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

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

**PETITION TO INITIATE THIRD-PARTY RULEMAKING FOR A TECHNICAL ADJUSTMENT TO REGULATION NO. 2**

Petitioner, Domtar A.W. LLC, for its Petition to Initiate Third-Party Rulemaking for a Technical Adjustment to Arkansas Pollution Control and Ecology Commission Regulation No. 2 ("Petition") states:

1. This Petition is submitted pursuant to Arkansas Pollution Control and Ecology Commission ("APCEC" or "the Commission") Regulation No. 2, § 2.308, APCEC Regulation No. 8, § 8.809, and the Arkansas Department of Environmental Quality's ("ADEQ" or "the Department") Continuing Planning Process. As set forth more fully below in paragraph 9, Domtar A.W. LLC ("Domtar"), is requesting:

   a. a site-specific water quality standard technical adjustment to the total dissolved solids ("TDS") criterion of the Red River from the Arkansas/Oklahoma state line to the mouth of the Little River; and

   b. site-specific water quality standard technical adjustment to the sulfate criterion of the Red River from the Arkansas/Oklahoma state line to the Arkansas/Louisiana state line.

Domtar is not requesting removal of any designated use.

2. Based upon discussions with ADEQ staff and informal consultation with EPA, Domtar is seeking these changes as a technical adjustment due to the unique circumstances involved. These unique circumstances include the following:

a. 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;

b. 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 Red River; and

c. 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.

As a result of these very unique circumstances, no separate, comprehensive biological study was conducted to justify the comparatively minor technical adjustments requested here

3. Domtar owns and operates a paper mill ("the facility") at Ashdown, Little River County, Arkansas which discharges treated wastewater[1] from an outfall to the Red River under the provisions of NPDES Permit No. AR0002968 issued by ADEQ. The facility's current NPDES permit includes monitor and report requirements for sulfate and TDS; however when its permit is renewed, ADEQ will include TDS and sulfate effluent limits based on a TMDL allocation.[2]

4. As the Commission is aware from the previous Third-Party Rulemaking Petition submitted September 26, 2014 by SWEPCO, the Red River, which is known to contain naturally

---

[1] The treated wastewater discharged by the facility consists of treated process wastewater, sanitary wastewater, cooling water and stormwater runoff.

[2] The Arkansas segment of the Red River, which is located within the Gulf Coastal Plain Ecoregion, is listed as impaired for TDS and chlorides in the Arkansas 2008 303(d) list. The listing led to the completion of a TMDL in 2013 under which ADEQ must include permit limits for sulfate and TDS of 200 mg/L and 500 mg/L respectively when it issues Domtar's renewal NPDES permit. Those permit limitations would adversely impact the operation of the facility despite the fact that the minerals loading/concentration in the facility's discharge at full operation has a minor effect on the concentration of dissolved minerals in the Red River.

occurring elevated levels of minerals, has inconsistent and conflicting mineral criteria established by Texas, Oklahoma, Arkansas and Louisiana. As it enters Arkansas, the south side of the Red River has a Texas TDS criterion of 1,100 mg/L and a sulfate criterion of 250 mg/L while, at the same time, the north side of the river has an Arkansas TDS criterion of 850 mg/L and a sulfate criterion of 200 mg/L. Additionally, in Oklahoma the TDS criterion as the river enters Arkansas is set at 1,220 mg/L and the sulfate criterion is 277 mg/L.

5. The current TDS criterion for the segment of the Red River from the Arkansas/Oklahoma state line to the mouth of the Little River is 850 mg/L. The 850 mg/L TDS criterion was established in a 1994 third-party rulemaking which also removed the domestic drinking water use designation for this segment of the Red River. The current TDS criterion for the segment of the Red River from the mouth of the Little River to the Arkansas/Louisiana state line is 500 mg/L and is the subject of the SWEPCO rulemaking petition asking that the TDS criterion be established at 860 mg/L.

6. The progression from high upstream criteria in Oklahoma and Texas to low and lower criteria in Arkansas, followed by much higher criteria in Louisiana makes no sense and has no rational connection to the longstanding historical reality in the Red River.

