



August 31, 2010

U.S. Mail and Electronic Mail (BAILEY@adeq.state.ar.us)

Mr. John Bailey
Arkansas Department of Environmental Quality
Water Planning Division
5301 North Shore Drive
North Little Rock, AR 72118-5317

Re: Comments on EPA's Preliminary Data Review and Analysis for Water Quality Modeling and TMDL Development for the Illinois River Watershed (August 3, 2010 Draft)

Dear Mr. Bailey:

Tyson Foods, Inc. ("Tyson") has reviewed the draft Preliminary Data Review and Analysis for Water Quality Modeling and TMDL Development for the Illinois River Watershed ("Data Gap Report") released by EPA on August 3, 2010 and provided by ADEQ to various stakeholders for review and comment. The purpose of this correspondence is to provide ADEQ with Tyson's comments on and concerns regarding the Data Gap Report. Please provide these comments to EPA together with the comments of your office and other stakeholders.

As you are well aware, the results of any model are only as accurate and reliable as the data selected and assumptions made by the modeler in configuring and running the model. In reviewing the Data Gap Report we noted numerous instances in which EPA has expressed an intention to use data or make assumptions which we believe could render the results of the modeling unreliable. We also noticed a few instances in which EPA has apparently overlooked or is poised to disregard data which should be included in any modeling of water quality or nutrient loading in the Watershed. Our primary concerns include the following:

- The list of source of data in Table 1.2 is helpful but EPA should produce a Notice of Data Availability for this project so that stakeholders can review the actual data EPA intends to use.
- In Table 2.9, EPA summarizes environmental sampling data provided by the Oklahoma Attorney General's Office ("OAG"). Before using this data, we urge EPA to carefully review the expert reports of Dr. Timothy Sullivan, Ron Jarman, and Dr. Jon Connolly previously provided by Tyson. These reports detail the numerous and substantial problems with this dataset. To the extent EPA intends to use the data supplied by the OAG to characterize potential contributions of



poultry litter to water quality conditions, the OAG's claim that the "Edge of Field" samples are associated with poultry litter application should be disregarded. During the litigation it was established that the OAG's consultants did not verify the use of poultry litter near locations that they labeled "Edge of Field" samples. These samples were collected from puddles on dirt roads or from bar ditches without documenting flow paths from any potential source. EPA should not accept the OAG's unfounded claim that these samples are characteristic of or reflect the contributions from runoff from fields fertilized with poultry litter as opposed to the numerous other potential sources of nutrients found in storm water in rural areas (e.g., cattle, dirt roads, commercial fertilizer, septic tanks, etc.).

- On page 37, EPA correctly notes that "comprehensive modeling needs to consider ALL potential sources of phosphorus in order to accurately represent the relative contributions of any single source." However, several important potential sources of phosphorus are omitted from the description of "sources for phosphorus" in the opening paragraph of the same page. Specifically, to be reliable and useful, EPA's modeling work for the Watershed must characterize and quantify impacts from: the substantial increase in impervious surfaces in the Watershed in recent years, cattle manure deposition, cattle grazing, alteration of riparian areas by cattle, septic tanks, commercial fertilizer, dirt/gravel roads, urban runoff, suburban runoff, construction and biosolids applications. None of these important potential sources of phosphorus are identified anywhere in the Data Gap Report. We also note that in several instances EPA refers to "commercial agriculture" as a potential source to be included in the modeling study. It is unclear what is meant by this term. However, all agricultural activities in the watershed (including small ranchers raising cattle, family-owned dairies, hay farmers, horse operations and small row crop operations) should be included in the model even if EPA does not consider these activities to constitute "commercial agriculture."
- Throughout the Data Gap Report, EPA refers to "poultry houses" as possible sources of nutrients and expresses an intention to use "poultry house numbers" or "poultry house locations" as "part of the data used to characterize and quantify contributions from poultry litter applications." (p. 37) Poultry litter inside a poultry house is not a potential source and the location of that house is not relevant for water quality analysis. EPA cannot reasonably assume that poultry litter is applied on every location where a poultry house is noted on a map. Some poultry farmers do make use of their poultry litter on property they own or lease, but that property may or may not be contiguous to the location of their poultry houses. Many other poultry farmers sell their litter to third parties. Poultry litter is regularly transported to buyers located large distances from the house where the litter was generated. Poultry farmers and litter applicators in Arkansas and



Oklahoma are required by law to maintain records showing the specific locations where litter is applied, the amounts of those applications and the name and address of third parties who purchase litter removed from their farms. This information can be obtained by EPA from ARNC or ODAFF or directly from poultry farmers and licensed litter applicators. If EPA intends to attempt to quantify or characterize poultry litter applications as a potential source of phosphorus to receiving waters, the actual locations of litter application should be used. Poultry houses are not a reliable proxy for the actual locations where litter is used to fertilize lands.

- If EPA nevertheless intends to use poultry house locations to characterize poultry litter as a potential source of nutrients impacting water quality, it should obtain accurate data regarding the number and location of active poultry houses. The data shown in Figure 3.4 is inaccurate and unreliable. This map was originally created by Dr. Berton Fisher, one of the OAG's litigation consultants and then later used by Dr. Storm in his 2009 report. The map was not admitted into evidence by the court during the trial due to questions about its accuracy and the inability of Dr. Fisher to lay a proper foundation for the map. EPA should not use data that was inadmissible in court. In addition, the majority of poultry house locations shown on the map represent what Dr. Fisher claims to be "inactive" or "abandoned" poultry houses. There is no information provided as to the alleged dates of operation of these houses. The landscape of Northwest Arkansas and Northeast Oklahoma is dotted with many poultry houses that were built in the 1950s or 1960s but have not been in operation for decades. A 50 year-old inactive poultry house being used for hay storage is not a "potential source" of nutrients in any time period that is relevant to the TMDL modeling.

We appreciate the opportunity to review and comment on the Draft Data Gap Report. If you have any questions or if Tyson can provide any additional information, please do not hesitate to contact me at (479) 290-4076.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert W. George".

Robert W. George
V.P. & Associate General Counsel

cc: Nguyen Quang, US EPA Region VI
Tony Dunigan, Aquaterra