

## **EXHIBIT E**

### **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  
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**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

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1. What is the short title of the 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 Arkansas Water Quality Standards for a segment of the Unnamed Tributary from the Tyson – Waldron Facility to the confluence with the Poteau River and for the Poteau River from the confluence with the Unnamed Tributary to the Highway 59 Bridge.*

3. Is this rule required to comply with a federal statute, rule, or regulation?

Yes \_\_\_ No X

If yes, please provide the federal rule, regulation, and/or statute citation. N/A

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? N/A

5. 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If yes, a copy of the repealed rule is to be included with your completed questionnaire.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.

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 substantive changes. **Note: This summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

*See Attachments A (blackline of the affected pages of APC&EC 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.*

7. What is the purpose of the proposed rule? Why is it necessary?

*The purpose of the proposed rule is to amend APC&EC Regulation No. 2, as follows:*

- *Modify the dissolved minerals water quality criteria for the Unnamed Tributary from the Tyson-Waldron outfall to the confluence with the Poteau River*

*chlorides from 150 mg/L to 180 mg/L  
sulfates from 70 mg/L to 200 mg/L  
TDS from 660 mg/L to 870 mg/L*

- *Modify the dissolved minerals water quality criteria for the Poteau River from the confluence with the Unnamed Tributary to the Highway 79 Bridge*

*chlorides from 120 mg/L to 185 mg/L  
sulfates from 60 mg/L to 200 mg/L  
TDS from 500 mg/L to 786 mg/L*

*The rule is necessary to modify the dissolved minerals criteria for the above-listed stream segments to levels that reflect current and historic water quality conditions, and which are appropriate for Tyson Foods, Inc. – Waldron Plant's operations. The site-specific water quality criteria are protective of the designated uses, and they will not adversely affect the aquatic life. Tyson-Waldron's current wastewater operations require 100% optimization at all times and allow for no margin of safety. This is impractical and unsustainable, and there are no economically feasible treatment technologies capable of reliably and sustainably reducing the dissolved mineral concentration to levels of the current standards in the affected segments. Moreover, the site-specific criteria will also enable Tyson Foods, Inc. – Waldron Facility to implement environmentally beneficial water conservation practices and reduce nutrient loading (total phosphorus) into the Poteau River.*

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).

*[https://www.adeq.state.ar.us/regs/draft\\_regs.aspx](https://www.adeq.state.ar.us/regs/draft_regs.aspx)*

9. Will a public hearing be held on this proposed rule? Yes   X   No      If yes, please complete the following:

Date: Week of March 18-22, 2019

Time: 6:00 P.M.

Place: Scott County, Arkansas at the Scott County Courthouse

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

*The period for receiving all written comments from the public shall conclude no sooner than ten (10) business days after the date of the public hearing pursuant to APC&EC Regulation No. 8, § 8.806(C).*

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

*The regulation becomes effective 20 days after filing of the final regulation, as adopted by the Commission, with the Secretary of State.*

12. Do you expect this rule to be controversial? Yes      No   X   If yes, please explain.

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

*For or Neutral:*

*Arkansas Department of Environmental Quality  
Arkansas Natural Resources Commission*

*Arkansas Department of Health  
Arkansas Natural Heritage Commission  
Arkansas Game and Fish Commission  
U.S. Environmental Protection Agency, Region VI*

*Against:*

*Unknown*

**ATTACHMENT A TO**

**LEGISLATIVE QUESTIONNAIRE**

# **ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION**



## **REGULATION NO. 2**

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

**MARK-UP DRAFT**

Adopted by the Arkansas Pollution Control and Ecology Commission: January 25, 2019

grease shall be an average of no more than 10 mg/L or a maximum of no more than 15 mg/L. 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 criteria apply to the streams indicated.

<u>Stream</u>	<u>Concentration-mg/L</u>		
	<u>Chlorides</u> (Cl <sup>-</sup> )	<u>Sulfates</u> (SO <sub>4</sub> <sup>=</sup> )	<u>TDS</u>
Arkansas River Basin			
Arkansas River (Mouth to Murray Lock and Dam [L&D #7])	250	100	500
Bayou Meto (Rocky Branch to Bayou Two Prairie)	64*	ER	ER
Bayou Meto (mouth to Pulaski/Lonoke county line)	95**	45**	ER
Bayou Two Prairie (Pulaski/Lonoke county line to Northern boundary of Smoke Hole Natural Area)	95**	45**	ER
Bayou Two Prairie (Southern boundary of Smoke Hole Natural Area to Mouth)	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 (Murray Lock and Dam [L&D #7] to Dardanelle Lock and Dam [L&D #10])	250	100	500
Cadron Creek	20	20	100
Arkansas River (Dardanelle Lock and Dam [L&D #10] to Oklahoma state line, including Dardanelle Reservoir)	250	120	500
James Fork	20	100	275
Illinois River	20	20	300
Poteau River from <u>confluence of Unnamed trib to US Hwy 59 Bridge</u>	120	60	500
<u>Business US Hwy 71 to Oklahoma state line</u>	<b>185</b>	<b>200</b>	<b>786</b>
Unnamed trib <u>from Tyson-Waldron Outfall 001 to confluence with the Poteau River</u> at Waldron	150	70	660
	<b>180</b>	<b>200</b>	<b>870</b>
White River Basin			
White River (Mouth to Dam #3)	20	60	430
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



