COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE
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Tidewater Regional Office

STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Perdue Foods LLC
FOR
Perdue Foods LLC Accomac Facility
VPDES Permit No. VA0003808

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 Perdue Foods LLC, regarding the Perdue Foods LLC Accomac 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. "EPA" means Environmental Protection Agency, located at 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460.

10. "Facility" means the wastewater treatment facility located at 22520 Lankford Highway, Accomac, Virginia, which treats and discharges storm and wastewater resulting from Perdue Foods' collocated poultry processing and rendering operations under VPDES Permit No. VA0003808.

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

12. "O&M" means operations and maintenance.

13. "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.

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

15. "Perdue Foods" means Perdue Foods LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Perdue Foods is a "person" within the meaning of Va. Code § 62.1-44.3.

16. "Permit" means industrial discharge VPDES Permit No. VA0003808, which was issued under the State Water Control Law and the Regulation to Perdue Farms Inc. on September 29, 2011 and which expires on September 28, 2016. The Permit is currently in the process of being transferred to Perdue Foods, a sister company, which has assumed liability for compliance with regulatory requirements.

17. "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.

18. "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.

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

20. "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.

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

22. "TMDL" means total maximum daily load, a pollution budget that includes a calculation of the maximum amount of a pollutant that can occur in a waterbody and allocates the necessary reductions to one or more pollutant sources.

23. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.

24. "VAC" means the Virginia Administrative Code.

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

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

27. "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. Perdue Farms owns and operates the Facility. The Permit is currently in the process of being transferred to Perdue Foods, a sister company, which has assumed liability for compliance with regulatory requirements. Perdue Foods is a manufacturing operation located in Accomac County that consists of the slaughtering, defeathering, eviscerating, chilling, and packaging of poultry products for human consumption. Offal and feather waste are rendered for animal feed ingredients by a Valley Proteins facility located at the same site; Perdue Farms sold the rendering facility to Valley Proteins in October 2013. The Facility treats wastewater from the on-site Valley Proteins facility; Valley Proteins does not have its own wastewater treatment plant.

2. The Permit allows Perdue Farms (soon to be Perdue Foods) to discharge treated storm and wastewater resulting from poultry processing and rendering operations to Parker Creek and an unnamed tributary, in strict compliance with the terms and conditions of the Permit. The Permit required Perdue Farms to monitor and report compliance with phosphorous and fecal coliform Permit effluent limits.

3. Parker Creek and the unnamed tributary are located in the Chesapeake Bay, Atlantic Ocean, and Small Coastal Basins. Parker Creek is listed in DEQ's 305(b) report for non-attainment because of fecal coliform and an impaired benthic community. EPA approved the Parker Creek TMDL, named "Benthic TMDL Development for Parker Creek Virginia," on November 7, 2008 and the Board approved this TMDL on April 27, 2009. The TMDL contains a wasteload allocation for phosphorous. EPA approved a bacteria TMDL for the Parker Creek watershed on January 15, 2008 and the TMDL was approved by the Board on July 31, 2008.

4. In submitting its DMRs, as required by the Permit, Perdue Farms has listed that it exceeded discharge limits for phosphorous and fecal coliform contained in Part I.A.1 of the Permit for the months of July and October 2015, as well as July 2016. Perdue Foods maintains that an operator improperly handled the fecal coliform sample, which contaminated the sample container and resulted in the permit limit exceedance for fecal coliform for the July 2015 reporting period. In addition, Perdue Foods maintains that the high phosphorous value for the October 2015 reporting period was due to a potential error by the contract lab; however, the contract lab stated that there was no error in performing the analysis on the phosphorous sample.

5. TRO issued to Perdue Farms a Warning Letter and Notice of Violation for the permit limit exceedances as follows: WL No. W2015-09-T-1001, dated September 2, 2015; and NOV No. W2015-12-T-0005, dated December 18, 2015. The fecal coliform effluent limit violation was cited in WL No. W2015-09-T-1001.

6. Perdue Farms' operating logs indicate that it discharged treated wastewater from the Facility every day from July 2015 to July 2016.

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 industrial discharge permits or certificates to Perdue Farms other than VPDES Permit No. VA0003808.

11. Parker Creek and the unnamed tributary are surface waters located wholly within the Commonwealth and are "state waters" under State Water Control Law.

12. Based on the results of the DMRs, and accompanying documentation submitted by Perdue Farms to DEQ for the months of July 2015, October 2015, and July 2016, the Board concludes that Perdue Farms has violated Part I.A.1 of the Permit, Va. Code 62.1-44.5, and 9 VAC 25-31-50, by discharging storm and wastewater from the Facility while concurrently failing to comply with the Permit conditions, as described in paragraph C(4) above.

13. By letter dated October 5, 2016, submitted by Perdue Foods to DEQ, Perdue Foods maintains that its permit limit exceedances were due to employee mishandling and lab error; therefore, violations described in C(4), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Perdue Foods, and Perdue Foods agrees to pay a civil charge of $3,300 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

Perdue Foods shall include its Federal Employer Identification Number (FEIN) _____ 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, Perdue Foods 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 Perdue Foods for good cause shown by Perdue Foods, 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. 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, Perdue Foods admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Perdue Foods 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. Perdue Foods 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 Perdue Foods 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. Perdue Foods 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. Perdue Foods shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Perdue Foods 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 Perdue Foods. Nevertheless, Perdue Foods 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 Perdue Foods has completed all of the requirements of the Order;

b. Perdue Foods 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 Perdue Foods.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Perdue Foods 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 Perdue Foods 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 Perdue Foods 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 Perdue Foods to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Perdue Foods.

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, Perdue Foods voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 15 day of December, 2016.

Maria Nold, Regional Director
Department of Environmental Quality

Perdue Foods LLC voluntarily agrees to the issuance of this Order.

Date: October 10, 2016 By: Kevin Dennis, Director of Operations
(Person) (Title)
Perdue Foods LLC

Commonwealth of Virginia
City/County of Accomack

The foregoing document was signed and acknowledged before me this 10th day of October, 2016, by Kevin Dennis who is Director of Operations of Perdue Foods LLC, on behalf of the corporation.

Emma Gaskins Nock
Notary Public

255491
Registration No.

My commission expires: 2/28/17

Notary seal:

EMMA GASKINS NOCK
Notary Public
Commonwealth of Virginia
255491
My commission expires: 2/28/17