

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

AR- POLLUTION CONTROL  
& ECOLOGY COMMISSION  
FILED BY  
2015 SEP 30 PM 12:47

**IN RE: REQUEST BY DOMTAR A.W. LLC            )**  
**INC. TO INITIATE RULEMAKING FOR        ) DOCKET NO. 14-008-R**  
**A TECHNICAL ADJUSTMENT TO            )**  
**REGULATION NO. 2                         )**

**DOMTAR A.W. LLC’S MOTION FOR THE ADOPTION  
OF PROPOSED AMENDMENTS TO REGULATION NO. 2**

Domtar A.W. LLC (“Domtar”), in support of its Motion for the Adoption of Proposed Changes to the Arkansas Pollution Control and Ecology Commission’s (“APCEC” or “the Commission”) Regulation No. 2 to amend the total dissolved solids (“TDS”) and sulfate water quality criterion for the Red River from the Arkansas/Oklahoma state line to the Arkansas/Louisiana state line submits the following:

1. By Minute Order 14-41, dated December 5, 2014, the Commission granted Domtar’s Petition to Initiate Third-Party Rulemaking.
2. Public notice of the rulemaking was published in the *Arkansas Democrat-Gazette* on December 10 and 11, 2014. On January 26, 2015, a public hearing was held at 6:00 p.m. at the General Use Room of the Cossatot Community College of the University of Arkansas, 1411 N. Constitution Ave., Ashdown, AR. The deadline for submitting written public comments was March 2, 2015. In compliance with Minute Order 14-41, Domtar filed its Statement of Basis and Purpose on May 20, 2015. *See* Exhibit A attached hereto. On May 20, 2015, Domtar filed its Response to Comments and ADEQ filed its Responsive Summary on August 6, 2015. *See* Exhibit B attached hereto.

3. Attached hereto as Exhibit C is the final proposed amendments to APCEC Regulation No. 2.

4. On September 8, 2015, Domtar's proposed amendments to APCEC Regulation No. 2 were reviewed by the Joint Senate and House committee on Public Health, Welfare, and Labor. On September 23, 2015, the proposed amendments were reviewed and approved by the Administrative Rules and Regulation Subcommittee of the Arkansas Legislative Council and on September 25, 2015, the matter was approved by the Arkansas Legislative Council. *See* Regulations Tracking Sheet attached hereto as Exhibit D.

5. On March 2, 2015, Domtar was notified that its proposed amendments to Regulation No. 2 had been approved by the Office of the Governor. *See* Exhibit E attached hereto.

6. Attached hereto as Exhibit F is the proposed Minute Order adopting the amendments to APCEC Regulation No. 2 requested by Domtar in its Petition to Initiate Third-Party Rulemaking.

WHEREFORE, Domtar A.W. LLC respectfully asks this Commission to adopt the amendments to APCEC Regulation No. 2 set forth in Exhibit C attached hereto.

Respectfully submitted,

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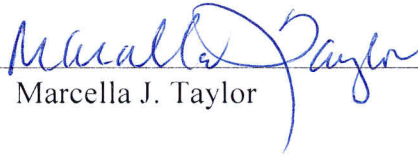
By:   
Marcella J. Taylor, AR Bar No. 82156  
Allan Gates, AR Bar No. 72040

**Counsel for Southwestern Electric Power Company**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of October, 2015, I served a copy of the foregoing Motion for the Adoption of Proposed Amendments to Regulation No. 2 on the following by electronic service:

Lorielle Gutting, Esq.  
Chief, Legal Division  
Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, AR 72118  
[gutting@adeq.state.ar.us](mailto:gutting@adeq.state.ar.us)

  
\_\_\_\_\_  
Marcella J. Taylor

# **EXHIBIT A**

## **DOMTAR'S STATEMENT OF BASIS AND PURPOSE**

BEFORE THE ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION

ARK. POLLUTION CONTROL  
& ECOLOGY COMMISSION  
FILED BY  
2015 MAY 20 PM 11:40

IN RE: REQUEST BY DOMTAR A.W. LLC )  
INC. TO INITIATE RULEMAKING FOR ) DOCKET NO. 14-008-R  
A TECHNICAL ADJUSTMENT TO )  
REGULATION NO. 2 )

DOMTAR A.W. LLC'S  
STATEMENT OF BASIS AND PURPOSE

Domtar A.W. LLC, for its Statement of Basis and Purpose, states:

1. The Arkansas Pollution Control and Ecology Commission ("APCEC" or "the Commission") is given the power and duty to promulgate rules and regulations implementing the powers and duties of the Arkansas Department of Environmental Quality ("ADEQ" or "the Department") 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 November 20, 2014, Domtar filed its Petition to Initiate Third-Party Rulemaking for a Technical Adjustment to APCEC Regulation No. 2. Domtar's Petition was submitted pursuant to, and in compliance with APCEC Regulation No. 2, §§ 2.303 and 2.308, APCEC Regulation No. 8, § 8.809, and the ADEQ's Continuing Planning Process. On December 5, 2014, the APCEC entered Minute Order No. 14-41 granting Domtar's Petition and initiated rulemaking on the changes proposed to Regulation No. 2 by Domtar.

3. Domtar's Petition sought a technical adjustment to the total dissolved solids (TDS) water quality criterion for a portion of the Red River from the Arkansas/Oklahoma state line to the mouth of the Little River, and a technical adjustment to the sulfate criterion of the Red River from the Arkansas/Oklahoma state line to the Arkansas/Louisiana state line.

4. Through its Petition Domtar requested that the Commission amend APCEC Regulation No. 2 to change the TDS water quality criterion of the Red River from the Arkansas/Oklahoma state line to the mouth of the Little River from 850 mg/L to 940 mg/L; change to sulfate water quality criterion of the Red River from the Arkansas/Oklahoma state line to the mouth of the Little River from 200 mg/L to 250 mg/L; and to change the sulfate water quality criterion for the Red River from the mouth of the Little River to the Arkansas/Louisiana state line from 200 mg/L to 225 mg/L.

