

EXHIBIT D

COMPLIANCE WITH ACT 143 OF 2007

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April 29, 2013

VIA HAND DELIVERY AND CERTIFIED MAIL,
RETURN RECEIPT REQUESTED #7002 3150 0005 9453 4471

Ms. Patricia Brown
Division Director
Arkansas Economic Development Commission
Arkansas Department of Economic Development
900 W. Capitol Avenue
Little Rock, AR 72201

Re: Economic Impact/Environmental Benefit Analysis, Tyson Foods, Inc. – Waldron
Third Party Rulemaking Petition before the Arkansas Pollution Control &
Ecology Commission

Dear Ms. Brown:

Tyson Foods, Inc. – Waldron Plant (Tyson-Waldron) intends to petition the Arkansas Pollution Control & Ecology Commission (APC&EC) to amend APC&EC Regulation No. 2, Establishing Water Quality Standards for the Surface Waters of the State of Arkansas. A copy of the proposed amendment and the Economic Impact Statement of Proposed Rules or Regulations, EO 05-04: Regulatory Flexibility are attached for your review. Additional documentation, including a copy of the Poteau River – Section 2.306 Site Specific Water Quality Study, Tyson Foods, Inc., Waldron, the study supporting the request to amend APC&EC Regulation No. 2, is available for your review upon request. This letter is being submitted to AEDC pursuant to the requirements of Act 143 of 2007.

Tyson-Waldron is not requesting a change to the actual water quality of the affected streams. Instead the changes to Reg. 2 requested by Tyson-Waldron – modification of chloride, sulfate and total dissolved solids (TDS) standards for (a) an Unnamed Tributary of 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) the Unnamed Tributary from Point of Discharge of the City of Waldron wastewater treatment plant to Confluence with the Poteau

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River, and (c) the Poteau River from Confluence with the Unnamed Tributary (near Business Highway 71) to the Stateline – reflect current and historic conditions in the affected streams.

There will be no additional cost to state government associated with the proposed amendment and no regulatory burden such as fees, reporting requirements, or obtaining any regulatory permit will be imposed on any small business because of the proposed modification to Reg. 2. The proposed changes will not create any barrier to entry. No additional requirements will be imposed on any small business and no small business will be required to implement any changes because of the proposed amendment. The requested changes will have no impact on any small business; they will only impact Tyson-Waldron.

Please review the prepared amendment to APC&EC Reg. No. 2 and provide your approval of the same at your earliest convenience. Please let me know if you have any questions or need any further information.

Sincerely,

DOVER DIXON HORNE PLLC



Mark H. Allison

Enclosures

cc: Hon. Charles Moulton

TYSON FOODS, INC. – WALDRON
PROPOSED CHANGES TO ARKANSAS POLLUTION CONTROL &
ECOLOGY COMMISSION REGULATION NO. 2

April 29, 2013

banks and/or bottoms of the watercourses or adversely affect any of the associated biota. As a guideline, oil and grease shall not exceed 10 mg/l average or 15 mg/l maximum when discharging to surface waters. 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 limits apply to the streams indicated, and represent the monthly average concentrations of chloride (Cl⁻), sulfate (SO₄⁼) and total dissolved solids (TDS).

<u>Stream</u>	<u>Concentration-mg/L</u>		
	Cl ⁻	SO ₄ ⁼	TDS
Arkansas River Basin			
Arkansas River (Mouth to L&D #7)	250	100	500
Bayou Meto (Rocky Branch to Bayou Two Prairie).	64*	ER	ER
Bayou Meto (mouth to Bayou Two Prairie).	95**	45**	ER
Bayou Two Prairie (mouth to Rickey Branch).	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 (L&D #7 to L&D #10).	250	100	500
Cadron Creek	20	20	100
Arkansas River (L&D #10 to Oklahoma line, including Dardanelle Reservoir)	250	120	500
James Fork	20	100	275
Illinois River	20	20	300
Poteau River from Business Hwy 71 to Stateline	120	60	500
Unnamed trib at Waldron	150	70	660
<i>Unnamed Tributary from Point of Discharge of Tyson Waldron downstream to the point of discharge of the City of Waldron WWTP</i>	80*	121*	411*
<i>Unnamed Tributary from Point of Discharge of the City of Waldron WWTP to Confluence with the Poteau River</i>	106*	117*	514*
<i>Poteau River from Confluence with the Unnamed Tributary (near Business Hwy 71) to Stateline.</i>	106*	117*	514*

