



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TEXAS 75202 – 2733

AUG 28 2013

Ryan Benefield
Deputy Director
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118-5317

Re: Tyson-Waldron Plant, NPDES Permit No. AR0038482

Dear Mr. Benefield:

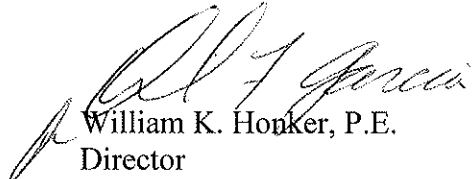
This letter is in regard to the *Petition for Declaratory Order For a Stay of Permit Terms and Conditions* (“the Petition”) filed by Tyson Foods, Inc. (Tyson) with the Arkansas Pollution Control and Ecology Commission in regard to the above-referenced NPDES permit. Under the Petition, Tyson seeks a stay of the final permit limits for chlorides, sulfates and dissolved solids included in NPDES Permit No. AR0038482, stating that it is entitled to the stay of its final permit limits while the permit is revised consistent with the requirements of Act 954 of the 89th General Assembly of the State of Arkansas.

Neither the Clean Water Act (CWA) nor its implementing regulations provide for a stay of final permit limits pending revision of the permit. Under the CWA and 40 CFR § 122.62, a NPDES permit can be modified only by the authorized NPDES permitting authority in accordance with specified requirements, which include development of a draft permit and proposal of the draft permit for public comment and review. Additionally, under the Memorandum of Agreement between EPA Region 6 and ADEQ, ADEQ must provide EPA with the opportunity to review and provide comments and/or objections to any modification of a permit for which EPA has not waived review.

The final minerals limits contained in Tyson’s permit upon issuance, and scheduled to become effective September 1, 2013, have not been modified in accordance with the requirements of the CWA and 40 CFR § 122.62. These limits remain the applicable NPDES minerals limits for the Tyson-Waldron facility. Failure to comply with these limits and all other permit conditions would be a violation of Tyson’s NPDES permit and would subject Tyson to federal enforcement action under § 309 of the CWA, 33 U.S.C. § 1319, as well as liability under the citizen suit provisions of CWA § 505, 33 U.S.C. § 1365.

If you have any questions or would like to discuss this matter further, please contact me at (214) 665-7170, or your staff may contact Claudia Hosch, Associate Director, at (214) 665-6464 (email: hosch.claudia@epa.gov). We look forward to continuing to work with ADEQ to ensure that the NPDES program in Arkansas is operated in full compliance with the CWA and its implementing regulations.

Sincerely,



William K. Honker, P.E.
Director
Water Quality Protection Division

cc: John Blevins (6EN)
Tyson Foods, Inc. – Waldron Plant
Mark H. Allison (Dover Dixon Horne PLLC)