5. Domtar's Petition is supported by the following:

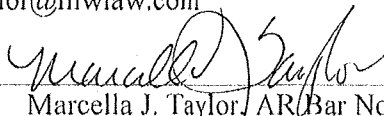
- The Red River situation is unique. There is no similar water body in Arkansas with the inconsistent and conflicting water quality minerals criteria. There are well known and long-term naturally occurring elevated levels of minerals in the Red River caused by input from natural salt springs and seeps in Texas and Oklahoma and there are highly inconsistent and conflicting minerals standards on the Red River established by the various agencies with jurisdiction over the water quality standards of the River;
- there is currently pending before the Commission Southwest Electric Power Company's ("SWEPCO") water quality standard changes supported by its Use Attainability Analysis ("UAA") which, if approved, will change the minerals water quality standards in the Red River from the mouth of the Little River to the Arkansas/Louisiana state line, (*In Re: Request By The Southwestern Electric Power Company to Initiate Rulemaking to Amend Regulation No. 2*, Before the Arkansas Pollution Control and Ecology Commission, Docket No. 14-007-R); and Domtar's request is expressly contingent upon Commission approval of the changes requested by SWEPCO's separate petition;
- The requested technical adjustments reflect current conditions, bring consistency to the criteria on the Red River, and allow Domtar to operate efficiently and within projected permit limits while protecting designated uses for the Red River;

- TDS concentrations in the Red River historically exceed the current TDS criterion of 850 mg/L due to elevated levels of dissolved solids caused primarily by input from natural salt springs and seeps in Oklahoma and Texas;
- TDS and sulfate criterion in the Red River are spatially inconsistent because of the criteria separately established on the same segments of the river by Oklahoma, Texas and Arkansas;
- The TDS and sulfate criterion in the Red River makes no sense and has no rational connection to the longstanding historical reality in the river;
- The Summary Rationale collaboratively developed by Domtar and ADEQ, spiked toxicity tests of the Red River, and Buchanan, *et al.* Study (2003) which were attached to Domtar's Petition as Exhibit F;
- There is no current economically feasible treatment technology for the removal of the minerals to meet the current criteria. 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 would produce no significant additional environmental protection.

Respectfully submitted,

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By:



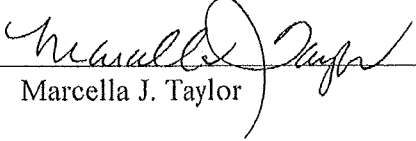
Marcella J. Taylor, AR Bar No. 82156  
Allan Gates, AR Bar No. 72040

**Counsel for Domtar A.W. LLC**

CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of May, 2015, I served a copy of the foregoing Statement of Basis and Purpose on the following by electronic service:

Lorielle Gutting, Esq.  
Acting Chief, Legal Division  
Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, AR 72118  
[gutting@adeq.state.ar.us](mailto:gutting@adeq.state.ar.us)

  
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Marcella J. Taylor



# **EXHIBIT B**

## **DOMTAR'S RESPONSE TO COMMENTS and ADEQ'S RESPONSIVE SUMMARY**

BEFORE THE ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION

ARK. POLLUTION CONTROL  
& ECOLOGY COMMISSION  
FILED BY  
2015 MAY 20 PM 11:40

IN RE: REQUEST BY DOMTAR A.W. LLC )  
INC. TO INITIATE RULEMAKING FOR ) DOCKET NO. 14-008-R  
A TECHNICAL ADJUSTMENT TO )  
REGULATION NO. 2 )

**DOMTAR A.W. LLC'S**  
**RESPONSE TO COMMENTS**

Domtar A.W. LLC ("Domtar") for its Response to Comments states:

1. On December 5, 2014, the Arkansas Pollution Control and Ecology Commission ("APCEC") granted Domtar's Petition to Initiate Third-Party Rulemaking for a Technical Adjustment to APCEC Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas. A public hearing was held on January 26, 2015 in Ashdown, Arkansas. The public comment period ended on March 2, 2015. One written public comment was submitted. Two comments were submitted at the public hearing.

2. The written public comment was submitted by the Arkansas Red River Commission and the two oral public comments were submitted by the chairman and one member of the Arkansas Red River Commission. Domtar's Response to the comments follows:

**Comment 1:** One member of the Arkansas Red River Commission expressed concern that the limits of Total Dissolved Solids ("TDS") would increase in the Red River and that Domtar was requesting removal of the domestic drinking water use designation.

**Response 1:** The proposed amendment to Regulation No. 2 would increase the water quality criterion for TDS on the segment of the Red River from the Arkansas/Oklahoma state line to the mouth of the Little River, but the quantity and concentration of TDS in the Red River will not change. The proposed amendment would increase the criterion to correspond to historic TDS levels observed in prior decades of monitoring.

Domtar is not requesting removal of the domestic drinking water use designation for the Red River, but a related rulemaking petition by SWEPCO does propose removal of the drinking water designation for the segment of the Red River from the mouth of the Little River to the Louisiana Line; and Domtar's proposal is expressly conditioned on approval of the SWEPCO rulemaking. Removal of drinking water designation from this segment of the Red River is appropriate because the Red River has naturally occurring mineral concentrations that regularly exceed secondary drinking water standards. The domestic drinking water use designation was removed from the segment of the Red River from the Arkansas/Oklahoma state line to the mouth of the Little River in 1994.

**Comment 2:** Another member of the Arkansas Red River Commission expressed concern that: (a) according to a newspaper article, the rulemaking would add more contaminants to the Red River; (b) the public notice only stated "minerals" rather than which minerals were the subject of the rulemaking; and (c) the rulemaking would interfere with the Arkansas Red River Commission's long term plans to sell water from the Red River.

**Response 2:** (a) The rulemaking will increase the water quality criteria for TDS and sulfate listed in Regulation No. 2, but there will be no change in the water quality of the Red River due to this proposal which only attempts to set the criteria to match current conditions in the river. There was a statement in one newspaper article indicating that the rulemaking would lead to more contaminants being added to the Red River, but that article was mistaken. The article appeared to confuse the proposed change in criteria with an actual change in the water quality observed in the river.

