

**ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**SUBJECT – Tyson Foods, Inc. –
Waldron Plant Third-Party Rulemaking**

TYSON FOODS, INC. – WALDRON PLANT

DOCKET NO. 13-005-R

MINUTE ORDER NO. 19-03

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On May 9, 2013, Tyson Foods, Inc. – Waldron Plant (“Tyson Waldron”) filed a Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2. On May 20, 2013, Tyson – Waldron filed an Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2 (“First Amended Petition”). On May 23, 2013, the Arkansas Pollution Control and Ecology Commission (“APC&EC” or “Commission”) granted Tyson-Waldron’s First Amended Petition. A public hearing was held on July 22, 2013, in Waldron, Arkansas, and the public comment period ended on August 5, 2013.

The Arkansas Department of Environmental Quality (“ADEQ”), the U.S. Environmental Protection Agency (“EPA”) and others submitted written comments. Following the public comment period, Tyson-Waldron: (a) held lengthy discussions with ADEQ; (b) prepared a response to each of ADEQ and EPA’s specific concerns; and (c) revised, with addendum, the Poteau River Section 2.306 Site Specific Water Quality Study (Rev. 3 December 2018). Based on the post-comment discussions and the revised report, Tyson-Waldron calculated modifications to 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

On January 11, 2019, Tyson Waldron filed a Second Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No 2 and Request for Second Public Notice and Hearing (“Second Amended Petition”), wherein Tyson-Waldron proposed the new, revised

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modifications to the dissolved minerals criteria for the Unnamed Tributary and the Poteau River. Pursuant to Ark. Code Ann. § 8-4-202(c), the Commission has sixty (60) days in which to either institute rulemaking proceeding or to give written notice denying the petition for rulemaking.

The Commission met on January 25, 2019, to review the Second Amended Petition. Having considered the Petition, the Commission approves the request to initiate a rulemaking proceeding to consider adopting the proposed revision to Regulation No. 2 and adopts the following procedural schedule so consideration of this matter may proceed in an efficient and orderly manner:

1. Tyson-Waldron and ADEQ shall file an original and one (1) copy and a computer disk in Word of all materials required under this Minute Order.
2. Persons submitting written public comments shall submit their written comments to ADEQ, and ADEQ will deliver the originals of all comments to the Commission Secretary at the conclusion of the proceeding.
3. Tyson-Waldron shall submit to ADEQ's Public Outreach and Assistance Division (POA) the following:
 - a. A proposed public notice to be used in mailing notice to interested persons and for publishing in appropriate industry, trade, or professional publications as the Commission may select. The proposed public notice may, at ADEQ's discretion, be approved for use or ADEQ may choose to prepare its own public notice. The public notice shall conform to the requirements of Regulation No. 8.803. By agreement, Tyson-Waldron shall pay the costs of the newspaper publications and the costs of the appropriate industry, trade or professional publication chosen by the Commission and shall file only the original proof of the publication with the Commission. ADEQ shall be responsible for mailing the public notice to all persons who have requested notice of rulemaking proceedings and the cost of mailing;
 - b. Fifty (50) copies of the executive summary of the proposed rulemaking; and

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- c. Bound copies of the Petition and all supporting documentation, the number of which is to be determined by the Office of Law and Policy.
 4. A public hearing shall be conducted the week of March 18-22, 2019, in Scott County, Arkansas.
 5. The period for receiving all written comments from Tyson-Waldron, the public and ADEQ shall conclude ten (10) business days after the date of the public hearing, unless an extension of time is granted.
 6. Tyson-Waldron and ADEQ shall each file, not later than 14 days before the Commission meets to consider adoption of the proposed regulation, a Statement of Basis and Purpose and Responsive Summary as required by APC&EC Regulation No. 8.815. In addition, Tyson-Waldron and ADEQ shall file a proposed Minute Order deciding this matter.
 7. ADEQ shall seek approval of the proposed rule from the Joint Interim Committee on Public Health and Welfare and from the Joint Interim Committee on Administrative Rules and Regulations.
 8. The Commission may consider this matter at or before its August, 2019 meeting. In the event the appropriate legislative committees do not complete review and approval of the proposed rule by the above date, the Commission will consider the proposed amendments to the regulation after review by the appropriate legislative committees. Members of the Commission may ask questions of any persons that made oral or written comments.
 9. At the Commission meeting, the presentation of oral statements and legal arguments will be regulated as follows:
 - a. The Chair of the Commission will permit members of the public to make a statement to the Commission. No more than three (3) minutes will be allowed for each statement. The period for statements will close at the end of one (1) hour, or sooner if all interested persons have completed their statements. At the discretion of the Chair, this one (1) hour oral statement period may be extended.

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- b. At the discretion of the Chair, an attorney representing one or more individuals, a corporation, or other legal entity may be permitted five (5) minutes in which to address the Commission.
 - c. Legal counsel or other designated persons representing Tyson-Waldron and the ADEQ shall be permitted ten (10) minutes in which to address the Commission.
 - d. At the conclusion of all statements, the Chair will call on each Commissioner for the purpose of asking the attorneys or persons sponsoring statements who are present, any questions they may have. Attorneys will not be permitted to respond or ask follow-up questions of any person questioned by a Commissioner.

After each Commission has had an opportunity to ask questions, the Chair will entertain a motion on the matter, allow discussion, and call for a vote of the Commission members.

10. If Tyson-Waldron desires a transcript of the public hearing and Commission meetings, or if required by the Commission, Tyson-Waldron agrees to pay all costs for the preparation of a transcript of the public hearing and Commission meetings which concern this docket and occur after the adoption of this Minute Order. If a transcript is required, Tyson-Waldron shall employ the court reporter and the court reporter shall deliver the original transcript to the Commission Secretary.

11. The Commissioner finds the proposed regulation does not affect small businesses and therefore concludes that Act 143 of 2007, as amended by Act 809, is not applicable.

The Commission initiates the rulemaking proceeding in this docket and adopts, without modification, the procedural schedule set forth above.

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