COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
PIEDMONT REGIONAL OFFICE
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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - SPECIAL ORDER BY CONSENT
ISSUED TO
TYSON FARMS, INC. d/b/a TYSON FOODS, INC.
FOR THE
TYSON FOODS GLEN ALLEN PLANT
VPDES Permit No. VA0004031

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d), between the State Water Control Board and Tyson Farms, Inc. d/b/a Tyson Foods, Inc., regarding the Tyson Foods Glen Allen Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

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

1. "Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 *et seq.*) of Title 2.2 of the Va. Code.

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. "Facility" or "Site" means the Tyson processing facility located at 13264 Mountain Road, Glen Allen (Hanover County), Virginia.

6. "Tyson" means Tyson Farms, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Tyson Farms, Inc. is a "person" within the meaning of Va. Code § 62.1-44.3.

7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

8. "Order" means this document, also known as a "Special Order by Consent" or a "Consent Special Order."

9. "Permit" means VPDES Permit No. VA0004031, which was issued by authority of the Board to Tyson Foods, Inc. on November 14, 2005, modified on April 14, 2006 and which expires on November 13, 2010.

10. "Plant" means the wastewater treatment plant located at the Tyson Glen Allen Plant, 13264 Mountain Road, Glen Allen (Hanover County), Virginia, which treats and discharges sewage and other industrial wastes produced during plant operations.

11. "Regulation" means the VPDES Permit Regulation at 9 VAC 25-31-10 *et seq.*

12. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.

13. "State Water Control Law" means Chapter 3.1(§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.

14. "Va. Code" means the Code of Virginia (1950), as amended.

15. "VAC" means the Virginia Administrative Code.

16. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Tyson owns and operates the Facility and the Plant in Glen Allen, Virginia. The Permit allows Tyson to discharge treated sewage and other industrial wastes from the Plant to an unnamed tributary of the Chickahominy River, in strict compliance with the terms and conditions of the Permit.

2. On December 4, 2008, DEQ staff received a report of a fish kill in the unnamed tributary downstream of the Plant. DEQ arrived at the Plant at approximately 12:45 p.m. and conducted water quality monitoring at and near the effluent discharge from the Plant. The

dissolved oxygen concentration upstream of the effluent discharge was 3.0 parts per million ("ppm") and downstream of the effluent discharge was 0.3 ppm. The dissolved oxygen concentration of the effluent itself was 0.4 ppm. The daily minimum effluent dissolved oxygen concentration required by Part I.A.1 of the Permit is 5.0 ppm.

3. Upon DEQ's arrival at the Plant, Tyson representatives immediately ceased discharge of the effluent to the stream by diverting flow to the Plant's flow equalization basin. Tyson representatives performed dissolved oxygen monitoring at different points in its wastewater treatment process and determined that overdosing of sodium bisulphate during dechlorination caused an elevated chemical oxygen demand, which caused the sag in dissolved oxygen in the effluent and downstream of the outfall. Tyson corrected the problem and resumed its effluent discharge at 5 p.m. on December 4, 2008. Dissolved oxygen concentrations were measured hourly for the next 16 hours, and did not fall below 8.36 ppm. Tyson reported the high bisulfate discharge in a letter to the Department on December 5, 2008.

4. The unnamed tributary to the Chickahominy River, to which Tyson discharges its effluent, is located in the James River River Basin and is a "state water", as that term is defined by Va. Code § 62.1-44.3. During the 2008 305(b)/303(d) Water Quality Assessment, the tributary was assessed as not supporting aquatic life and wildlife uses due to exceedances of ammonia water quality criteria and benthic, pH, low dissolved oxygen, and high temperature impairments.

5. Va. Code §62.1-44.5.A.1 states that "Except 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." Va. Code §62.1-44.5.A.3 states that it is unlawful to "...alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life...".

6. The Regulation, at 9 VAC 25-31-50 and Part II.F of the Permit state that except in compliance with the Permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes or otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to animal or aquatic life.