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
Cache River 20 30 270			
Bayou DeView (from Mouth to AR Hwy 14)	48	37.3	411.3
Bayou Deview (from AR Hwy 14 to Whistle Ditch)	48	38	411.3
Big Creek (from Whistle Ditch to mouth of			
Unnamed trib)	58	49	ER
Unnamed trib to Big Creek	71	60	453
Lost Creek Ditch	20	30	270

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)	

Variations Supported by UAA

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 Business Highway 71 to Stateline - chlorides - 120 mg/l; sulfates - 60 mg/l; TDS - 500 mg/l (ARV-1, #2)~~

~~Unnamed tributary to Poteau River at Waldron - chlorides - 150 mg/l; sulfates - 70 mg/l; TDS - 660 mg/l (ARV-1, #3)~~

Unnamed Tributary from Point of Discharge of Tyson Waldron downstream to the point of discharge of the City of Waldron WWTP - chlorides - 80 mg/l; sulfates - 121 mg/l; TDS - 411 mg/l (ARV-1, #3)

Unnamed Tributary from Point of Discharge of the City of Waldron WWTP to Confluence with the Poteau River - chlorides - 106 mg/l; sulfates - 117 mg/l; TDS - 514 mg/l (ARV-1, #3)

Poteau River from Confluence with the Unnamed Tributary (near Business Hwy 71) to Stateline - chlorides - 106 mg/l; sulfates - 117 mg/l; TDS - 514 mg/l (ARV-1, #2)

* 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 D.O. standard will be 6.5 mg/l. When water temperatures exceed 22°C, the critical season D.O. standard may be depressed by 1 mg/l for no more than 8 hours during a 24-hour period.

TYSON FOODS, INC. – WALDRON

ACT 143 OF 2007 ECONOMIC IMPACT STATEMENT

PROPOSED CHANGES TO ARKANSAS POLLUTION CONTROL &
ECOLOGY COMMISSION REGULATION NO. 2

April 29, 2013

**ECONOMIC IMPACT STATEMENT
OF PROPOSED RULES OR REGULATIONS
EO 05-04: Regulatory Flexibility**

Department	Tyson Foods – Waldron Plant	Division	None
Contact Person	Mark H. Allison, DOVER DIXON HORNE, PLLC	Date	April 29, 2013
Contact Phone	(501) 375-9151	Contact Email	mallison@ddh-ar.com

Title or Subject: Petition to Amend Arkansas Pollution Control & Ecology Commission Regulation No.2.
Arkansas Water Quality Standards

Benefits of the Proposed Rule or Regulation

1. Explain the need for the proposed change(s). Did any complaints motivate you to pursue regulatory action? If so, please explain the nature of such complaints.

Tyson Foods – Waldron Plant (Tyson-Waldron) seeks to have the Total Dissolved Solids (TDS), Sulfate (S04) and Chloride (Cl) water quality standards set forth in Arkansas Pollution Control & Ecology Commission (APCEC) Regulation No.2 amended to reflect the historic and current levels of those substances in (a) an Unnamed Tributary of the Poteau River from the point of Tyson-Waldron's NPDES Outfall Discharge to the point of discharge of the City of Waldron Wastewater Treatment Plant (UT-Tyson), (b) the Unnamed Tributary of the Poteau River from the point of the City of Waldron's Wastewater Treatment Plant discharge to the confluence with the Poteau River (UT-City of Waldron), and (c) the Poteau River from the point of confluence with UT-City of Waldron (near Business Hwy 71) to the State Line.

