

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

Secretary
Arkansas Pollution Control and Ecology
101 East Capitol, Suite 205
Little Rock, AR 72201
Filed 7/31/19 *PLG*

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

**TYSON FOODS, INC – WALDRON PLANT’S MOTION FOR THE
ADOPTION OF PROPOSED AMENDMENTS TO REGULATION NO. 2**

Tyson Foods, Inc. – Waldron Plant (“Tyson-Waldron”) moves for the Adoption of Proposed Changes to Arkansas Pollution Control and Ecology Commission (“APCEC” or “the Commission”) Regulation No. 2 to amend the chloride, sulfate, and total dissolved solids (“TDS”) water quality criteria for the Unnamed Tributary and for portions of the Poteau River, and in support states the following:

1. By Minute Order 19-03, dated January 25, 2019, the Commission granted Tyson-Waldron’s Second Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2.
2. Public notice of the rulemaking was published in the *Arkansas Democrat-Gazette* on February 8 and 17, 2019. A public hearing was held at 6:00 p.m. on April 2, 2019, in the courtroom of the Scott County Courthouse, 190 West First Street, Waldron, Arkansas. The deadline for submitting written public comments was April 16, 2019. In compliance with Minute Order 19-03, Tyson-Waldron prepared a Statement of Basis and Purpose and a Responsive Summary, which are attached as Exhibit A. The Arkansas Department of Environmental Quality also prepared a Responsive Summary, which is attached as Exhibit B.
3. A copy of the final proposed amendments to APCEC Regulation No. 2 is attached to this motion as Exhibit C.

4. On June 3, 2019, Tyson-Waldron's proposed amendments to APCEC Regulation No. 2 were reviewed by the Joint Senate and House Committee on Public Health, Welfare, and Labor. On June 19, 2019, the proposed amendments were reviewed by the Administrative Rules Subcommittee of the Arkansas Legislative Council and on June 21, 2019, the proposed amendments were reviewed and approved by the Arkansas Legislative Council. *See* Regulation Tracking Sheet attached as Exhibit D.

5. On January 7, 2019, Tyson-Waldron was notified that the proposed amendments had been approved by the Office of the Governor. *See* Exhibit E.

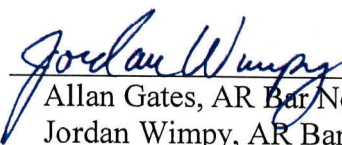
6. A copy of the proposed Minute Order adopting the final proposed amendments to APCEC Regulation No. 2 requested by Tyson-Waldron in its Second Amended Petition is attached as Exhibit F.

WHEREFORE, Tyson Foods, Inc. requests that the Commission adopt the amendments to APCEC Regulation No. 2 set forth in the attached Exhibit C.

Dated: July 3rd, 2019.

Respectfully submitted,

MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, PLLC
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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 3rd day of July, 2019, I served a copy of the foregoing Motion for Adoption of Proposed Amendments to 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
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Jordan Wimpy

EXHIBIT A

**TYSON-WALDRON'S RESPONSIVE SUMMARY
AND STATEMENT OF BASIS AND PURPOSE**

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

**IN RE: REQUEST BY TYSON FOODS, INC. –)
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TYSON FOODS, INC – WALDRON PLANT’S STATEMENT OF BASIS AND PURPOSE

Tyson Foods, Inc. – Waldron Plant (“Tyson-Waldron”) submits the following Statement of Basis and Purpose:

1. The Arkansas Pollution Control and Ecology Commission (“APCEC or “the Commission”) is authorized to promulgate rules implementing the powers and duties of the Arkansas Department of Environmental Quality (“ADEQ” or “the Department”) and APCEC, including regulations prescribing water quality standards. Ark. Code Ann. § 8-4-202(a) and (b).

2. The relevant Arkansas statutes provide further that any person has the right to petition the APCEC for an amendment to any rule. On January 11, 2019, Tyson-Waldron filed its Second Amended Petition to Initiate Third-Party Rulemaking to Amend APCEC Regulation No. 2. The 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 ADEQ’s Continuing Planning Process. On January 25, 2019, the APCEC entered Minute Order 19-03 granting Tyson-Waldron’s Second Amended Petition.

3. Through its Second Amended Petition, Tyson-Waldron sought modification 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

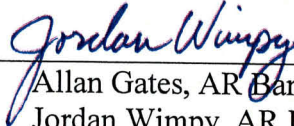
sulfates from 60 mg/L to 200 mg/L

TDS from 500 mg/L to 786 mg/L

4. Tyson-Waldron's Second Amended Petition is supported by the following:
- Tyson-Waldron is not seeking a change from current 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 plant 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).

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

Counsel for Tyson Foods, Inc.

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TYSON FOODS, INC – WALDRON PLANT’S RESPONSIVE SUMMARY

Tyson Foods, Inc. – Waldron Plant provides this Responsive Summary as required under Arkansas Pollution Control and Ecology Commission Regulation No. 8.815:

On May 9, 2013 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 (the “First Amended Petition”). The Arkansas Pollution Control & Ecology 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. ADEQ and EPA commented and expressed concerns the methods and procedures utilized in the 2012 Poteau River Section 2.306 Site Specific Water Quality Study, which supported the First Amended Petition.