(b) The public notice did identify the specific minerals changes proposed for Regulation No. 2. The notice stated, among other things:

Domtar is requesting the following amendments to Regulation 2:

- Technical adjustment of the TDS and sulfate water quality criteria for the Red River from the Arkansas/Oklahoma state line to mouth of the Little River as follows: TDS from 850 mg/L to 940 mg/L; Sulfate from 200 mg/L to 250 mg/L;
- Technical adjustment of the sulfate water quality criterion for the Red River from the mouth of the Little River to the Arkansas/Louisiana state line as follows: Sulfate from 200 mg/L to 225 mg/L.

(c) The rulemaking should have no impact on the Arkansas Red River Commission's long term plans because it results in no changes to current water quality conditions of the river.

**Comment 3:** The Arkansas Red River Commission submitted four (4) questions: (1) Will the proposed rulemaking change the water quality and total TDS levels currently existing in the Red River? (2) The rulemaking will change the designation in the Little River to the Louisiana state line from domestic water supply to non-domestic water supply. Is there another designation that can be used? If so, what is the process to get such designation approved and accepted by ADEQ? (3) Does the removal of the domestic water supply use designation on the Red River prevent or interfere with any future project to use, sell or transfer Red River water to in-state or out-of-state

users? (4) Why is there such an inconsistent and conflicting set of mineral water quality standards for the Red River in Arkansas?

**Response 3:** (1) No, the proposed rulemaking will not change the water quality of the river or the total TDS levels currently existing in the Red River.

(2) Domtar is not requesting removal of the domestic drinking water use designation in either the Little River or the Red River, but a related rulemaking petition by SWEPCO does propose removal of the drinking water designation for the segment of the Red River from the mouth of the Little River to the Arkansas/Louisiana Line; and Domtar's proposal is expressly conditioned on approval of the SWEPCO rulemaking. Removal of drinking water designation from this segment of the Red River is appropriate because the Red River has naturally occurring mineral concentrations that regularly exceed secondary drinking water standards. The domestic drinking water use designation in the Red River from the Arkansas/Oklahoma state line to the Little River was removed more than two decades ago. Removal of the drinking water designation does not prevent the addition of other use designations. The procedure for adding a use designation is by rulemaking to amend Regulation No. 2.

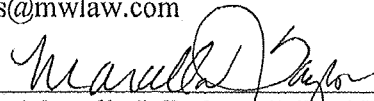
(3) No, Domtar is not aware of any reason why removal of the domestic drinking water use designation would prevent or interfere with any future project to use, sell or transfer Red River water to in-state or out-of-state users.

(4) The inconsistencies in mineral standards in different reaches of the Red River in Arkansas are largely due to historical changes in how water quality standards were established and administered. The changes to Regulation No. 2 proposed by Domtar in this rulemaking and by SWEPCO in its related rulemaking will result in minerals criteria in Arkansas that are consistent with the minerals levels historically observed in the Red River. The fact that Texas and Oklahoma have much higher minerals criteria for the portions of the Red River upstream of the Arkansas state line is attributable to actions by those states that are beyond the control of Arkansas.

Respectfully submitted,

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By:



Marcella J. Taylor, AR Bar No. 82156

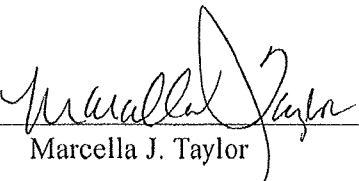
Allan Gates, AR Bar No. 72040

Counsel for Domtar A.W. LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of May, 2015, I served a copy of the foregoing Response to Comments on the following by electronic delivery:

Lorielle Gutting, Esq.  
Managing Attorney  
Arkansas Department of Environmental Quality  
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[gutting@adeq.state.ar.us](mailto:gutting@adeq.state.ar.us)

  
\_\_\_\_\_  
Marcella J. Taylor

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

**IN THE MATTER OF AMENDMENTS TO )  
REGULATION NO. 2, REGULATION )  
ESTABLISHING WATER QUALITY )  
STANDARDS FOR SURFACE WATERS )  
OF THE STATE OF ARKANSAS )**

**DOCKET NO. 14-008-R**

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY'S  
RESPONSIVE SUMMARY**

Pursuant to Minute Order 14-41, the Arkansas Department of Environmental Quality (“ADEQ” or “Department”) submits the following Responsive Summary regarding proposed changes to Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas.

On December 5, 2014, the Arkansas Pollution Control and Ecology Commission (“APC&EC” or “Commission”) granted Domtar A.W. LLC’s (“Domtar”) Petition to Initiate Rulemaking to amend Regulation No. 2. The third-party petition was filed pursuant to APC&EC Reg.8.809. Domtar requests to modify Arkansas Water Quality Standards in the Red river from the Arkansas/Oklahoma state line to mouth of the Little River as follows: TDS from 850 mg/L to 940 mg/L, Sulfate from 200 mg/L to 250 mg/L; and, in the Red River from the mouth of the Little River to the Arkansas/Louisiana state line as follows: Sulfate from 200 mg/L to 225 mg/L.

One public hearing was held in Ashdown on Monday, January 26, 2015. The final day to submit written comments was March 2, 2015. The Commission received one written comment during the public comment period, including a total of one signatory. Three oral comments were received during the public hearing. Oral comments from the public hearing are presented here in part; however, a digital recording of the public hearing in its entirety is available upon request.

**Oral Comments (transcribed in part) received at public hearing held on January 26, 2015.**

**Comment 1.a. (in part):** Dan York, Chairman of Arkansas Red River Commission

[I am] Concerned to see [an] increase of TDS, increase for any reach of the Red River, anywhere really, but specifically here in Arkansas. And also I read that there was a relaxation or striking of the drinking water designation for the Red River.

**Comment 1.b. (in part):** Wayne Dowd, member Red River Commission

Unfortunately the Red River Commission notice of these applications, I guess, or rule change was through the newspaper we've hardly had a chance to get our act together to understand fully what is requested. Therefore, speaking for myself, with limited knowledge as I understand the problem and the proposed solution I would be opposed to the rule change if it's gonna add more contaminants to the river.