## SPECIFIC STANDARDS: ARKANSAS RIVER VALLEY ECOREGION

(Plates ARV-1, ARV-2, ARV-3)

	<u>Streams</u>	<u>Lakes and Reservoirs</u>
Temperature °C (°F)*	31 (87.8)	32 (89.6)
Trout waters	20 (68)	
Arkansas River	32 (89.6)	
Turbidity(NTU) (base/all)	21/40	25/45
Arkansas River(base/all)	50/52	
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 to 150 mi <sup>2</sup>	5        3	
151 mi <sup>2</sup> to 400 mi <sup>2</sup>	5        4	
>400 mi <sup>2</sup> watershed	5        5	
Trout waters	6        6	
All other standards	(same as statewide)	

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

Dardanelle Reservoir - maximum temperature 35 °C (95 °F) (limitation of 2.8 °C above natural temperature does not apply) (ARV-2, #1)

Poteau River from confluence with Unnamed tributary to U.S. Highway 59 Bridge ~~Business Highway 71 to Oklahoma state line~~ - chlorides – ~~120~~ 185 mg/L; sulfates – ~~60~~ 200 mg/L; TDS – ~~500~~ 786 mg/L (ARV-1, #2)

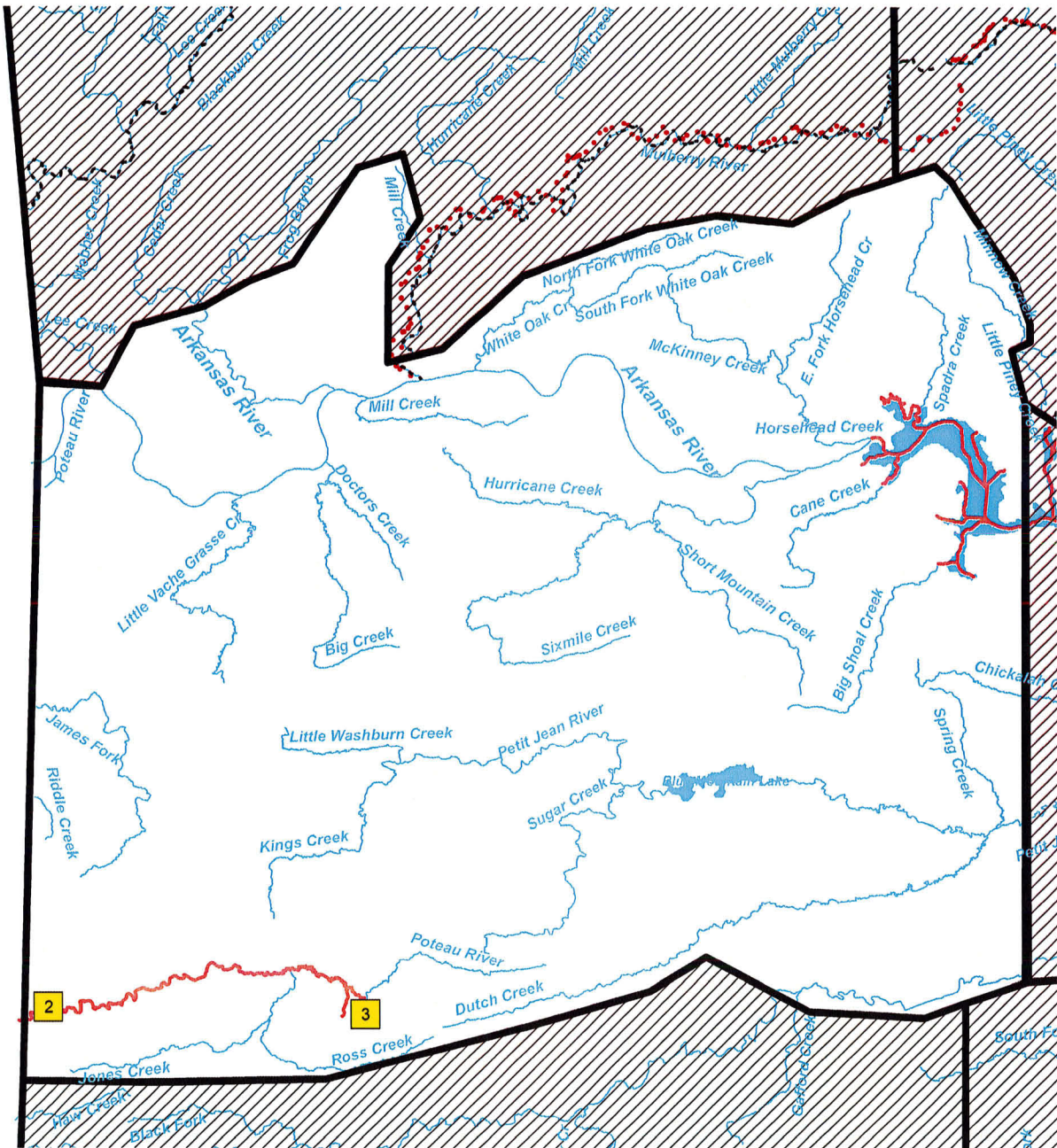
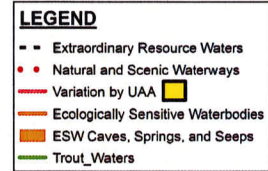
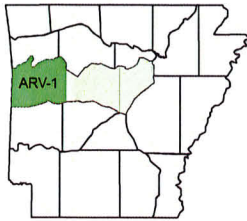
Unnamed tributary from Tyson-Waldron Outfall 001 to confluence with the Poteau River ~~to Poteau River at Waldron~~ - chlorides ~~150~~ 180 mg/L; sulfates – ~~70~~ 200 mg/L; TDS - ~~660~~ 870 mg/L (ARV-1, #3)