Following the public comment period Tyson-Waldron worked cooperatively with the Arkansas Department of Environmental Quality to address each of the identified concerns with the site specific study. Tyson-Waldron prepared an entirely new report that utilized a different background flow, replaced default background mineral conditions with measured in-stream conditions, and relied on a different percentile to calculate proposed site specific criteria. Tyson-Waldron also commissioned an additional year of water quality and biological data collection for the Poteau River. Ultimately, after nearly five years, Tyson Waldron submitted to ADEQ a completely revised report entitled Poteau River Section 2.306 Site Specific Water Quality Study (Rev. 3 December 2018).

Based on the revised 2018 report, Tyson-Waldron filed with the Commission a Second Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2. The Second Amended Petition diverged significantly from the 2013 proposal and included a completely revised proposal for water quality criteria for chlorides, sulfates and TDS, and revised stream segments for the new criteria. Tyson-Waldron requested the Commission order a new public hearing and comment period for the public to review and comment on the entirely different regulatory amendments proposed in Second Amended Petition. A public hearing was held on April 2, 2019, in Waldron, Arkansas, and the public comment period ended on April 16, 2019.

No comments were submitted during the comment period for the amendments proposed in the Second Amended Petition to Initiate Third-Party Rulemaking to Amend Regulation No. 2. Moreover, it is not clear that comments submitted during the 2013 public comment period

remain relevant to the regulatory changes proposed in the Second Amended Petition, particularly because the commenters in the 2013 comment period did not submit comments concerning the 2018 proposal. Out of an abundance of caution, however, Tyson-Waldron noted two comments from the 2013 comment period that may be relevant the new regulatory proposal in the Second Amended Petition:

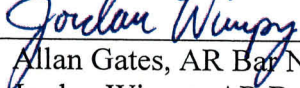
Comment No. 1 (Mary Cameron): Commenter inquired whether federal regulations allow for water quality standards as stated in the proposed amendments.

Response: Yes. Federal Regulations authorize States to establish site-specific water quality criteria. 40 CFR Part 131; APCEC Regulation No. 2, Reg. 2.306.

Comment No. 2 (Arkansas Natural Heritage Commission): Commenter noted the possible occurrence of several state species of concern in the Poteau River and stated that it would be appropriate to consider the implications of the proposed amendments to the species.

Response: The Poteau River Section 2.306 Site Specific Water Quality Study (Rev. 3 December 2018) evaluated the impact of elevated dissolved minerals on the aquatic life in the Poteau River. The 2018 report documents (i) that the Poteau River, downstream of the Tyson-Waldron facility, supports the Aquatic Life (Fishery) use and (ii) that concentrations of dissolved minerals are not adversely affecting the relevant aquatic life community in the Poteau River.

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By: 
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Jordan Wimpy, AR Bar No. 2012273

Counsel for Tyson Foods, Inc.

EXHIBIT B
ADEQ RESPONSIVE SUMMARY

BEFORE THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

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

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY'S
RESPONSIVE SUMMARY

On May 9, 2013, the Arkansas Pollution Control and Ecology Commission granted the petition of Tyson Foods, Inc.-Waldron Plant ("Tyson Waldron") to initiate rulemaking to amend APC&EC Regulation No.2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas. ADEQ's August 5, 2013 comments serve as ADEQ's response to public comments received during the first round of public comments. In response to those public comments, Tyson Waldron amended its site specific water quality study, collected additional data, and moved to reinstate the rulemaking based on the results in the revised study.

On January 25, 2019, the Arkansas Pollution Control and Ecology Commission granted the second petition of Tyson Waldron to initiate rulemaking to amend APC&EC Regulation No.2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas. A public hearing was held on April 2, 2019, at the Scott County Courthouse in Waldron, Arkansas. No public comments were made at the public hearing. The public comment period ended on April 16, 2019. No written comments were received.

Respectfully submitted,

By: 

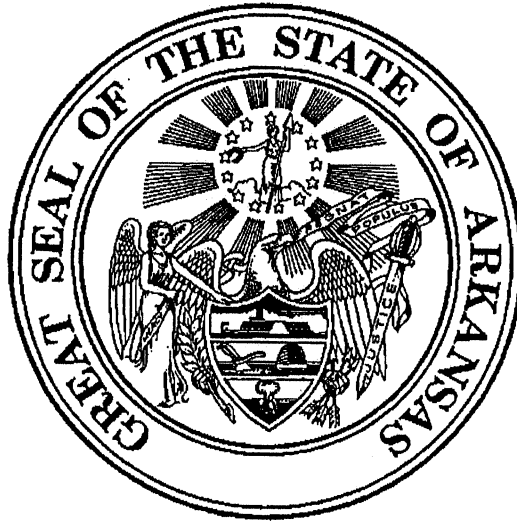
Basil V. Hicks III, Attorney
ARKANSAS DEPARTMENT OF
ENVIRONMENTAL QUALITY

5301 Northshore Drive
North Little Rock, AR 72118
(501) 682-0884

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

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 ⁻)	<u>Sulfates</u> (SO ₄ ⁻²)	<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 Scott County Road 59 to Oklahoma state line	120	60	500
Poteau River from confluence of Unnamed trib to Scott County Road 59	185†	200†	786†
Unnamed trib from Tyson-Waldron Outfall 001 to confluence with the Poteau River	180†	200†	870†
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