I don't know what they're discharging the paper says additional minerals. I don't know what those minerals are. I think the public, uh the uh, commission probably should order a public hearing. I would request one be granted ... the many questions I have that I can't get answered, uh, even though the proponents have very graciously tonight agreed to meet privately to answer those questions they won't be on record. Nor will our response to those answers to our questions be on record. And I think this is a matter of great public interest.

I think the matter need be looked at very closely because if you increase the contaminants in the river it makes it less likely we're gonna sell that water, much less a lot of it. Uh, in addition, I think the public needs to know what those contaminants are and all I know is that all the paper says are "minerals." Uh, Red River has been under for quite some time, anyway, unless it's been relaxed, a mercury warning about eating more than two fish twice a month out of

that river because mercury contained in the river and in the fish and if any of these minerals are mercury, that's certainly a contaminant in the river which is going to effect the public because there are a number of commercial fishermen that fish the river that have retail outlets here that sell fish out of the river. So I think that it'd be interesting for the public to know and I'm not gonna read a 3 or 4 inch thick boilerplate application to change the rule to just find out are there are gonna be additional uh, minerals in there that maybe are gonna hurt the public.

And I would therefore request that the Commission consider holding a public hearing and where we could get some answers on the record and possibly in the media so that the public can be aware of what's going on.

**Response 1.a and 1.b:**

Domtar seeks to modify Arkansas Water Quality Standards for Total Dissolved Solids (TDS) and Sulfates in the Red river from the Arkansas/Oklahoma state line to mouth of the Little River as follows: TDS from 850 mg/L to 940 mg/L; Sulfate from 200 mg/L to 250 mg/L. Currently, no Domestic Water Supply designated use exists on this portion of the Red River, hence there is no proposal to remove "drinking water" uses for this segment of the Red River.

Additionally, Domtar seeks to modify Arkansas Water Quality Standards for the Red River from the mouth of the Little River to the Arkansas/Louisiana state line as follows: Sulfate from 200 mg/L to 225 mg/L. This modification does not exceed the Domestic Water designated use criteria of 250 mg/L for Sulfates, and therefore does not require any modifications to or removal of "drinking water" uses.

This petition seeks to increase the Arkansas Water Quality Standards for TDS and Sulfates to the naturally existing instream concentrations already found in the Red River. ADEQ data at station RED0025, located above the Domtar discharge, shows the 95<sup>th</sup> percentile of 957



mg/L for TDS and 242 mg/L for Sulfates. These proposed changes to the standards will not, in and of themselves, “increase TDS” or “add more contaminants to the river” within the Red River. This is simply a modification to the standards to reflect what is already naturally occurring in the Red River. This petition does not seek to remove Domestic Water Supply designated use within the Red River.

The “minerals” referenced in this proposal are Sulfates and TDS. TDS is made up of ions, commonly called “salts,” such as sodium (Na<sup>+</sup>), chloride (Cl<sup>-</sup>), calcium (Ca<sup>2+</sup>), and magnesium (Mg<sup>2+</sup>) among others. The amounts and ratios of the different ions are largely dependent on the watershed’s soil/geology types and land uses. Therefore, TDS makeup is not the same from one river to next or from one part of the state, or ecoregion, to the next.

The request for a Public Hearing is acknowledged. Reg. 8.804 requires that at least one public hearing be held before a regulation is adopted, amended, or repealed. The hearing held on January 26, 2015 fulfilled this requirement. The Department noted that Domtar and their representatives stayed after the public hearing and answered questions.

**Comment 2. (in part):** Allan Gates of Mitchell Williams

...there is authority to extend, briefly, the comment period to allow additional time if that is requested tonight and so to afford as much opportunity as possible I ask that that extension be granted so that there will be that opportunity.

**Response:**

The public comment period was extended until March 2, 2015.

## **Written Comments received before the extended March 2, 2015 date.**

### **Comment 3.1 – 3.4: Arkansas Red River Commission (via Dan York)**

Our questions pertain to the proposed rule change to increase the allowed TDS in the Red River from the Oklahoma/Arkansas line to the Arkansas/Louisiana line.

#### **Comment 3.1.**

With the proposed rule changes to the water quality standards and the issuance of the Domtar permit, will there be any change to the water quality and total TDS levels currently existing in the Red River?

#### **Response 3.1.**

These proposed amendments to the standards will not, in and of themselves, “change the water quality and total TDS levels currently existing in the Red River.” As stated above, the proposed amendments will reflect the levels that already naturally exist within these reaches of the Red River (95<sup>th</sup> percentile of ADEQ data). Domtar’s permit limits will be issued using the Red River’s water quality standards at the time of issuance. As is always the case, it will be the responsibility of the permittee to operate within the limits of the permit in order to meet water quality standards.

#### **Comment 3.2.**

The proposed change to water quality standards will change the designation in the Little River to Louisiana line stretch from ‘domestic water supply’ to ‘non-domestic water supply’. Is there another designation that can be used, such as ‘supplemental water supply’? If not, what is the process to get such a designation approved and accepted by ADEQ?

#### **Response 3.2.**

No changes are proposed within this petition for the Little River. Additionally, there is no proposal to remove “Domestic Water Supply” designated use for the Red River within this petition.

There is no other designated use for “drinking water” other than Domestic Water Supply in the Arkansas Water Quality Standards, APC&EC Regulation No. 2; there are no sub-uses. The U. S. Environmental Protection Agency (EPA) has set secondary Maximum Contaminant Levels (sMCL) for fifteen contaminants for “drinking water” uses. Levels for “minerals,” Sulfate, Chloride, and TDS are 250 mg/L, 250 mg/L, and 500 mg/L, respectively (commonly referred to as 250/250/500).

Consequently, these values are used as Arkansas’ water quality standards for Domestic Water Supply designated use. If instream concentrations of these parameters are above the 250/250/500 sMCL the water body is not meeting this standard. In some cases, elevated mineral concentrations are natural due to geological influences and in some cases elevated mineral concentrations are anthropogenic.