7. DEQ issued NOV No. W2009-03-P-0006 to Tyson on March 13, 2009 for the violations described above.

8. Further investigation by Tyson revealed that its contractor had installed an oversized sodium bisulphate feed pump during a recent upgrade to the Plant. The chemical feed pump has been replaced with an appropriately sized pump. Tyson has also initiated the following measures to prevent a reoccurrence of the situation:

    a. Dissolved oxygen concentrations will be recorded at the effluent discharge point every two hours as part of routine Plant checks;

b. A dedicated dissolved oxygen probe and visual alarm system was installed at the effluent discharge point in January 2009; and
c. The Plant operations and maintenance manual was updated to require chemical feed system inspections following chemical deliveries, in addition to existing routine inspections.

9. Based on the results of the December 4, 2008 inspection, the Board concludes that Tyson violated its Permit, Va. Code § 62.1-44.5.A.1 and A.3, and 9 VAC 25-31-50 by discharging treated sewage and industrial wastes from the Plant while concurrently failing to comply with the conditions of the Permit, and by altering the chemical properties of state waters and making them deleterious to aquatic life.

SECTION D: Agreement and Order

By virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 and upon consideration of Va. Code § 10.1-1186.2, the Board orders Tyson, and Tyson agrees to:

1. Perform the actions described in Appendix A of this Order;

2. Pay $701.35 for the replacement of the fish killed as a result of the discharge within 30 days of the effective date of the Order by separate check, certified check, money order or cashier's check payable to the "Department of Game and Inland Fisheries" and delivered to the address specified in Section D.4.a of this Order;

3. Pay $150.09 for the DEQ investigative costs associated with Pollution Complaint No. IR-2009-P-0260 within 30 days of the effective date of the Order by separate check, certified check, money order or cashier's check payable to the "Treasurer of Virginia" and delivered to the address specified in Section D.4.a of this Order; and

4. Pay a civil charge of $12,155 in settlement of the violations cited in this Order as follows:

   a. Tyson shall pay $3,039 of the civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," delivered to:

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

   Tyson shall include its Federal Employer Identification Number (FEIN) (142-061421-1) 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).

b. Tyson shall satisfy $9,116 of the civil charge by satisfactorily completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.

c. The net project costs of the SEP to Tyson shall not be less than the amount set forth in Paragraph D.4.b. If it is, Tyson shall pay the remaining amount in accordance with Paragraph D.4.a of this Order, unless otherwise agreed to by the Department. "Net project cost" means the net present after-tax cost of the SEP, including tax savings, grants, and first-year cost reductions and other efficiencies realized by virtue of project implementation. If the proposed SEP is for a project for which the party will receive an identifiable tax savings (e.g., tax credits for pollution control or recycling equipment), grants, or first-year operation cost reductions or other efficiencies, the net project cost shall be reduced by those amounts. The costs of those portions of SEPs that are funded by state or federal low-interest loans, contracts, or grants shall be deducted.

d. By signing this Order Tyson certifies that it has not commenced performance of the SEP.

e. Tyson acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by Tyson to a third party, shall not relieve Tyson of its responsibility to complete the SEP as described in this Order.

f. In the event it publicizes the SEP or the SEP results, Tyson shall state in a prominent manner that the project is part of a settlement of an enforcement action.

g. The Department has the sole discretion to:

   i. Authorize any alternate, equivalent SEP proposed by Tyson; and

   ii. Determine whether the SEP, or alternate SEP, has been completed in a satisfactory manner.

h. Should the Department determine that Tyson has not completed the SEP, or alternate SEP, in a satisfactory manner, the Department shall so notify Tyson in writing. Within 30 days of being notified, Tyson shall pay the amount specified in Paragraph D.4.b, above, as provided in Paragraph D.4.a, above.

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 after notice and opportunity to be heard.