DESIGNATED USES: ARKANSAS RIVER VALLEY ECOREGION

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

Extraordinary Resource Waters

Cadron Creek including North Fork and East Fork (ARV-2, ARV-3)

Mulberry River (ARV-1)

Big Creek adjacent to natural areas (ARV-3)

Natural and Scenic Waterway

Mulberry River (ARV-1)

Ecologically Sensitive Waterbodies

None

Primary Contact Recreation - all streams with watersheds of greater than 10 mi² and all lakes/reservoirs**

Secondary Contact Recreation - all waters**

Domestic, Industrial and Agricultural Water Supply - all waters**

Aquatic Life**

Trout

Little Red River below Greers Ferry Dam to Searcy (ARV-3)

Lakes and Reservoirs - all

Streams

Seasonal Arkansas River Valley aquatic life use - all streams with watersheds of less than 10 mi² except as otherwise provided in Reg. 2.505

Perennial Arkansas River Valley aquatic life - all streams with watersheds of 10 mi² or larger and those waters where discharges equal or exceed 1 cfs

Site Specific Designated Use Variations Supported by Use Attainability Analysis

Poteau River from U.S. Business Highway 71 to Oklahoma state line - no domestic water supply use (ARV-1, #2 and #4)

Unnamed tributary to Poteau River at Waldron - no domestic water supply use (ARV-1, #3)

**Except for those waters with designated use variations supported by Use Attainability Analysis or other investigations.

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 ² watershed	5 2	
10 to 150 mi ²	5 3	
151 mi ² to 400 mi ²	5 4	
>400 mi ² 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 Scott County Road 59 to Oklahoma state line – chlorides 120 mg/L; sulfates 60 mg/L; TDS 500 mg/L (ARV-1, #2)

Poteau River from confluence with Unnamed tributary to Scott County Road 59 – chlorides 185 mg/L, sulfates 200 mg/L, TDS 786 mg/L (ARV-1, #4) †

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

* 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.

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

Plate ARV-1 (Arkansas River Valley)

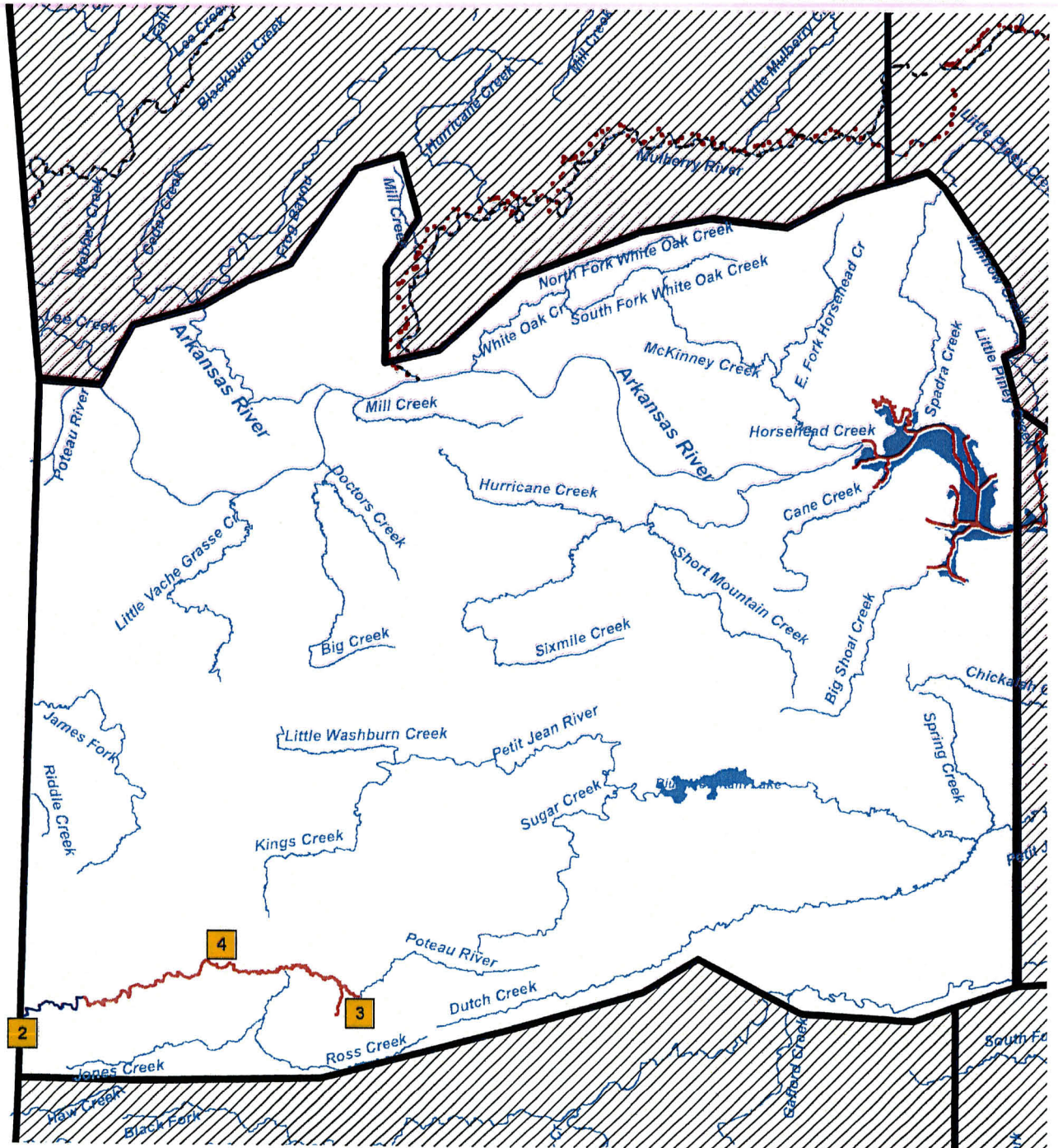
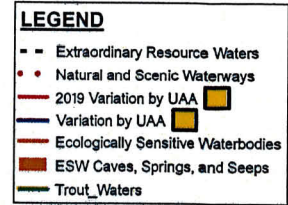