7. As noted in paragraph 5, above, the current TDS criterion for the upper segment of the Red River (from the Arkansas/Oklahoma state line to the mouth of the Little River) is based upon a 1994 standards change which used long-term average concentration of historical data to set the new minerals criteria rather than the current approach of using a value that is from the highest range of historical data (e.g., $90^{th}$ to $95^{th}$ percentile). The study supporting the 1994 change would have resulted in the minerals water quality criteria numbers requested herein if the approach of using the highest range of historical data ($90^{th}$ to $95^{th}$ percentile) had been used.

8. The current designated uses for the segments of the Red River which are the subject of this Petition as set forth in Regulation No. 2 are:

a. Red River from the Arkansas/Oklahoma state line to the mouth of the Little River -- fisheries, primary and secondary contact recreation, and agricultural and industrial water supplies[3];

b. Red River from the mouth of the Little River to the Arkansas/Louisiana state line -- fisheries, primary and secondary contact recreation, and domestic, agricultural, and industrial water supplies.

Domtar is not requesting removal of any designated use.

9. Through this Petition, Domtar is requesting the following technical adjustments to APCEC Regulation No. 2:

- modification of the TDS and sulfate water quality criteria for the Red River from the Arkansas/Oklahoma state line to the 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;
- modification 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.

A redline version of APCEC Regulation No. 2 showing the proposed change is attached hereto as Exhibit A and incorporated herein by reference.[4]

10. For the Commission's convenience, a copy of the redline version of APCEC Regulation No. 2 submitted by SWEPCO is attached hereto as Exhibit B.

---

[3] The 1994 rulemaking removed the domestic drinking water supply designated use.

[4] The redline version attached as Exhibit A is a redline of the version of APCEC Regulation No. 2 adopted by the Commission February 28, 2014, but which, as of the date of this filing has not been formally approved by EPA. Should action taken by EPA affect any of the redline pages attached hereto as Exhibit A, a substituted Exhibit A will be filed with the Commission.

11. A copy of the Legislative Questionnaire and Financial Impact Statement is attached hereto as Exhibit C and incorporated herein by reference.

12. On October 30, 2014, a copy of the Economic Impact Statement of Proposed Rules or Regulations/EO 05-04: Regulatory Flexibility form setting forth the absence of any effect or impact on any small business was submitted to the Arkansas Economic Development Commission (AEDC) in compliance with Act 143 of 2007. A copy of the submission to AEDC is attached hereto as Exhibit D. More than ten (10) days have elapsed since submission of the information to AEDC. The letter of review regarding the applicability of Act 143 of 2007 from AEDC will be submitted when and if it is received.

13. A copy of the Economic Impact/Environmental Benefit Analysis required by APCEC Regulation No. 8, § 8.812 is attached hereto as Exhibit E and incorporated herein by reference.

14. A copy of the proposed Minute Order to initiate rulemaking is attached as Exhibit G and incorporated herein by reference.

15. A copy of the correspondence from ADEQ supporting this technical adjustment is attached hereto as Exhibit H.

16. This Petition is supported by the following:

- The unique circumstances outlined in paragraph 2, above;
- The Red River situation is unique. There is no similar water body in Arkansas with the inconsistent and conflicting water quality minerals criteria;
- 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 test of the Red River, and Buchannan, *et al.* Study (2003) which are attached hereto 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.

16. The technical adjustments requested by Domtar in this Petition are expressly contingent upon Commission approval of the changes requested in the SWEPCO Petition to Initiate Rulemaking.

WHEREFORE, Domtar A.W. LLC requests that the Commission initiate a rulemaking to amend APCEC Regulation No. 2 in the manner requested in paragraph 9, above.

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
agates@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 20th day of November, 2014, I served a copy of the foregoing Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 on the following by U.S. Postal Service, postage pre-paid and by electronic delivery:

Lorielle Gutting, Esq.
Managing Attorney
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
gutting@adeq.state.ar.us

Marcella J. Taylor