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\* 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.

# Plate ARV-1 (Arkansas River Valley)



**ATTACHMENT B TO**

**LEGISLATIVE QUESTIONNAIRE**

## EXECUTIVE SUMMARY

Tyson Foods, Inc. – Waldron Plant (“Tyson-Waldron”) operates a hatchery, feed mill, and chicken processing plant located in Waldron, Arkansas. The Tyson-Waldron facility discharges treated process wastewater through Outfall 001 into an Unnamed Tributary of the Poteau River pursuant to NPDES Permit No. AR0038482, which was issued by the Arkansas Department of Environmental Quality (“ADEQ”) and became effective October 1, 2010. The discharge enters the Unnamed Tributary and then flows to the Poteau River, which runs to and across the Arkansas state line.

Tyson-Waldron’s NPDES permit contains discharge limits for chlorides, sulfates and total dissolved solids (TDS), which are based upon Arkansas water quality standards for the Poteau River and the Unnamed Tributary. Tyson-Waldron evaluated alternatives through a Section 2.306 Site Specific Study, which included field studies, toxicity testing, mass balance modeling, engineering analyses of alternatives for discharge and treatment, and an analysis of designated uses in the Poteau River and the Unnamed Tributary.

Based upon the Revised Site Specific Study, Tyson-Waldron requests the following site-specific modifications to APC&EC Regulation No. 2:

- Modify the dissolved minerals water quality criteria for the Unnamed Tributary from the Tyson-Waldron outfall to the confluence with the Poteau River

chlorides from 150 mg/L to 180 mg/L  
sulfates from 70 mg/L to 200 mg/L  
TDS from 660 mg/L to 870 mg/L

- Modify the dissolved minerals water quality criteria for the Poteau River from the confluence with the Unnamed Tributary to the Highway 59 Bridge

chlorides from 120 mg/L to 185 mg/L  
sulfates from 60 mg/L to 200 mg/L  
TDS from 500 mg/L to 786 mg/L

Tyson-Waldron’s proposed site-specific modifications are supported by:

- Tyson-Waldron is not seeking a change from historical water quality conditions in the Unnamed Tributary and the Poteau River;
- Designated uses for the Unnamed Tributary and the Poteau River are being maintained;
- All stations downstream of the Tyson-Waldron discharge indicate support of a diverse macroinvertebrate community;

- All stations downstream of the Tyson-Waldron discharge indicate support of the Aquatic Life (Fishery) use according to ADEQ Assessment Criteria;
- Concentrations of dissolved minerals (chlorides, sulfates, and TDS) downstream of the Tyson-Waldron discharge are not adversely affecting the macroinvertebrate community;
- Whole effluent toxicity testing results reveal an excellent toxicity record and documents that the levels of chloride, sulfate, and TDS discharged from the Tyson-Waldron do not interfere with organism health;
- Current wastewater treatment plant operations require 100% optimization at all times to stay below permit limits, which allows for zero margin of safety in performance;
- There is no other economically feasible treatment technology for the removal of the minerals. Reverse osmosis treatment technology is available; however, it is not cost effective, it generates a concentrated waste stream that is environmentally difficult to dispose of, it is not required to meet the designated uses, and it would produce no significant additional environmental protection;
- Proposed modifications would enable Tyson-Waldron to implement water conservation practices saving nearly 70.2MG water/year and facilitating a 10-20% reduction in nutrient loading to the Poteau River;
- 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”; and
- The basis for site-specific standards is set forth in 40 CFR 131.10(g).