EXHIBIT D
REGULATION TRACKING SHEET

REGULATIONS TRACKING SHEET

Regulation No. 2

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

1. **Review** of draft regulations by key groups.

	<i>Initiated</i>	<i>Completed</i>	<i>Incorporated</i>
EPA	_____	_____	_____
ADEQ Legal/Admin.	_____√_____	_____√_____	_____√_____
Industrial/ Environmental Groups	_____N/A_____	_____N/A_____	_____N/A_____

Comments: The amendment of Regulation No. 2 is necessary to revise the dissolved minerals water quality criteria for the Unnamed Tributary and portions of the Poteau River to reflect current conditions.

2. Proposed regulations presentation to Commission for approval to proceed to public comment period.

Date: January 25, 2019

By: Allan Gates

Comments/Approval: Commission approved the Second Amended Petition to initiate rulemaking

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

Publication

Dates of Publication

Arkansas Democrat-Gazette

February 8 and 17, 2019

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

Date: March 15, 2019

By: Jordan Wimpy

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

Location

Date

Hearing Officer

Scott County Courthouse, Waldron AR

April 2, 2019

Charles Moulton

6. Final day of public comment period:

April 16, 2019

7. **Final proposed regulation and Responsive Summary** prepared by Petitioner and Department.

Date Completed: May 15, 2019 (Petitioner)

Date Completed: May 16, 2019 (ADEQ)

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

Date: June 3, 2019

By: Allan Gates, Jordan Wimpy, Michael Grappe (ADEQ)

Comments/Approval: Reviewed by Committee, See Attachment 1

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

Date: June 19, 2019

By: Allan Gates, Jordan Wimpy, Michael Grappe (ADEQ)

Date: June 21, 2019

By: Allan Gates, Michael Grappe (ADEQ)

Comments/Approval: Reviewed and approved, See Attachments 2 and 3

11. **Motion to Adopt** filed with **proposed final regulation**.

Date Delivered: July 3, 2019

12. Planned presentation of proposed final regulation to the **Commission** for adoption.

Date: July 26, 2019

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: Jordan Wimpy
Jordan Wimpy

ATTACHMENT 1

**AGENDA FROM JUNE 3, 2019, MEETING OF THE
JOINT COMMITTEE ON PUBLIC HEALTH, WELFARE, AND LABOR**

TENTATIVE AGENDA (Revised 5-29-2019)
Senate Committee on Public Health, Welfare, and Labor
House Committee on Public Health, Welfare, and Labor
Meeting Jointly

Monday, June 3, 2019
10:00 AM
Room A, MAC
Little Rock, Arkansas

Sen. Missy Irvin, Chair	Rep. Jack Ladyman, Chair	Rep. Michelle Gray
Sen. David Wallace, Vice-Chair	Rep. Deborah Ferguson, Vice-Chair	Rep. Justin Gonzales
Sen. Bill Sample	Rep. Fredrick J. Love	Rep. Kenneth B. Ferguson
Sen. Ronald Caldwell	Rep. Jeff Wardlaw	Rep. Justin Boyd
Sen. Jimmy Hickey, Jr	Rep. Chris Richey	Rep. Karilyn Brown
Sen. Bart Hester	Rep. Stephen Magie	Rep. Austin McCollum
Sen. Scott Flippe	Rep. Josh Miller	Rep. Bruce Coleman
Sen. Kim Hammer	Rep. Richard Womack	Rep. Clint Penzo
	Rep. John Payton	Rep. Mark Perry
	Rep. Mary Bentley	Rep. Lee Johnson

- A. Call to Order
- B. Comments by the Chairs
 - 1. Senator Missy Irvin
 - 2. Representative Jack Ladyman
- C. Consideration of a Motion to Authorize Chairs to Approve Special Expenses Incurred by the House and Senate Interim Committees on Public Health, Welfare and Labor (**EXHIBIT C**)
- D. Consideration to Adopt the December 10, 2018, Meeting Minutes (**EXHIBIT D**)
- E. Arkansas Department of Health (ADH), Pharmacy Services and Drug Control, Review of Rule Regarding the Scheduling of Controlled Substances (**EXHIBIT E**)
 - 1. Laura Shue, General Counsel, ADH
 - 2. Discussion and Action by the Committees
- F. Arkansas Department of Health (ADH), Center for Local Public Health/Environmental Health Protection. This Rule Revision Updates Soil Science Terminology and Removes Outdated Portions of this Rule (**EXHIBIT F**)
 - 1. Laura Shue, General Counsel, ADH
 - 2. Discussion and Action by the Committees
- G. Arkansas Department of Health (ADH), Center for Local Public Health/Environmental Health Protection. This Rule Updates the Arkansas Code to the 2013 FDA Food Code Guidance, and Requires a Certified Manager to be Employed by the Establishment (**EXHIBIT G**)
 - 1. Laura Shue, General Counsel, ADH
 - 2. Discussion and Action by the Committees