Unlike designated uses like fishable/swimmable uses, drinking water uses do not typically have sub-uses applied to them. They either meet the federally established sMCL (250/250/500 for minerals) or they do not. Therefore they either meet Domestic Water Supply criteria or they do not.

**Comment 3.3.**

Does the removal of the ‘domestic water supply’ designation on the Red River prevent or interfere with any future project that might involve use, sale or transfer of water from Red River in Arkansas to out of state or in state users?

**Response 3.3.**

There is no proposal within this petition to remove the Domestic Water Supply designated use within the Red River. However, water can still be used for drinking water purposes, even if it does not meet “drinking water” criteria; it will just need to be further treated to remove to the excess minerals.

**Comment 3.4.**

Why is there such an inconsistent and conflicting set of mineral water quality standards for the Red River within Arkansas? (The stretch from the Oklahoma line to Little River and from Little River to the Louisiana line?)

**Response 3.4.**

When third parties or the State revise water quality standards, they may do so for any segment, or piece, of a waterbody. It is not a requirement to amend the water quality standards for an entire waterbody. This can result in differing water quality standards within a waterbody.

# **EXHIBIT C**

## **FINAL REVISED REGULATION**

# ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION



## REGULATION NO. 2

### REGULATION ESTABLISHING WATER QUALITY STANDARDS FOR SURFACE WATERS OF THE STATE OF ARKANSAS

Approved by the Arkansas Pollution Control and Ecology Commission: October 23, 2015

StreamConcentration-mg/L  
Chlorides    Sulfates    TDS  
(Cl<sup>-</sup>)            (SO<sub>4</sub><sup>=2</sup>)

Dismukes Creek	26*	ER	157*
Big Creek from Dismukes to Bayou Dorcheat	20*	ER	200*
Bois d'Arc Creek from Caney Creek to Red River	113*	283*	420*
Caney Creek	113*	283*	420*
Bodcau Creek	250	70	500
Poston Bayou	120	40	500
Kelley Bayou	90	40	500
Red River from Arkansas/Oklahoma state line to the mouth of the Little River	250	250†	940†
Red River from mouth of the Little River to Arkansas/Louisiana state line	250	225†	500
Sulphur River	120	100	500
Days Creek	250	250	500
McKinney Bayou	180	60	480
Little River	20	20	100
Little River from Millwood Lake to the Red River	20	20	138
Saline River	20	10	90
Mine Creek from Hwy 27 to Millwood Lake	90	65	700
Cossatot River	10	15	70
Upper Rolling Fork	20	20	100
Rolling Fork from unnamed trib A to DeQueen Lake	130	70	670
Unnamed tribs A and A1 at Grannis	135	70	700
Mountain Fork	20	20	110
Mississippi River (Louisiana state line to Arkansas River)	60	150	425
Mississippi River (Arkansas River to Missouri state line)	60	175	450

ER - ecoregion value

\* - developed using background flow of 4 cfs

\*\* - These limits shall apply to all tributaries of Bayou Meto and Bayou Two Prairie listed in Appendix A  
Any modification of these values must be made in accordance with Reg. 2.306.

† Not applicable for Clean Water Act purposes until approved by EPA.

## (B) Ecoregion Reference Stream Minerals Values

The following values were determined from Arkansas' least-disturbed ecoregion reference streams are considered to be the maximum naturally occurring levels. For waterbodies not listed above, any discharge which results in instream concentrations more than 1/3 higher than these values for chlorides (Cl<sup>-</sup>) and sulfates (SO<sub>4</sub><sup>=2</sup>) or more than 15 mg/L, whichever is greater, is considered to be a significant modification of the maximum naturally occurring values. These waterbodies should be considered as candidates for site specific criteria development in accordance with Regs. 2.306 and 2.308. Similarly, site specific criteria development should be considered if the following TDS values are exceeded after being increased by the sum of the increases to Cl and SO<sub>4</sub>. Such criteria may be developed only in accordance with Regs. 2.306 and 2.308. The values listed in

## SPECIFIC STANDARDS: GULF COASTAL ECOREGION

(Plates GC-1, GC-2, GC-3, GC-4)

	<u>Typical Streams</u>	<u>Spring Water Streams</u>	<u>Lakes and Reservoirs</u>
Temperature °C (°F)*	30 (86)	30 (86)	32 (89.6)
Ouachita River			
(state line to Little Missouri River)	32 (89.6)		
Red River	32 (89.6)		
Turbidity (NTU) (base/all)	21/32	21/32	25/45
Red River (base/all)	50/150		
Minerals	see Reg. 2.511		see Reg. 2.511
Dissolved Oxygen (mg/L) **	<u>Pri.</u>	<u>Crit.</u>	see Reg. 2.505
<10 mi <sup>2</sup> watershed	5	2	
10 mi <sup>2</sup> - 500 mi <sup>2</sup>	5	3	
>500 mi <sup>2</sup> watershed	5	5	
All sizes (springwater influenced)		6	5
All other standards	(same as statewide)		

\*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 dissolved oxygen standard will be 6.5 mg/L. When water temperatures exceed 22°C, the critical season dissolved oxygen standard may be depressed by 1 mg/L for no more than 8 hours during a 24-hour period

