

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

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than thirty (30) years and is the largest employer in Scott County, Arkansas. Tyson-Waldron discharges treated process wastewater and boiler blowdown through Outfall 001 into an Unnamed Tributary of the Poteau River ("Unnamed Tributary") under the authority of NPDES Permit No. AR0038482 issued by the Arkansas Department of Environmental Quality ("ADEQ") effective September 30, 2010. Monitoring data show that Tyson-Waldron is in compliance with the interim limits in its current permit.

3. The Tyson-Waldron plant has a design flow of 1.25 million gallons per day with a peak monthly average effluent flow of .97 million gallons per day and an average monthly effluent flow of .85 million gallons per day during 2010 and 2011. The discharge enters at a point on the Unnamed Tributary of the Poteau River ("UT-Tyson") and flows to the point of discharge from the City of Waldron wastewater treatment plant ("UT-Waldron"), which then flows approximately 0.2 miles to the point of confluence with the Poteau River, which then flows as the Poteau River approximately 20 miles to the state line.

4. The designated uses of the Unnamed Tributary set forth in Regulation No. 2 are as follows:

Secondary Contact Recreation
Industrial and Agricultural Water Supply
Seasonal Arkansas River Valley fishery

The designated uses of the Poteau River set forth in Regulation No. 2 are as follows:

Primary Contact Recreation
Industrial and Agricultural Water Supply
Perennial Arkansas River Valley fishery

Neither the UT nor the Poteau River have domestic water supply as a designated use as the result of a prior use attainability analysis. Tyson-Waldron does not seek to change any current designated uses for the UT or the Poteau River.

5. Tyson-Waldron's NPDES Permit No. AR0038482 issued effective September 30, 2010 for the first time contained permit limits for chlorides, sulfates and TDS, based on site specific criteria for the UT and the Poteau River. Interim limits in the permit required Tyson-Waldron to monitor and report the concentrations of these constituents in Tyson-Waldron's discharge. Final permit concentration limits for chlorides, sulfates and TDS that become effective on September 1, 2013, are as follows:

	Mo. Avg. (mg/l)	Daily Max. (mg/l)
Chlorides	150	225
Sulfates	70	105
TDS	660	990

6. In anticipation of the effective date of the final permit limits, and in compliance with its interim permit limits, Tyson-Waldron monitored its discharge for chloride, sulfate and TDS from October 2010 through February 2012. The monitoring data indicate that Tyson-Waldron's discharge frequently exceeded the final permit limits for sulfates and TDS. Tyson-Waldron's approach to address the potential for exceedances of its final permit limits and water quality standards was to evaluate alternatives, including the development of additional site-specific water quality standards that are protective of existing and designated uses in the UT and the Poteau River. This approach involved a Section 2.306 Site Specific Water Quality Study of the UT and the Poteau River ("Section 2.306 Study") to evaluate the physical, chemical and biological characteristics of the affected stream segments, toxicity testing, mass balance

modeling to evaluate downstream dissolved minerals concentrations under various flow and discharge scenarios, engineering analysis of alternatives for discharge and treatment, and an analysis of designated uses for UT and the Poteau River.

7. Through this Petition, and based upon the Section 2.306 Study, Tyson-Waldron is requesting the following amendments to APC&EC Regulation No. 2:

- a. Modify the dissolved minerals water quality standards 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 standards for the Unnamed Tributary from the Point of Discharge of the City of Waldron wastewater treatment plant 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 standards for the Poteau River from the Confluence with the Unnamed Tributary (near Business Hwy 71) to the state line.

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

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

8. A copy of the Legislative Questionnaire is attached hereto as Exhibit B and incorporated herein by reference.

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

10. On April 29, 2013, a copy of the redlined version of APC&EC Regulation No. 2 showing the proposed changes and the Economic Impact Statement of Proposed Rules or Regulations/EO 05-04: Regulatory Flexibility 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.

11. 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.

12. A copy of the Section 2.306 Study supporting the requested modifications is attached hereto as Exhibit F and incorporated herein by reference.

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

14. This Petition is supported by the following:

Tyson-Waldron is not seeking a change from historical water quality conditions in the Unnamed Tributary or the Poteau River; rather Tyson-Waldron seeks standards which will allow Tyson-Waldron to be compliant with its NPDES Permit while making certain that its effluent does not limit the attainment of the aquatic life designated uses in the Unnamed Tributary and the Poteau River.

Data collected for the Section 2.306 Study established that all sampling locations influenced by Tyson-Waldron's discharge showed the presence of ecoregion key and indicator species and species composition consistent with the attainment of an Arkansas River Valley Ecoregion fishery designated use. The requested changes will have no adverse effect on the aquatic life communities;

Toxicity testing on *Ceriodaphnia dubia* and *Pimphales promelas* using Tyson-Waldron effluent showed no significant lethal or sub-lethal toxicity in either test organism;

There is no current economically feasible treatment technology for the removal of the minerals. Reverse osmosis treatment technology is not cost effective and generates a concentrated waste stream that is environmentally difficult to dispose of. That technology is not required to meet the designated uses and would produce no significant environmental protection.

The basis under the federal Clean Water Act for revisions of Reg. 2 to reflect site-specific standards is provided in 40 CFR §131.20 and §131.11(b).

WHEREFORE, Tyson Foods, Inc. – Waldron Plant requests that the Commission initiate a rulemaking to amend APCEC Regulation No. 2, and amend Regulation No. 2 in the manner requested in paragraph 7, above.

Respectfully submitted,

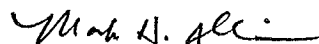
DOVER DIXON HORNE PLLC
425 W. Capitol Avenue, Suite 3700
Little Rock, Arkansas 72201
(501) 375-9151
mallison@ddh-ar.com

By: Mark H. Allison
Mark H. Allison
Ark. Bar No. 85001
Counsel for Tyson Foods, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2013, I served a copy of the foregoing 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:

Ms. Tammera Harrelson, Esq.
Chief Counsel, Legal Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118



Mark H. Allison