

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Tyson Farms Inc.)
67240 Main Street)
Blountsville, AL 35031)
Blount County, AL)

Permit No. AL0001449)

Consent Order No. [ORDER NUMBER]

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department”) and Tyson Farms Inc. (the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (“AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a poultry processing facility (“the Facility”), known as Tyson Farms, Inc. – Blountsville Processing Plant, located at 67240 Main Street in the city of Blountsville, Blount County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to § 22-22A-4(n), Ala. Code, as amended, the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.
4. The Department issued National Pollutant Discharge Elimination System (“NPDES”) Permit No. AL0001449 (“the Permit”), in accordance with ADEM Admin. Code chap. 335-6-6 and the AWPCA, to the Permittee on June 29, 2012, effective July 1, 2012, establishing limitations on

the discharges of pollutants from such point sources, designated outfall numbers DSN001, DSN002, DSN003, and DSN004 into Graves Creek, a water of the state. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (“DMRs”) to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. The Permittee submitted DMRs to the Department indicating that the Permittee had invalid tests or discharged pollutants in violation of the limits imposed by Part I.A of the Permit. The invalid tests and effluent violations noted are listed in Attachment #1.

6. Part I.C.2.b of the Permit requires the Permittee to submit a Noncompliance Notification Form (Form 421) (“NCF”) to the Department if the Permittee’s discharge is not in compliance with any permit limitation. This form is required to be submitted with the next DMR after becoming aware of the occurrence of such noncompliance. On August 26, 2019, the Department received a Form 421 for exceedances in the quarterly reporting period of April through June 2019. The Permittee failed to submit the NCF to the Department on or before July 28, 2019 as required by Part I.C.2.b of the Permit.

7. Part IV.C of the Permit requires biomonitoring test results obtained during each monitoring period to be summarized and reported using the appropriate DMR form approved by the Department. In accordance with Part IV.C. of the Permit, an effluent toxicity report containing the information in Part IV.C.2 shall be included with the DMR. Two copies of the test results must be submitted to the Department no later than 28 days after the month in which the tests were performed. On August 26, 2019, the Department received the Toxicity Reports for the quarterly reporting period of April through June 2019. The Permittee failed to submit the Toxicity Report on or before July 28, 2019 as required by Part IV.C.2 of the Permit.

8. As indicated in Attachment 1, the Permittee reported several E. Coli results as *T, or too numerous to count. Part I.B.1 of the Permit states that sample collection and measurements shall be representative of the volume and nature of the monitored discharge. The Permittee

violated Part I.B.1 of the Permit when the laboratory it retained to analyze the samples failed to dilute the samples to obtain E. Coli results that represented the volume and nature of the monitored discharge.

9. On May 10, 2018, the Department issued a Notice of Violation ("NOV") to the Permittee for Biological Oxygen Demand (BOD), Total Ammonia Nitrogen, and Total Kjeldahl Nitrogen effluent violations and for discharging wastewater exhibiting chronic toxicity, as demonstrated by toxicity testing required by the Permit. The NOV required the Permittee to submit to the Department a written report prepared by an engineer registered and authorized to practice in Alabama describing the steps that had been taken or would be taken to correct the violations.

10. On June 18, 2018, the Department received the Permittee's response to the NOV. In its response, the Permittee indicated it had investigated and identified the potential causes for the Biological Oxygen Demand (BOD), Total Ammonia Nitrogen, and Total Kjeldahl Nitrogen effluent violations, which included mechanical failures, algae blooms, and elevated flows. The Permittee indicated it installed new aerators and a Roots Blower, revised the Permittee's Process Control Program, made adjustments to the grease caps on the lagoons, and cleaned and performed maintenance on the UV Basin. The Permittee stated it had plans for designing upgrades to the wastewater treatment system and to make further adjustments to the grease caps on the lagoons. The Permittee also indicated it was continuing to investigate the toxicity failures with a Toxicity Identification Evaluation (TIE) and a Toxicity Reduction Evaluation (TRE).

11. The Department has agreed to the terms of the Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in the Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS OF THE DEPARTMENT

Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the

standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at the civil penalty (assessed herein and summarized in Attachment #2), the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Based on information available to the Department, violations of the Permit, ADEM Admin. Code chap. 335-6-6, and the AWPCA were noted. The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, the condition of the receiving waters, the violations' effects, if any, on the receiving waters, and any available evidence of irreparable harm to the environment or threat to the public.

B. **THE STANDARD OF CARE:** The Department considers the failure to submit the NCF and toxicity reports in a timely manner and failure to sample in accordance with the permit as easily avoidable, and enhanced the penalty accordingly.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has considered that delayed compliance may have conferred an economic benefit upon the Permittee but is unable to estimate the economic benefit associated with the violations cited above, as the costs for compliance are not available.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Department has been provided information by the Permittee regarding its efforts to minimize or mitigate the effects of the violations upon the environment.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Department has considered the Permittee's history of previous violations and has determined that enhancement of the penalty based on this factor is appropriate.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. The Department neither admits nor denies the Permittee's Contentions, which are set forth below. This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment #2.