2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. 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 Virginia Air Pollution 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 occurrence. Tyson shall show 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 Tyson intends 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, their 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) 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

    (b) 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 30th day of October, 2009.

Richard F. Weeks, Regional Director
Department of Environmental Quality

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

Date: 8/24/2009 By: _____
Darron Lockhart, Facility Manager, Tyson Farms, Inc.

Commonwealth of Virginia
City/County of Hanover

The foregoing document was signed and acknowledged before me this 24 day of August, 2009, by Darron Lockhart who is Facility Manager of Tyson Farms, Inc., on behalf of the corporation.

_____
Notary Public

#7224214
Registration No.

My Commission Expires January 31, 2012

My commission expires: _____

Notary seal:

APPENDIX A
SUPPLEMENTAL ENVIRONMENTAL PROJECT

In accordance with Va. Code § 10.1-1186.2, Tyson shall perform the Supplemental Environmental Project ("SEP") identified below in the manner specified in this Appendix.

1. The SEP to be performed by Tyson is installation of a bioretention area at the Facility, as described in Tyson's email submittal dated July 27, 2009.

2. **No later than March 1, 2010**, Tyson shall submit final plans and specifications for the SEP to DEQ for review and approval. Tyson shall respond to any Notices of Deficiency from DEQ within the timeframe specified by such Notice. Tyson shall implement the SEP in accordance with the DEQ approved plans and specifications. Should changes be necessary, Tyson shall obtain DEQ approval in advance of implementation.

3. Tyson shall complete the installation of the SEP by **December 31, 2010**.

4. Tyson shall submit progress reports on the SEP on a quarterly basis, **due January 10, 2010, April 10, 2010, July 10, 2010, and October 10, 2010**, describing progress during the preceding quarter. Tyson may discontinue quarterly reporting once installation of the bioretention area is complete.

5. Tyson shall plant vegetation within the bioretention area outside of the growing season.

6. Tyson shall conduct vegetative monitoring once between August and September of the first full growing season following installation of the bioretention area. Monitoring shall document the type of vegetative species present, the percent survival, and shall include photographs. Tyson shall submit the results of the vegetative monitoring **no later than December 31st of the monitoring year**. If DEQ or Tyson determines that corrective action is needed, Tyson shall complete all corrective action necessary and shall submit a summary of the corrective action completed within 30 days of completion.

7. Tyson shall submit a written final report on the SEP, verifying that the SEP has been completed in accordance with the terms of this Order, and certified either by a Certified Public Accountant or by a responsible corporate officer or owner. Tyson shall submit the final report and certification to the Department **within 15 days from the completion of the bioretention area or by January 15, 2011, whichever occurs *first*.**

8. If the SEP has not or cannot be completed as described in the Order, Tyson shall notify DEQ in writing no later than July 31, 2010. Such notification shall include:
   a. an alternate SEP proposal, or
   b. payment of the amount specified in Paragraph D.4.b as described in Paragraph D.4.a.

9. Tyson hereby consents to reasonable access by DEQ or its staff to property or documents under the party's control, for verifying progress or completion of the SEP.

10. Tyson shall submit to the Department written verification of the final overall and net project cost of the SEP in the form of a certified statement itemizing costs, invoices and proof of payment, or similar documentation within 15 days of the project completion date. For the purposes of this submittal, net project costs can be either the actual, final net project costs or the projected net project costs if such projected net project costs statement is accompanied by a CPA certification or certification from Tyson's Chief Financial Officer concerning the projected tax savings, grants or first-year operation cost reductions or other efficiencies.

11. Documents to be submitted to the Department, other than the payments described in Section D of the Order, shall be sent to:

    Allison Dunaway
    Enforcement Manager
    VA DEQ – Piedmont Regional Office
    4949-A Cox Rd.
    Glen Allen, VA 23060
    Email: Allison.Dunaway@deq.virginia.gov
    Fax: (804) 527-5106
    Phone: (804) 527-5086