### Site Specific Standards Variations Supported by Use Attainability Analysis

- Loutre Creek - from headwaters to railroad bridge, critical season dissolved oxygen standard - 3 mg/L; primary season - 5 mg/L; from railroad bridge to mouth, critical season dissolved oxygen - 2 mg/L (GC-2, #1)
- Unnamed tributary to Smackover Creek - headwaters to Smackover Creek, year round dissolved oxygen criteria - 2 mg/L (GC-2, #2)
- Unnamed tributary to Flat Creek - from headwaters to Flat Creek, year round dissolved oxygen criteria - 2 mg/L (GC-2, #4)
- Dodson Creek - from headwaters to confluence with Saline River, critical season dissolved oxygen standard - 3 mg/L (GC-4, #5)
- Jug Creek - from headwaters to confluence with Moro Creek, critical season dissolved oxygen standard - 3 mg/L (GC-2, #6)
- Lick Creek - from headwaters to Millwood Reservoir, critical season dissolved oxygen standard - 2 mg/L (GC-1, #7)
- Coffee Creek and Mossy Lake - exempt from Reg. 2.406 and Chapter Five (GC-3, #8)
- Red River from Oklahoma state line to confluence with Little River - total dissolved solids - 850 mg/L (GC-1, #9)
- Bluff Creek and unnamed trib. - sulfates 651 mg/L; total dissolved solids 1033 mg/L (GC-1, #10)
- Muddy Fork Little Missouri River - sulfates 250 mg/L; total dissolved solids 500 mg/L (GC-1, #24)
- Little Missouri River - sulfates 90 mg/L; total dissolved solids 180 mg/L (GC-1, #25)
- Mine Creek from Highway 27 to Millwood Lake - chlorides - 90 mg/L; sulfates - 65 mg/L; total dissolved solids - 700 mg/L (GC-1, #11)



Caney Creek - chlorides 113 mg/L; sulfates 283 mg/L; total dissolved solids 420 mg/L (GC-1,#12)  
 Bois d'Arc Creek from Caney Creek to Red River - chlorides 113 mg/L; sulfates 283 mg/L; total dissolved solids 420 mg/L (GC-1,#13)  
 Town Creek below Acme tributary - sulfates 200 mg/L; total dissolved solids 700 mg/L (GC-4,#14)  
 Unnamed trib. from Acme - sulfates 330 mg/L; total dissolved solids 830 mg/L (GC-4,#14)  
 Gum Creek - chlorides 104 mg/L; total dissolved solids 311 mg/L (GC-2,#15)  
 Bayou de Loutre from Gum Creek to State line - Chlorides 250 mg/L; total dissolved solids 750 mg/L (GC-2,#16)  
 Walker Branch - chlorides 180 mg/L; total dissolved solids 970 mg/L (GC-2,#17)  
 Ouachita River - from Ouachita River mile (ORM) 223 to the Arkansas-Louisiana border (ORM 221.1), site specific seasonal dissolved oxygen criteria: 3 mg/L June and July; 4.5 mg/L August; 5 mg/L September through May. These seasonal criteria may be unattainable during or following naturally occurring high flows;(i.e., river stage above 65 feet measured at the lower gauge at the Felsenthal Lock and Dam, Station No.89-o, and also for the two weeks following the recession of flood waters below 65 feet), which occurs from May through August. Naturally occurring conditions which fail to meet criteria should not be interpreted as violations of these criteria (GC-3, #26)  
 Alcoa unnamed trib. to Hurricane Cr. and Hurricane Cr. - see Reg. 2.511 (CG-4. #19)  
 Holly Creek - See Reg. 2.511 (CG-4, #20)  
 Saline River bifurcation - see Reg. 2.511 (GC-4, #23)  
 Dry Lost Creek and tributaries - see Reg. 2.511 (GC-4, #21)  
 Lost Creek - see Reg. 2.511 (GC-4, #22)  
 Albemarle unnamed trib (AUT) to Horsehead Creek - chlorides 137 mg/L; total dissolved solids 383 mg/L (GC-2, #27)  
 Horsehead Creek from AUT to mouth - chlorides 85 mg/L; total dissolved solids 260 mg/L(GC-2,#27)  
 Bayou Dorcheat - sulfates 16 mg/L (GC-2,#27)  
 Dismukes Creek – chlorides 26 mg/L; total dissolved solids 157 mg/L (GC-2, #28)  
 Big Creek from Dismukes to Bayou Dorcheat – chlorides 20 mg/L; total dissolved solids 200 mg/L (GC-2, #28)  
 Bayou de Loutre from Chemtura outfall to Loutre Creek – maximum water temperature 96°F (GC-2, #29)  
 Unnamed tributary of Lake June below Entergy Couch Plant to confluence with Lake June – maximum water temperature 95 degrees F (limitation of 5 degrees above natural temperature does not apply) (GC-1, #30).  
 Unnamed tributary to Flat Creek from EDCC Outfall 001 d/s to confluence with unnamed tributary A to Flat Creek Chloride 23 mg/L, Sulfate 125 mg/L, TDS 475 mg/L, (GC-2, #37) †  
 Unnamed tributary A to Flat Creek from mouth of EDCC 001 ditch to confluence with Flat Creek, Chloride 16 mg/L, Sulfate 80 mg/L, TDS 315 mg/L, (GC-2, #38) †  
 Boggy Creek from the discharge from Clean Harbors El Dorado LCC downstream to the confluence of Bayou de Loutre. Chloride, 631mg/L; Sulfate, 63 mg/L, total dissolved solids, 1360; Selenium, 15.6 u/L  
 McGeorge Creek (headwaters to Willow Springs Branch) Sulfate, 250 mg/L; total dissolved solids, 432 mg/L (GC-4. #52)  
 Willow Springs Branch (McGeorge Creek to Little Fourche Creek) Sulfate, 112 mg/L; total dissolved solids 247 mg/L (GC-4. #53)  
 Little Fourche Creek (Willow Springs Branch to Fourche Creek) total dissolved solids, 179 mg/L (GC-4. #54)

† Not applicable for clean water act purposes until approved by EPA.