Note: All exhibits for this meeting are available by electronic means and are accessible on the General Assembly's website at www.arkleg.state.ar.us

Notice: Silence your cell phones. Keep your personal conversations to a minimum. Observe restrictions designating areas as 'Members and Staff Only'.

- H. Arkansas State Department of Human Services (DHS), Division of Medical Services, Review of Rule that Establishes the Rate Calculation Method for Private Duty Nurses for Dates of Services on or after January 1, 2019, State Plan Amendment 2018-015 (**EXHIBIT H**)
 - 1. Janet Mann, Director, Division of Medical Services, DHS
 - 2. Discussion and Action by the Committees

- I. Arkansas Department of Environmental Quality (ADEQ), Office of Air Quality, Review of Rule Regarding Regulation 19, which Deals with the Arkansas Plan of Implementation for Air Pollution Control which Adopts the 2015 Ozone National Ambient Air Quality Standard, Promulgated by the U.S. Environmental Protection Agency (EPA) on October 26, 2015 (**EXHIBIT I**)
 - 1. Michael Grappe, Chief Program Officer, ADEQ
 - 2. Discussion and Action by the Committees

- J. Arkansas Department of Environmental Quality (ADEQ), Office of Water Quality, Third Party Rulemaking Regulation 2, Establishing Water Quality Standards for Surface Waters of the State of Arkansas, Modification of 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 Scott County Road 59 (**EXHIBIT J**)
 - 1. Michael Grappe, Chief Program Officer, ADEQ
 - 2. Jordan Wimpy, Attorney, Mitchell/Williams Law Firm
 - 3. Discussion and Action by the Committees

- K. Review of the Arkansas Tobacco Settlement Commission (ATSC) Quarterly Report for July, 2018-September 2018
 - 1. Matt Gilmore, Public Health Programs Policy Coordinator, Arkansas Department of Health (Former Director, Arkansas Tobacco Settlement Commission)
 - 2. John Henderson, M.D., Commission Chair, Physician, Unity Health
 - 3. Discussion by the Committees

- L. Update on Medicaid Reimbursement from the Department of Human Services (DHS)
 - 1. Dawn Stehle, Deputy Director, Health and Medicaid, DHS
 - 2. Paula Stone, Deputy Director, Division of Medical Services, DHS
 - 3. Melissa Stone, Director, Developmental Disabilities Services (DDS) Division, DHS
 - 4. Janet Mann, Director, Division of Medical Services, DHS
 - 5. Discussion and Action by the Committees

- M. Update on Medicaid Reimbursement from the 3 PASSEs (**Provider-Led Arkansas Shared Savings Entity**)
 - 1. Nicole May, Interim Executive Director, Empower Healthcare Solutions
 - 2. John P. Ryan, President and Chief Executive Officer, Arkansas Total Care
 - 3. Jason Miller, Plan President, Summit Community Care
 - 4. Discussion and Action by the Committees

- N. Other Business

- O. Adjournment

ATTACHMENT 2

**AGENDA FROM JUNE 19, 2019, MEETING OF THE
ADMINISTRATIVE RULES SUBCOMMITTEE OF THE
ARKANSAS LEGISLATIVE COUNCIL**

REVISED AGENDA
Administrative Rules Subcommittee
of the
Arkansas Legislative Council

Wednesday, June 19, 2019
9:00 AM
Room A, MAC
Little Rock, Arkansas

Sen. Lance Eads, Co-Chair
Sen. Kim Hammer, Vice-Chair
Sen. Missy Irvin
Sen. Jonathan Dismang
Sen. Jane English
Sen. Keith Ingram
Sen. Jim Hendren
Sen. Blake Johnson
Sen. Cecile Bledsoe, ex officio
Sen. Terry Rice, ex officio

Rep. Dan Sullivan, Co-Chair
Rep. Lane Jean, Vice-Chair
Rep. Fredrick J. Love
Rep. Reginald Murdock
Rep. Matthew J. Shepherd
Rep. Jon S. Eubanks
Rep. Bruce Cozart
Rep. DeAnn Vaught
Rep. Jeff Wardlaw, ex officio
Rep. Jim Dotson, ex officio

A. Call to Order.

B. Reports of the Executive Subcommittee.

C. Rules Filed Pursuant to Ark. Code Ann. § 10-3-309.

1. ~~ARKANSAS STATE BANK DEPARTMENT~~

a. ~~47-701.9 Fiduciary Powers and State Banks~~

2. DEPARTMENT OF COMMUNITY CORRECTION (Ms. Dina Tyler)

a. Community Service Program AR 8.8 (p. 1)

3. DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER DIVISION (Mr. Micheal Grappe, Mr. Allan Gates, Mr. Jordan Wimpy)

a. Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas – Tyson Foods, Inc., Waldron Plant (p. 2)

4. DEPARTMENT OF FINANCE AND ADMINISTRATION, OFFICE OF STATE PROCUREMENT (Ms. Mary Kathryn Williams, Mr. David Withrow, Mr. Edward Armstrong)

a. R8: 19-11-230 Discussions (p. 7)

5. DEPARTMENT OF HEALTH, CENTER FOR LOCAL PUBLIC HEALTH/ENVIRONMENTAL HEALTH PROTECTION (Ms. Laura Shue)

a. Rules and Regulations Pertaining to Food Service Establishments (p. 10)

b. Onsite Wastewater Rules and Regulations (p. 11)

Note: All exhibits for this meeting are available by electronic means and are accessible on the General Assembly's website at www.arkleg.state.ar.us

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6. DEPARTMENT OF HEALTH, PHARMACY SERVICES AND DRUG CONTROL (Ms. Laura Shue)
 - a. List of Controlled Substances (p. 14)
7. DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES (Ms. Janet Mann)
 - a. Private Duty Nursing (PDN) Rate Calculation SPA #2018-015 (p. 18)
8. DEPARTMENT OF HUMAN SERVICES, YOUTH SERVICES (Mr. Marq Golden, Ms. Kara Benca)
 - a. Division of Youth Services Operations Manual (p. 20)
9. ARKANSAS MINORITY HEALTH COMMISSION (Ms. ShaRhonda Love)
 - a. AMHC Bylaws (p. 21)
10. DEPARTMENT OF PARKS AND TOURISM (Mr. Grady Spann)
 - a. CY2019 Arkansas State Parks Fees and Rates (p. 22)
11. ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM (Mr. Jay Wills, Ms. Jessica Middleton)
 - a. Age of Members – How Established (p. 23)

D. Adjournment.

ATTACHMENT 3

**AGENDA FROM JUNE 21, 2019, MEETING OF THE
ARKANSAS LEGISLATIVE COUNCIL**

AGENDA
Arkansas Legislative Council

Friday, June 21, 2019
9:00 AM
Room A, MAC
Little Rock, Arkansas

- A. Call to Order
- B. Roll Call.
- C. Approval of the Minutes of the Last Meeting, May 17, 2019.
- D. Presentation of the May 2019 Monthly General Revenue Report — Richard Wilson, Assistant Director, Bureau of Legislative Research.
- E. Report of the Executive Subcommittee — Rep. Jeff Wardlaw, Sen. Cecile Bledsoe, Co-Chairs.
- F. Reports of Standing Subcommittees:
 - 1. Administrative Rules: — Rep. Dan Sullivan, Sen. Lance Eads, Co-Chairs;
 - 2. Charitable, Penal & Correctional Institutions — Rep. David Fielding, Sen. Gary Stubblefield, Co-Chairs;
 - 3. Claims Review — Rep. Bruce Cozart, Sen. Bart Hester, Co-Chairs;
 - 4. Game and Fish/State Police — Rep. Josh Miller, Sen. Keith Ingram, Co-Chairs;
 - 5. Higher Education — Rep. David Whitaker, Sen. Breanne Davis, Co-Chairs;
 - 6. Hospital and Medicaid Study — Rep. Fredrick J. Love, Sen. Eddie Cheatham, Co-Chairs;
 - 7. Litigation Reports Oversight — Rep. Lanny Fite, Sen. Bob Ballinger, Co-Chairs;
 - 8. Performance Evaluation and Expenditure Review — Rep. DeAnn Vaught, Sen. Bruce Maloch, Co-Chairs;
 - 9. Policy-Making — Rep. Ken Bragg, Sen. Linda Chesterfield, Co-Chairs;
 - 10. Review: — Rep. Andy Davis, Sen. Scott Flippo;
 - 11. Uniform Personnel Classification and Compensation Plan — Rep. Jim Wooten, Sen. David Wallace, Co-Chairs;
 - 12. Lottery Oversight — Rep. Chris Richey, Sen. Joyce Elliott, Co-Chairs;
 - 13. Highway Commission Review and Advisory — Rep. Ron McNair, Sen. Jonathan Dismang, Co-Chairs;
 - 14. Arkansas Health Insurance Marketplace Oversight — Rep. Deborah Ferguson, Sen. Kim Hammer, Co-Chairs.
 - 15. Occupational Licensing Review — Rep. Womack, Sen. Missy Irvin, Co-Chairs;

Note: All exhibits for this meeting are available by electronic means and are accessible on the General Assembly's website at www.arkleg.state.ar.us

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G. Reports of Interim or Special Committees.

1. Report of the Joint Advanced Communications and Information Technology Committee.
— Rep. Stephen Meeks, Sen. Blake Johnson, Co-Chairs.