This proposed change is needed to reflect actual and historic conditions and to allow Tyson-Waldron to maintain compliance with the terms of its NPDES permit.

No complaints motivated Tyson-Waldron to seek amendment of APCEC Regulation No.2.

2. What are the top three benefits of the proposed rule or regulation?

Compliance by Tyson-Waldron with its NPDES permit limits.

Revised water quality standards which reflect actual conditions.

Continued protection of the designated and attainable uses of the receiving streams.

3. What, in your estimation, would be the consequence of taking no action, thereby maintaining the status quo?

If no action is taken to amend the water quality standards, future non-compliance with either NPDES permit limitations or unnecessarily stringent water quality standards will cause Tyson-Waldron to expend millions of dollars for treatment of its effluent water which, in turn, will not result in significantly more protective downstream water quality conditions and will generate a new waste stream that is environmentally difficult to dispose of.

4. Describe the market-based alternatives or voluntary standards that were considered in place of the proposed regulation and state the reason(s) for not selecting those alternatives.

Tyson-Waldron considered the following alternative to modification of water quality standards in Reg. 2: no discharge, source reduction, treatment, and no action.

No discharge was considered as an option, but was rejected because there is no existing facility to which Tyson-Waldron could transfer its effluent for treatment.

Source reduction of materials relating to the concentration of minerals in effluent was considered; this option was rejected, however, because some of the materials used in Tyson-Waldron's process are the optimal materials for compliance with other environmental regulatory requirements, and other materials are necessary for production of Tyson-Waldron's finished product.

Treatment technology was considered, but rejected. The only treatment technology for removal of minerals, reverse osmosis, is economically infeasible due to an initial capital investment of \$30,500,000 and annual operating costs of approximately \$4,600,000. Further this treatment technology generates a concentrated waste stream that is environmentally difficult to dispose of and provides no significant environmental protection.

No action was considered unacceptable as it would cause Tyson-Waldron eventually to be in non-compliance with NPDES permit limits

Impact of Proposed Rule or Regulation

5. Estimate the cost to state government of *collecting information, completing paperwork, filing, recordkeeping, auditing and inspecting* associated with this new rule or regulation.

There is no additional cost to state government associated with this proposed new rule.

6. What types of small businesses will be required to comply with the proposed rule or regulation? Please estimate the number of small businesses affected.

Because Tyson-Waldron is seeking revisions that reflect historic and actual water quality, there will be no additional requirements for any small business. Further, any small business which could potentially be required to comply with the proposed rule or regulation is already being required to comply with the currently unnecessarily more stringent water quality standards for the affected streams.

7. Does the proposed regulation create barriers to entry? If so, please describe those barriers and why those barriers are necessary.

The proposed regulation does not create barriers to entry.

8. Explain the additional requirements with which small business owners will have to comply and estimate the costs associated with compliance.

There are no additional requirements with which small business owners will have to comply.

9. State whether the proposed regulation contains different requirements for different sized entities, and explain why this is, or is not, necessary.

The proposed regulation does not contain different requirements for different sized entities.

10. Describe your understanding of the ability of small business owners to implement changes required by the proposed regulation.

No small business owners will be required to implement changes because of the proposed regulation.

11. How does this rule or regulation compare to similar rules and regulations in other states or the federal government?

Both federal and state environmental laws and the environmental laws typically provide for the establishment and amendment of water quality standards, not only by federal and state agencies, but also by third party petition. This proposed amendment to APCEC Regulation No.2 would be comparable to water quality standards in other states and amendments to Regulation No. 2 in other third-party rulemakings.

12. Provide a summary of the input your agency has received from small business or small business advocates about the proposed rule or regulation.

Tyson-Waldron is not an agency and has not received any input from small business or small business advocates about the proposed amendment to Regulation No. 2. APCEC Regulation No.8 requires submission of this information to the public. Input will come about during the public comment period after the APCEC initiates the rule-making.