

# **EXHIBIT A**

## **CITY OF FAYETTEVILLE'S STATEMENT OF BASIS AND PURPOSE AND RESPONSE TO COMMENTS**

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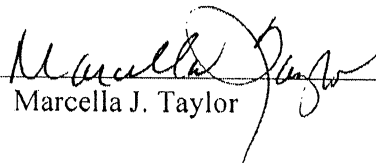
By:   
Marcella J. Taylor, AR Bar No. 82156  
Allan Gates, AR Bar No. 72040

**Counsel for the City of Fayetteville**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 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:

Michael McAlister, Esq.  
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Marcella J. Taylor

**BEFORE THE ARKANSAS POLLUTION CONTROL  
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**IN RE: REQUEST BY CITY OF FAYETTEVILLE )  
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**CITY OF FAYETTEVILLE'S RESPONSE TO COMMENTS**

1. The City of Fayetteville ("Fayetteville") for its Response to Comments, states:  
On October 25, 2013, the Arkansas Pollution Control and Ecology Commission ("APCEC") granted Fayetteville's Petition To Initiate Third-Party Rulemaking to Amend APCEC Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas ("Original Petition"). APCEC Minute Order 13-32. A public hearing was held on February 13, 2014 in Fayetteville, Arkansas. The public comment period ended on February 27, 2014. Six public comments were submitted; three written and three voiced at the public hearing. This public comment period is hereinafter referred to as "the Initial Public Comment Period".

2. Based on a comment submitted by the Arkansas Department of Environmental Quality ("ADEQ") in the Initial Public Comment Period, Fayetteville and ADEQ reached an agreement to divide the affected stream segment into two segments with new criteria proposed 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. The second public hearing was held on March 27, 2017 in Fayetteville, Arkansas. The second public comment period ended on April 10, 2017. One public comment was submitted orally at the public hearing with a written copy of the oral statement was also submitted. This public comment period is hereinafter referred to as “the Second Public Comment Period”.

3. The comments received during the Initial Public Comment Period and Fayetteville’s Response to each is as follows:

**Comment:**

ADEQ asked that the requested water quality criteria be re-evaluated to insure they reflect instream concentrations based on either submitted data or the minerals concentrations measured over the past 23 years in monitoring data.

**Response:**

Fayetteville re-evaluated the data and gathered additional data which was further analyzed and submitted to ADEQ. Based on ADEQ’s written comments and the related discussions with Department staff, the City revised the criteria changes that it proposes to present to the Commission for final approval. Specifically, the City 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 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	33 mg/L	46 mg/L	273 mg/L

**Comment:**

Arkansas Department of Health requested that any effluent from the WWTP include concentration limits of TDS, chlorides and sulfates that meet the Secondary Maximum Contaminant Levels of 500, 250 and 250 mg/L.

**Response:**

The TDS, chloride and sulfate water quality criteria requested by Fayetteville upon which the effluent permit limits will be based are 44 mg/L chloride, 79 mg/L sulfate and 362 mg/L TDS. The city anticipates that permit limits will include concentration limits of chloride, sulfate and TDS that will meet or be lower than the Secondary Drinking Water Maximum Contaminant Levels.

**Comment:**

One commenter stated that the water quality standards requested are higher than are necessary because the mass balance model used to calculate the criteria utilized a series of inputs that are combined in a way that will never occur.

**Response:**

The re-evaluation and analysis discussed in response to ADEQ's comment (*see above*) lead to agreement to revise downward the requested TDS, chloride and sulfate water quality standards. However, the inputs into the mass balance model were correct in that the standards originally requested have actually occurred in the manner demonstrated by the mass balance model.

**Comment:**

One commenter requested a delay to see what all the municipalities which discharge into the White River are going to do and for more study. This commenter was particularly concerned that chlorine has an impact on the aquatic insects which are a food supply for fish.

**Response:**

Fayetteville is not requesting a chlorine water quality criterion; rather it is requesting a chloride water quality criterion. The UAA supporting the requested water quality criteria changes as well as the further evaluation and analysis of the data discussed in response to ADEQ's comment (*see above*) established that the requested changes in the minerals standards will fully support aquatic life in the affected segment of the White River.

**Comment:**

One commenter stated that people should be composting and mulching food waste rather than using a garbage disposal to keep salts from getting to Beaver Lake.

**Response:**

Comment acknowledged; however, alternative disposal of food waste is beyond the scope of this rulemaking.

**Comment:**

Beaver Water District expressed gratitude to Fayetteville for its openness and cooperation in the process of the rulemaking and for keeping Beaver Water District well informed.

**Response:**

Comment acknowledged. Fayetteville will continue to work with Beaver Water District to protect the drinking water supply for the people of Northwest Arkansas.



4. The comment received during the Second Public Comment Period and Fayetteville's Response is as follows:

**Comment:**

Emory Brown, Vice President Project Management for Superior Industries, expressed Superior Industries support of the water quality standard changes requested by the City of Fayetteville.


**Response:**

Comment acknowledged.

Respectfully submitted,

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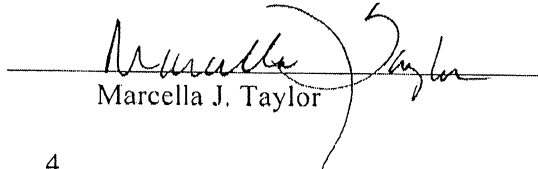
Marcella J. Taylor, AR Bar No. 82156  
Allan Gates, AR Bar No. 72040

Counsel for the City of Fayetteville

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28<sup>th</sup> day of April, 2017, I served a copy of the foregoing Response to Comments on the following by electronic service:

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