H. Review of Communications:

1. **Arkansas Agriculture Department**, Request for the Legislative Council's review of the sale of property below the appraised price, submitted pursuant to A.C.A. § 22-6-601(h)(2);
2. **Arkansas Board of Parole**, Monthly performance report on parole applications and outcomes for May 2019, submitted pursuant to A.C.A. § 16-93-210;
3. **Arkansas Forestry Commission**, Monthly activity report for May 2019, submitted pursuant to Section 42 of Act 228 of the 2018 Fiscal Session;
4. **Arkansas State Police**, Monthly activity report for May 2019 regarding activity and condition of the Uniformed Employee Health Insurance Plan, submitted pursuant to Section 17 of Act 224 of the 2018 Fiscal Session;
5. **Arkansas Teacher Retirement System (ATRS)**: Request for the Legislative Council's review of the partial equity ownership investments with the following, submitted pursuant to A.C.A § 19-11-1302:
 - a. JFL Equity Investors V, L.P.;
 - b. Franklin Park Venture Fund Series 2019, L.P.; and
 - c. Franklin Park Corporate Finance Access Fund, L.P.;
6. **Bureau of Legislative Research**, Report on travel recommendations for members of the General Assembly attending conferences other than SLC, CSG, NCSL, ALEC, or the Energy Council submitted pursuant to Legislative Council travel policy;
7. **Capitol Zoning District Commission**, Monthly activity report for May 2019, submitted pursuant to A.C.A. § 22-3-311;
8. **Commissioner of State Lands**, Report of property sold from January 1, 2019 through March 31, 2019 by the Commissioner of State Lands Office through the post-auction sale process, submitted pursuant to A.C.A. § 26-37-202(b)(3).
9. **Department of Community Correction**, Report on the Community Correction Centers' population totals and Parole and Probation Services' caseload information as of June 10, 2019;
10. **Department of Correction**, Statewide Population Report as of June 10, 2019;
11. **Department of Finance and Administration**:
 - a. **DFA, Office of the Director**, May 2019 general revenue report;
 - b. **DFA, Division of Building Authority**, Monthly performance report pertaining to capital improvement activities (design review and construction) for May 2019, submitted pursuant to A.C.A. § 22-2-108(13);
 - c. **DFA, Office of Child Support Enforcement**, Semi-Annual report on the performance and progress of the Child Support Program for the period of July 1, 2018 through December 31, 2018;

12. **Department of Human Services:**

- a. **DHS Division of Children and Family Services**, Monthly report of out-of-state placements for May 2019 (report for April 2019 retained in file), submitted pursuant to A.C.A. § 20-46-106;
- b. **DHS Division of Medical Services**, Monthly report of Medicaid in-state and out-of-state inpatient psychiatric placements for May 2019, submitted pursuant to A.C.A. § 20-46-105;

13. **Department of Information Systems**, Request for the Legislative Council's review of proposed new rates of service for fiscal year 2020, submitted pursuant to A.C.A. § 25-4-119(b)(3)(B);

14. **Public Service Commission**, Quarterly report of the Extension of Telecommunications Facilities Fund (ETFF) for the quarter ending March 31, 2019, submitted pursuant to A.C.A. § 23-17-404(e)(7)(A)(i);

I. New Business.

J. New Interim Study Proposals and Interim Resolutions:

1. **Interim Study Proposal 2019-124, by Representative Julie Mayberry**, requesting that the Arkansas Legislative Council refer to the House Committee on Revenue and Taxation a study of tax issues related to gambling and the use of potential revenue savings realized by the reform of tax policies relating to gambling;
2. **Interim Study Proposal 2019-125, by Representative Julie Mayberry**, which is an act to provide a sales and use tax exemption for the sale of used textbooks to students enrolled in an institution of higher education;
3. **Interim Study Proposal 2019-126, by Representative Jack Ladyman**, requests that the Arkansas Legislative Council refer to the House Committee on Revenue and Taxation a study of the possibilities for and effects of reducing the sales and use taxes in the state;
4. **Interim Study Proposal 2019-127, by Representative Jana Della Rosa**, which is a bill to create a study of public notice and participation in the environmental permitting process;
5. **Interim Study Proposal 2019-129, by Senator Kim Hammer**, proposing that Senate Committee on City, County, and Local Affairs conduct an interim study to determine the best practices of fire departments in the state and in the nation that may be implemented in a local community to improve efficiency.

K. Adjournment.

**REPORT OF THE
ADMINISTRATIVE RULES SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

June 21, 2019

Co-Chairs:

The Administrative Rules Subcommittee met on Wednesday, June 19, 2019, at 9:00 a.m., in Room A, MAC.

- 1. The Subcommittee reviewed and approved the following rules filed pursuant to Ark. Code Ann. § 10-3-309:**

DEPARTMENT OF COMMUNITY CORRECTION (Ms. Dina Tyler)

- a. Community Service Program AR 8.8**

**DEPARTMENT OF ENVIRONMENTAL QUALITY, WATER DIVISION
(Mr. Micheal Grappe, Mr. Allan Gates, Mr. Jordan Wimpy)**

- a. Regulation No. 2, Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas – Tyson Foods, Inc., Waldron Plant**

**DEPARTMENT OF HEALTH, CENTER FOR LOCAL PUBLIC
HEALTH/ENVIRONMENTAL HEALTH PROTECTION (Ms. Laura Shue,
Mr. Terry Paul, Mr. Chuck Thompson)**