**Variations Supported by Environmental Improvement Project**

Holly Creek; Selenium, Chronic Standard, 17µg/L (GC-4, #1)

**Site Specific Standards Variations Supported by Technical Adjustment**

Red River from the Arkansas/Oklahoma state line to the mouth of the Little River; sulfate, 250 mg/L, TDS 940 mg/L (GC-1, #57) †

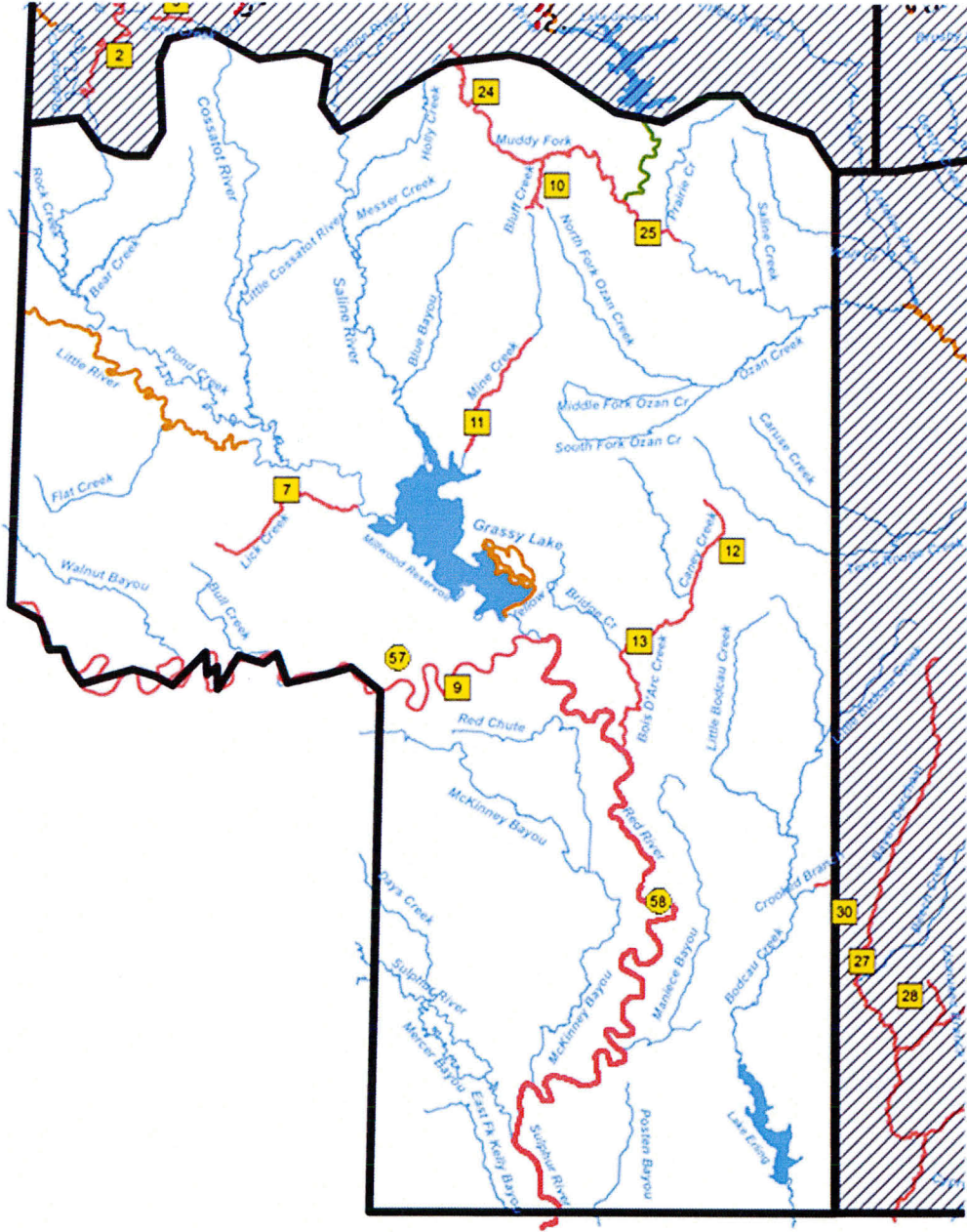
Red River from the mouth of the Little River to the Arkansas/Louisiana state line; sulfate, 225 mg/L (GC-1, #58) †

# Plate GC-1 (Gulf Coastal Plain)



**LEGEND**

- • Extraordinary Resource Waters
- • Natural and Scenic Waterways
- Variation by UAA
- Ecologically Sensitive Waterbodies
- ESW Caves, Springs, and Seeps
- Trout Waters



# **EXHIBIT D**

## **REGULATIONS TRACKING SHEET**

# REGULATIONS TRACKING SHEET

Regulation No. 2

Common Name: Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas

1. **Strawman review** of draft regulations by key groups.

	<u>initiated</u>	<u>completed</u>	<u>incorporated</u>
EPA	_____	_____	_____
ADEQ Legal/Admin.	_____√_____	_____√_____	_____√_____
Industrial/ Environmental Groups	_____√_____	_____√_____	_____√_____

*Comments:* The amendment of Regulation No. 2 is necessary to revise the water quality criteria for the Little River to reflect current conditions

2. Proposed regulations presentation to Commission's **Regulations Committee** for approval to proceed to public comment period.

Date: September 26, 2014 By: Allan Gates

*Comments/Approval:* Committee recommended adoption of Petition to initiate rulemaking

3. **Legal notice** of proposed regulations and public hearing.

<u>publication</u>	<u>dates of publication</u>
<u>Arkansas Democrat-Gazette</u>	<u>December 10 and 11, 2014</u>

4. Provide **Legislative Council** with three copies of proposed regulations and the legislative questionnaire at least ten days prior to the first public hearing.

5. Hold **public hearing(s)** on the proposed regulations.

<u>location</u>	<u>date</u>	<u>hearing chairman</u>
<u>Cossatot Community College Ashdown, AR</u>	<u>November 17, 2014</u>	<u>ALJ Charles Moulton</u>

6. Date of final day of public comment period: March 2, 2015 4:30 p.m.

7. **Final proposed regulation** and **response to comments** prepared by Petitioner & Department.

*Date initiated:* May 20, 2015 (Petitioner) *Date completed:* August 6, 2015 (ADEQ)

8. Formal presentation to the **Public Health & Welfare Committee** of the Legislative Council.

Date: September 8, 2015 By: Allan Gates, Tammy Harrellson, Ellen Carpenter

Comments/Approval: Reviewed by Committee

9. Formal presentation of proposed final regulation to the **Administrative Rules & Regulations Subcommittee** of the Legislative Council (All Regs).

