



Tyson Foods, Inc.

May 8, 2013

Doug Szenher
ADEQ
5301 North Northshore Drive
North Little Rock, AR 72118

RE: Comments on ADEQ's Regulation #2

I write on behalf of Tyson Foods, Inc. (Tyson) regarding the Arkansas Department of Environmental Quality's (ADEQ) draft Regulation #2 published on February 28, 2013. Tyson appreciates the opportunity to provide the following comments. Tyson has one general comment and then several specific comments.

General Comment

The draft changes to Regulation #2 do not appear to meet Act 954 of the 2013 Arkansas General Assembly, specifically related to mineral standards. Tyson requests that ADEQ propose and thereafter adopt changes necessary to implement the provisions of Act 954 in Regulation No. 2.

Specific Comments

1. The draft definition of Critical flows will cause substantial capital and operating costs for cities and industry. The removal of 4 cfs as a background flow is very troubling. ADEQ should change this definition to address legislative changes created by Act 954.
2. The draft definition of Harmonic Mean Flow should be changed to retain the previous definition, which is scientifically more accurate. Harmonic means are long term calculations based on daily flow measurements at monitoring stations. Using the draft standard of 24 samples of 30 days is a monthly flow standard, not a long term standard. Flow within 30 days could be exaggerated based upon season.
3. Including a definition of State of Arkansas Continuing Planning Process seems to be an attempt to make a guidance document into a binding regulation. The Continuing Planning Process (CPP) document has not been subject to the legally required public notice and comment procedures that are necessary for developing a regulation. Therefore, Tyson recommends that all references to the CPP document be removed from Regulation #2.
4. In the new language of Section 2.404, a mixing zone is not allowed for pH. It is unclear why a mixing zone is not allowed for this parameter. National Pollutant Discharge Elimination System (NPDES) permits already strictly regulate pH. It is also unclear why the following sentence was added to the section: "*A mixing zone shall not apply to any public or private domestic water supply intake or public water supply well.*" It is Tyson's understanding Regulation #2 regulates water quality standards for surface water, not ground water, therefore there may not be sufficient authority to include ground water language in Regulation # 2. Tyson recommends mixing zones be allowed for pH, and the language regarding ground water be removed from this section.
5. Regarding Section 2.509, Tyson supports a specific criterion for Beaver Lake. Tyson, however, believes that a multi-year standard would be more appropriate than a single year's growing season for Chlorophyll a and an annual average for Secchi transparency. Due to huge swings in precipitation witnessed in the past three years, it is important to look over a longer period of time than one year. Tyson recommends using at least a 5 year geometric mean approach.

6. Tyson has completed Water Effect Ratio Studies (WER) for Tyson facilities located in Nashville, Grannis, and Waldron. The recommended WER from the Nashville study was used in development of the recently issued permit (NPDES No. AR0041734) for the facility. The Grannis and Waldron WER study reports were transmitted to ADEQ on January 25, 2012 and to date no adverse comments have been received. Tyson has been advised by ADEQ staff that EPA will require a Regulation 2 amendment based on these WER studies before the amended criteria can be used for assessment purposes. Therefore, Tyson requests that the WERs documented in each of the reports previously submitted to ADEQ be used to amend the acute and chronic copper criteria for the applicable stream segments associated with the Nashville, Grannis, and Waldron Facilities.

Tyson appreciates the opportunity to provide comments on Regulation #2. If you have any questions, please contact me at 479-290-7189.

Sincerely,

A handwritten signature in blue ink, appearing to read "St Pt".

Steve Patrick, P.E.
Sr. EHS Operations Manager
Tyson Foods, Inc.

cc: Timothy T. Jones, Tyson Foods