

IN RE: REQUEST BY TYSON FOODS, INC. –)
WALDRON PLANT TO INITIATE) DOCKET NO. 13-005-R
RULEMAKING TO AMEND REGULATION)
NO.2)

Petitioner, Tyson Foods, Inc. – Waldron Plant (“Tyson-Waldron”), for its Second Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 and Request for a Second Public Notice and Hearing States:

2. On May 23, 2013, the Arkansas Pollution Control & Ecology Commission (the “Commission”) granted Tyson-Waldron’s First Amended Petition. *See* Minute Order No. 13-17. A public hearing was held on July 22, 2013, in Waldron, Arkansas, and the public comment period ended on August 5, 2013.

3. The First Amended Petition sought: (a) modification of the chloride, sulfate and total dissolved solids (“TDS”) water quality criteria for the Unnamed Tributary to the Poteau River from the point of discharge of Tyson-Waldron downstream to the point of discharge of the City of Waldron wastewater treatment plant; (b) modification of the chloride, sulfate and TDS water quality criteria for the Unnamed Tributary to the Poteau River from the point of discharge of the

City of Waldron wastewater treatment plant (“WWTP”) to the confluence with the Poteau River; and (c) modification of the chloride, sulfate and TDS water quality criteria for the Poteau River from the point of confluence with the Unnamed Tributary to the state line.

4. Specifically, Tyson-Waldron’s First Amended Petition requested modifications to Regulation No. 2 as follows:

- a. Modify the dissolved minerals water quality criteria for the Unnamed Tributary from the point of discharge of Tyson-Waldron downstream to the point of discharge of the City of Waldron WWTP

chlorides from 150 mg/L to 80 mg/L
sulfates from 70 mg/L to 121 mg/L
TDS from 660 mg/L to 411 mg/L

- b. Modify the dissolved minerals water quality criteria for the Unnamed Tributary from the Point of Discharge of the City of Waldron WWTP to the confluence with the Poteau River

chlorides from 150 mg/L to 106 mg/L
sulfates from 70 mg/L to 117 mg/L
TDS from 660 mg/L to 514 mg/L

- c. Modify the dissolved minerals water quality criteria for the Poteau River from the confluence with the Unnamed Tributary to the state line

chlorides from 120 mg/L to 106 mg/L
sulfates from 60 mg/L to 117 mg/L
TDS from 500 mg/L to 514 mg/L

5. The Arkansas Department of Environmental Quality (“ADEQ” or “Department”) filed comments during the public comment period that expressed “concerns regarding the proposed site specific minerals criteria changes to the Unnamed Tributary and Poteau River with respect to critical flow, designated use attainment, use of mass balance equations to create standards, use of the 99th percentile data to calculate criteria, and use of default background mineral concentrations to calculate criteria.”

6. The U.S. Environmental Protection Agency (“EPA”) submitted written comments that shared many of the same concerns expressed by ADEQ, and further requested that ADEQ’s specific concerns be addressed prior to the Commission adopting the proposed changes.

7. Following the public comment period, Tyson-Waldron held discussions with ADEQ. Tyson-Waldron also prepared a response to each of ADEQ’s specific concerns and revised, with addendum, the “2012 Poteau River Section 2.306 Site Specific Water Quality Study.”¹

8. Tyson-Waldron also commissioned an additional full year of data collection for the Poteau River, which included: ambient water quality sampling (including flow) and *in-situ* measurements completed each month from January 2015 through December 2015; additional high flow storm water sample in April 2015; macroinvertebrate collections in the 2015 spring and fall seasons; and semi-quantitative habitat analysis (including pebble counts) during the 2015 spring and fall assessments.

9. Based on the post-comment discussions with ADEQ and EPA, the additional data collection, and the revised analyses, Tyson-Waldron now proposes modifications to the water quality criteria for dissolved minerals, as follows:

- a. 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

- b. 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

¹ The original “Poteau River Section 2.306 Site Specific Water Quality Study” is attached as Exhibit F to the First Amended Petition and is incorporated herein by reference.

A blackline version of APC&EC Regulation No. 2 showing the proposed changes is attached as Exhibit A and incorporated by reference.

10. The changes set forth above in paragraph 9 are supported by the revised report entitled “Poteau River Section 2.306 Site Specific Water Quality Study” (Rev. 3 December 2018) (referred to as the “Revised Site Specific Study”), which was submitted to ADEQ on December 19, 2018.² The Revised Site Specific Study is attached as Exhibit B and incorporated by reference.

11. Following submission of the Revised Site Specific Study to ADEQ, the Department authorized Tyson-Waldron to proceed with this amended third-party rulemaking. A copy of the December 28, 2018 correspondence from ADEQ is attached as Exhibit C.

12. On December 31, 2018, this Second Amended Petition was submitted to the Arkansas Governor’s Office for review and approval consistent with Executive Order No. 15-02. On January 7, 2019, Tyson-Waldron received approval to proceed from the Arkansas Governor’s Office. A copy of the January 7, 2019 correspondence from the Arkansas Governor’s Office is attached as Exhibit D and incorporated by reference.

13. Tyson-Waldron believes that the changes set forth above in paragraph 9 require a new public notice and opportunity for public comment and, therefore, respectfully requests that it be allowed to proceed with new a public notice and comment period.

14. A copy of the revised Legislative Questionnaire is attached as Exhibit E and incorporated by reference.

15. A copy of the revised Financial Impact Statement is attached as Exhibit F and incorporated by reference.

² The 2015 monitoring data and associated analysis was first submitted to the Department on October 28, 2016, as the Addendum to the 2012 Poteau River Section 2.306 Site Specific Water Quality Study, and was revised and re-submitted to the Department in October 2017 in response to comments.

16. A copy of the Economic Impact/Environmental Benefit Analysis required by APC&EC Regulation No. 8, § 8.812 is attached as Exhibit G and incorporated by reference.

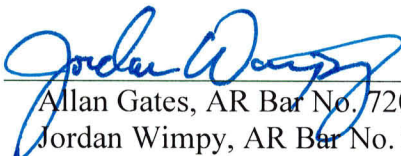
17. A copy of the proposed Minute Order is attached as Exhibit H and incorporated by reference.

WHEREFORE, Tyson Foods, Inc. requests that the commission enter a Minute Order granting its petition and sending the revised water quality criteria set forth in paragraph 9 for public comment and a public hearing.

Dated: January 11, 2019.

Respectfully submitted,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, PLLC
425 W. Capitol Avenue, Suite 1800
Little Rock, Arkansas 72201-3525
Phone: (501) 688-8800
Facsimile: (501) 688-8807
agates@mwlaw.com
jwimpy@mwlaw.com

By: 
Allan Gates, AR Bar No. 72040
Jordan Wimpy, AR Bar No. 2012273

Counsel for Tyson Foods, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2019, I served a copy of the foregoing Second Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 on the following by United States Postal Service, postage prepaid and by electronic service:

Michael McAlister, Esq.
Managing Attorney, Legal Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118
mcalister@adeq.state.ar.us


Jordan Wimpy