Ark, Act 143 of 2007 require the submission of this information to ADEC prior to the filing of a third-party petition to initiate the rulemaking. Public input will come about during the public comment period once the APCEC initiates the rule-making.