- a. Onsite Wastewater Rules and Regulations**

**DEPARTMENT OF HEALTH, PHARMACY SERVICES AND DRUG
CONTROL (Ms. Laura Shue, Mr. Shane David)**

- a. List of Controlled Substances**

**DEPARTMENT OF HUMAN SERVICES, MEDICAL SERVICES (Mr.
Isaac Linam, Ms. Janet Mann)**

- a. Private Duty Nursing (PDN) Rate Calculation SPA #2018-015**

DEPARTMENT OF HUMAN SERVICES, YOUTH SERVICES (Mr. Isaac Linam, Mr. Michael Crump, Ms. Kara Benca)

- a. **Division of Youth Services Operations Manual**

ARKANSAS MINORITY HEALTH COMMISSION (Ms. ShaRhonda Love)

- a. **AMHC Bylaws**

DEPARTMENT OF PARKS AND TOURISM (Mr. Grady Spann, Mr. Shea Lewis)

- a. **CY2019 Arkansas State Parks Fees and Rates**

ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM (Mr. Jay Wills, Ms. Jessica Middleton)

- a. **Age of Members – How Established**

- 2. **The following rule was deferred to the August 14, 2019 meeting of the Administrative Rules Subcommittee:**

DEPARTMENT OF FINANCE AND ADMINISTRATION, OFFICE OF STATE PROCUREMENT (Ms. Mary Kathryn Williams, Mr. David Withrow, Mr. Edward Armstrong)

- a. **R8: 19-11-230 Discussions**

- 3. **Upon the agency's request, the following rule was remanded to the Senate and House Interim Committees on Public Health, Welfare and Labor for further discussion and consideration at its July 8, 2019 meeting and therefore deferred to the July agenda of the Administrative Rules Subcommittee:**

DEPARTMENT OF HEALTH; CENTER FOR LOCAL PUBLIC HEALTH/ENVIRONMENTAL HEALTH PROTECTION (Ms. Laura Shue, Mr. Terry Paul, Mr. Chuck Thompson)

- a. **Rules and Regulations Pertaining to Food Service Establishments**

Respectfully submitted,

Senator Lance Eads, Co-Chair

Representative Dan Sullivan, Co-Chair

EXHIBIT E

APPROVAL FROM THE OFFICE OF THE GOVERNOR

Jordan Wimpy

From: Justin Tate <Justin.Tate@governor.arkansas.gov>
Sent: Monday, January 07, 2019 2:16 PM
To: Jordan Wimpy
Cc: Allan Gates; Andres F. Rhodes
Subject: RE: EO 15-02 APC&EC Third-Party Rulemaking re: Tyson Foods, Inc. - Waldron Facility

Jordan,

Pursuant to EO 15-02, the Governor has approved the Tyson Foods, Inc – Waldron Plant third-party rulemaking petition to go forward. Please move forward with filing the third-party petition with the Commission. As I mentioned on our call earlier, please keep our office apprised of the comments received during the public comment period.

Going forward, Andres Rhodes will be responsible for reviewing rules and regulations in the Governor's office. His office number is 682-3214.

Best,

Justin

From: Jordan Wimpy [<mailto:jwimpy@mwlaw.com>]
Sent: Monday, December 31, 2018 11:26 AM
To: Justin Tate <Justin.Tate@governor.arkansas.gov>
Cc: Allan Gates <AGates@mwlaw.com>
Subject: RE: EO 15-02 APC&EC Third-Party Rulemaking re: Tyson Foods, Inc. - Waldron Facility

Dear Justin –

I hope you enjoyed a nice Christmas holiday!

I am attaching the Tyson Foods, Inc. – Waldron Facility draft *amended* Petition for Rulemaking, blackline of the revised regulation, and other relevant materials for the Governor's review pursuant to EO 15-02:

- Request for Governor's Approval of Proposed Rules and Regulations
- ADEQ Correspondence of No Objection to Rulemaking
- *Draft* Amended Petition to Initiate Third-Party Rulemaking
- Exhibit A – Blackline Version of APCEC Regulation No. 2
- Exhibit B – Revised Poteau River Water Quality Study
- Exhibit D – Legislative Questionnaire
- Exhibit E – Financial Impact Statement
- Exhibit F – Economic Impact/Environmental Benefit Analysis
- Exhibit G – Proposed Minute Order

As discussed, Tyson hopes to file the rulemaking package on or before January 11th in order to make the Commission's January 26th meeting.

We appreciate your attention to and consideration of these materials, and we remain available to discuss any questions regarding the proposed rulemaking.

Have a Happy New Year!

Best regards,
Jordan

MITCHELL WILLIAMS

Jordan P. Wimpy

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Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C.

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EXHIBIT F
PROPOSED MINUTE ORDER

**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-__

PAGE 1 OF 1

Petitioner Tyson Foods, Inc. – Waldron Plant’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 Second Amended Petition to Initiate Third-Party 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 26TH DAY OF JULY, 2017, BY ORDER OF THE ARKANSAS
POLLUTION CONTROL AND ECOLOGY COMMISSION**

By: _____
Robert Reynolds, Chair

ATTEST: _____
Becky Keogh, Director

COMMISSIONERS:

L. Bengal
A. Bigger
C. Colclasure
J. Fox
M. Freeze
M. Goggans

B. Holland
R. McMullen
D. Melton
S. Moss, Jr.
W. Stites
B. White

R. Reynolds – Chair

SUBMITTED BY: Allan Gates

DATE PASSED: _____