



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward
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Director

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Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

Tyson Farms, Inc.

FOR

Tyson Farms, Inc. Temperanceville Facility

VPDES Permit No. VA0004049

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Tyson Farms, Inc., regarding the Tyson Farms, Inc. Temperanceville Facility, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
6. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
7. "DMR" means Discharge Monitoring Report.
8. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
9. "Facility" means the wastewater treatment facility located at 11224 Lankford Highway, Temperanceville, Virginia, which treats and discharges storm and wastewater resulting from Tyson Farms' manufacturing operation, consisting of a poultry hatchery and live chicken processing, and rendering operation.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "O&M" means operations and maintenance.
12. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
13. "Permit" means VPDES Permit No. VA0004049, which was issued under the State Water Control Law and the Regulation to Tyson on December 6, 2010, which was reissued on January 1, 2016 and expires on December 31, 2020.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. 9 VAC 25-31-10.

15. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
16. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
17. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
20. "Tyson" means Tyson Farms, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Tyson is a "person" within the meaning of Va. Code § 62.1-44.3.
21. "VAC" means the Virginia Administrative Code.
22. "Va. Code" means the Code of Virginia (1950), as amended.
23. "VPDES" means Virginia Pollutant Discharge Elimination System.
24. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Tyson owns and operates the Facility. The Facility consists of a poultry hatchery, which supplies chicks to contract growers, the processing of live chickens, and the treating and discharging of waste and storm water resulting from manufacturing and processing operations. Poultry processing includes slaughtering, defeathering, eviscerating, chilling,

packaging, and shipping of poultry products for human consumption to an offsite destination. Tyson also renders offal and feather waste into useable animal feed ingredients.

2. The Permit allows Tyson to discharge treated storm and wastewater resulting from poultry processing and rendering operations to an unnamed tributary, in strict compliance with the terms and conditions of the Permit.
3. The Permit requires Tyson to monitor and report compliance with effluent limits for ammonia, Total Suspended Solids (TSS), *E. coli*, fecal coliform, and Biological Oxygen Demand (BOD5).
4. The unnamed tributary, which flows to the Sandy Bottom Branch and then to the Pocomoke Sound, is located in the Chesapeake Bay, Atlantic Ocean, and Small Coastal Basins. The unnamed tributary is listed in DEQ's 305(b) report as impaired for fecal coliform. Tyson's Permit No. VA0004049 is listed in the fecal coliform TMDL as having a waste load allocation of *E. coli* based on the permit limit of 126 x 1.007 MGO. EPA approved the Total Maximum Daily Load (TMDL) on November 7, 2005 and the Board on April 28, 2009.
5. In submitting its DMRs, as required by the Permit, Tyson has listed that it exceeded discharge limits contained in Part I.A.1 of the Permit for ammonia for the March 2015, August 2015, and August 2016 reporting periods, TSS, *E. coli*, and fecal coliform for the March 2015 reporting period, and BOD5 for the September 2015 reporting period. Tyson also failed to provide a letter of explanation for non-compliance with its permit limits for the August, September, and March 2015 reporting periods in violation of Part II.I.3 of the Permit.
6. TRO issued a Warning Letter and Notice of Violation for the Permit limit exceedances and for failure to provide a letter of explanation for non-compliance described in C(5) as follows: WL No. W2015-05-T-1003, issued May 14, 2015; and NOV No. W2015-09-T-0003, issued October 27, 2015. The March 2015 TSS and ammonia effluent limit violations and the failure to provide a letter of explanation for non-compliance with its permit limits for the March 2015 reporting period was cited in WL No. W2015-05-T-1003.
7. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
8. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
9. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.

10. The Department has not issued any permits or certificates to Tyson, regarding the discharge of the pollutants described above, other than VPDES Permit No. VA0004049.
11. The unnamed tributary is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
12. Based on the results of DMRs and accompanying documentation submitted by Tyson to DEQ for the months of March through September 2015, the Board concludes that Tyson has violated its Permit, Va. Code § 62.1-44.5, and 9 VAC 25-31-50, by discharging treated storm and wastewater from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(5) above.
13. Tyson has not submitted documentation verifying that the violations as described in paragraph C(5), above, have been corrected.
14. In order for Tyson to return to compliance, DEQ staff and representatives of Tyson have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Tyson, and Tyson agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$16,150 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Tyson shall include its Federal Employer Identification Number (FEIN) 56-0754148 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Tyson shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Tyson for good cause shown by Tyson, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order, in NOV No. W2015-09-T-0003 dated October 27, 2015, and Warning Letter No. W2015-05-T-1003 dated May 14, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Tyson admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Tyson consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Tyson declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Tyson to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Tyson shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Tyson shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tyson shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are

occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tyson. Nevertheless, Tyson agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Tyson has completed all of the requirements of the Order;
 - b. Tyson petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Tyson.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tyson from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Tyson and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Tyson certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Tyson to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Tyson.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Tyson voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2016.

Maria Nold, Regional Director
Department of Environmental Quality

Tyson Farms, Inc. voluntarily agrees to the issuance of this Order.

Date: 12-16-2016 By: Kevin J. Igli Kevin J. Igli
(Person) (Title)
SVP & Chief Environmental Officer
Tyson Farms, Inc.

~~Commonwealth of Virginia~~ Arkansas
City/County of Benton

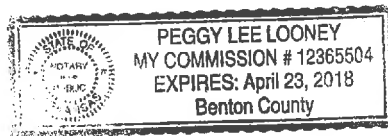
The foregoing document was signed and acknowledged before me this 16th day of December, 2016, by Kevin J. Igli who is SVP & Chief Environmental Officer of Tyson Farms, Inc., on behalf of the corporation.

Peggy Lee Looney
Notary Public

12365504
Registration No.

My commission expires: April 23, 2018

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Tyson shall:

1. Submit to DEQ for review and approval a corrective action plan (CAP) and schedule that fully examines the cause(s) of ammonia, TSS, *E. coli*, fecal coliform and BOD5 exceedances at the Facility and describes actions Tyson has taken or plans to take to comply consistently with the discharge limits established in the Permit by January 1, 2017.
2. Within 30 days of approval of the CAP, implement the CAP. Upon its approval, the CAP and schedule shall become a part of and enforceable under the terms of this Order.
3. Complete the corrective action as expeditiously as possible and in no event later than December 31, 2017.
4. Submit to DEQ all requirements of Appendix A of this Order to:

Regional Director
VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, VA 23462