Date: September 23, 2015 By: Allan Gates, Tammy Harrellson, Ellen Carpenter

Comments/Approval: Reviewed and Approved by Committee

10. Presentation of proposed final regulation to Commission's **Regulations Committee**.

Date: October 23, 2015 By: Allan Gates

Comments/Approval: \_\_\_\_\_

11. Provide Commission members with copy of proposed final regulation prior to Commission meeting.

Date Delivered: September 30, 2015

12. Present proposed final regulation to the **Commission** for adoption.

Date: October 23, 2015 By: Allan Gates

Comments/Approval: \_\_\_\_\_

13. Send two copies of adopted regulation to **Secretary of State** (regulation becomes effective ten days after filing).

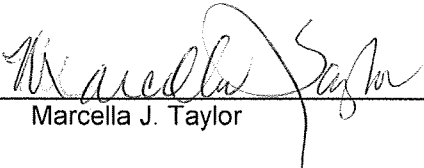
Date mailed: \_\_\_\_\_

14. Formally submit adopted regulation to **EPA**.

Date mailed: \_\_\_\_\_

PREPARED BY:

MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, PLLC  
425 W. Capitol Avenue, Suite 1800  
Little Rock, Arkansas 72201-3525

By:   
\_\_\_\_\_  
Marcella J. Taylor

# **EXHIBIT E**

## **APPROVAL FROM THE OFFICE OF THE GOVERNOR**

BEFORE THE ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION

IN RE: REQUEST BY DOMTAR A.W. LLC )  
INC. TO INITIATE RULEMAKING FOR ) DOCKET NO. 14-008-R  
A TECHNICAL ADJUSTMENT TO )  
REGULATION NO. 2 )

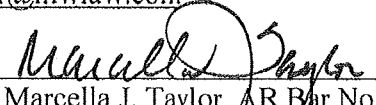
**DOMTAR A.W. LLC'S STATEMENT OF  
COMPLIANCE WITH EXECUTIVE ORDER 15-02**

Domtar A.W. LLC ("Domtar") for its Statement of Compliance with Executive Order 15-02, states:

1. Executive Order 15-02 requires submission of all amendments to existing regulations to be submitted to the Office of the Governor for approval.
2. On January 20, 2015, the proposed amendment to APCEC Regulation No. 2 proposed by Domtar in its Petition to Initiate Third-Party Rulemaking was submitted to the Office of the Governor.
3. On March 2, 2015, Domtar was notified that Domtar's proposed amendment had been approved by the Office of the Governor. See Exhibit A attached hereto.

Respectfully submitted,

MITCHELL, WILLIAMS, SELIG,  
GATES & WOODYARD, PLLC  
425 W. Capitol Avenue, Suite 1800  
Little Rock, Arkansas 72201-3525  
(501) 688-8800  
[mtaylor@mwlaw.com](mailto:mtaylor@mwlaw.com)

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

Counsel for Domtar A.W. LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of August, 2015, I served a copy of the foregoing Statement of Compliance with Executive Order 16-02 on the following by electronic service:

Lorielle Gutting, Esq.  
Chief, Legal Division  
Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, AR 72118  
[gutting@adeq.state.ar.us](mailto:gutting@adeq.state.ar.us)

  
\_\_\_\_\_  
Marcella J. Taylor



# **EXHIBIT A**

## Marcy Taylor

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**From:** Zac Harper <Zac.Harper@governor.arkansas.gov>  
**Sent:** Monday, March 02, 2015 10:59 AM  
**To:** Marcy Taylor  
**Subject:** SWEPCO & Domtar Petitions

Ms. Taylor,

I wanted to let you know that your petitions were approved by our office, and are now up for legislative approval. I notified Ryan Benefield at ADEQ and PC&E, but wanted to keep you in the loop as well. Please let me know if you have any questions.

Thank You,

Zac Harper  
Liaison  
Office of Governor Asa Hutchinson  
State Capitol, Room 120  
Little Rock, AR 72201  
C: (870) 395-1000

**EXHIBIT F**

**PROPOSED MINUTE ORDER**

**ARKANSAS POLLUTION CONTROL  
AND ECOLOGY COMMISSION**

**SUBJECT-Regulation No. 2  
Water Quality Standards  
Third-Party Rulemaking  
DOMTAR A.W. LLC**

**DOCKET NO. 14-008-R**

**MINUTE ORDER NO. 15-\_\_\_\_**

**PAGE 1 OF 1**

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Petitioner Domtar A.W. LLC's Motion For The Adoption of Proposed Amendments to Regulation No. 2 is before the Arkansas Pollution Control and Ecology Commission. Pursuant to public notice and hearing, and in consideration of the Petition to Initiate Rulemaking, comments received during the public comment period, the Statement of Basis and Purpose, and other pleadings, exhibits and evidence constituting the record in this docket, the Commission hereby grants the Motion For The Adoption of Proposed Amendments to Regulation No. 2. The amendments to Regulation No. 2, found in the Final Revised Regulation, and attached to the Motion For the Adoption of Proposed Amendments to Regulation No. 2 as Exhibit C are hereby adopted.

PROMULGATED THIS 23<sup>RD</sup> DAY OF OCTOBER, 2015 BY ORDER OF THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

BY: \_\_\_\_\_  
Ann Henry, Chairman

ATTEST: \_\_\_\_\_  
Becky Keogh, Director

APPROVED: \_\_\_\_\_  
Asa Hutchinson, Governor

**COMMISSIONERS:**

\_\_\_\_\_ **J. Bates**  
\_\_\_\_\_ **L. Bengal**  
\_\_\_\_\_ **J. Chamberlin**  
\_\_\_\_\_ **R. Chastain**  
\_\_\_\_\_ **J. Fox**  
\_\_\_\_\_ **C. Gardner**

\_\_\_\_\_ **M. Goggins**  
\_\_\_\_\_ **S. Moss, Jr.**  
\_\_\_\_\_ **R. Reynolds**  
\_\_\_\_\_ **W. Stites**  
\_\_\_\_\_ **B. White**  
\_\_\_\_\_ **R. Young**

\_\_\_\_\_  
**Chair, A. Henry**

SUBMITTED BY: Allan Gates

DATE PASSED: October 23, 2015