PERMITTEE'S CONTENTIONS

12. Tyson is committed to operating the Facility in full compliance with its permit and applicable laws and regulations. Tyson has devoted considerable internal and external resources to investigate the alleged violations and to find solutions to prevent future exceedances of the Permit. For example, in response to the May 10, 2018 Notice of Violation, Tyson installed new aerators and a Roots Blower, revised its Process Control Program, made adjustments to the grease caps on the lagoons, and cleaned and performed maintenance on the UV Basin. Tyson also submitted plans for designing upgrades to the wastewater treatment system and making further adjustments to the grease caps on the lagoons. As documented in a letter to ADEM, dated August 28, 2018, Tyson also made improvements to its UV system, including replacing ballasts in the system and testing the UV transmissivity in the wastewater, and engaged the chemical supplier for process chemistry and the wastewater chemical supplier to evaluate the potential toxicity and synergistic effect of the chemicals used at the facility. On July 23, 2019, Tyson submitted a letter to ADEM proposing additional upgrades to its wastewater treatment system that would provide increased retention time for treatment of the wastewater. The planned upgrades included new transfer pumps from the anoxic basin to the oxidation ditch, new high efficiency blowers and new aeration headers, new waste pumps, new recycle pumps, and new automated control equipment. New gravity flow lines were subsequently installed on September 13-16, 2019, to connect the new anoxic basin with the oxidation ditch. Then, on November 28-

December 1, 2019, the existing blowers were removed and new, high efficiency blowers were installed in the system.

13. Tyson alleges the violations have not resulted in irreparable harm to the environment or threat to the public.

14. Tyson strives to maintain good relationships with all its various stakeholders and to conduct its operations in compliance with applicable laws, regulations, and permits. Tyson has been forthcoming and transparent with ADEM regarding its efforts to resolve the alleged violations. Tyson will continue to work diligently to identify and correct the conditions that resulted in this order.

15. The Permittee neither admits nor denies the Department's Contentions. The Permittee consents to abide by the terms of this Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and the Department believes that the penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount of \$27,000.00 in settlement of the violations alleged herein within forty-five days after issuance of this Consent Order. Failure to pay the civil penalty within forty-five days after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. All penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. Within 90 days of the issuance of this Order, the Permittee shall prepare and submit to the Department an updated Engineering Report that identifies the potential causes of noncompliance and summarizes an investigation of the changes necessary for the Permittee to achieve and maintain compliance with the Permit. The Engineering Report shall include a detailed Compliance Plan with a schedule for implementation of necessary corrective actions and costs of such necessary corrective actions, if known. At a minimum, the Permittee shall consider each of the following in making its investigation: the need for changes in maintenance and operating procedures; the need for modification of existing treatment and collection system works; and the need for new or additional treatment and collection system works. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the Report is not sufficient, then the Report shall be modified accordingly. The Permittee shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations made in the Engineering Report not later than 730 days after the issuance of this Consent Order.

D. During the effective period of this Order, except as specified below, the Permittee shall conduct toxicity testing, including accelerated testing, and report the results to the Department according to the frequencies specified in the Permittee's February 10, 2020 letter. However, prior to the Permittee reducing the frequency of toxicity testing as specified in Item 2 of the letter, the Permittee must request and obtain written acceptance from the Department. The Department reserves the right to require more frequent toxicity testing as appropriate.

E. The Permittee shall prepare and submit quarterly progress reports to the Department describing in detail the Permittee's progress towards completing the items presented in the Engineering Report. Beginning on the 15th day of the end of the first calendar quarter

following the Department's approval of the Engineering Report and continuing on the 15th day of the end of each calendar quarter thereafter, the Permittee shall submit such reports to the Department. In addition, no later than fourteen days following each applicable due date herein, the Permittee shall submit to the Department a written notice of noncompliance with the requirements of that paragraph, if applicable. Notices of noncompliance shall state the cause(s) of noncompliance, the corrective action taken, and shall describe the Permittee's ability to comply with any remaining requirements of this Consent Order.

F. No later than 730 days after the issuance of this Consent Order, the Permittee shall comply with the toxicity limitations imposed by Part I.A of the Permit.

G. The Permittee shall comply with all other terms, conditions, and limitations of the Permit immediately upon the issuance of this Consent Order.

H. The Permittee shall submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Permittee is in compliance with all requirements of this Consent Order. The Permittee shall submit such certification so that it is received by the Department no later than 760 days after issuance of this Consent Order.

I. After the issuance date of this Consent Order, the Permittee shall pay stipulated penalties for each day it fails to meet any of the written submittal milestone dates or satisfy any of the requirement dates contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

J. If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in Paragraphs C, E and H the Department reserves the right to file a

new action against the Permittee. Should violations continue to occur after 730 days after the issuance of this Consent Order or as stipulated in Paragraph I above, then the Department may issue an additional order or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

K. Payment of stipulated penalties for violations of milestone dates under this Consent Order are due no later than the 28th day of the month following the month a milestone date was not achieved. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

L. This Consent Order shall apply to and be binding upon both Parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the Party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the Party represented, and to legally bind such Party.

M. Subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations cited in this Consent Order.

N. The Permittee it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

O. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the Consent Order. Events such as

unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Permittee shall submit this information so that it is received by the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

P. The sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in other orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate. The Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

Q. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same. Nothing in this Order should be construed to create any rights, or grant any cause of action, to any person not a party to this Order.

R. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

S. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

T. Should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

U. Any modification of this Consent Order shall be agreed to in writing and signed by both Parties.

V. Except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligation to comply in the future with any permit.

W. The Department and the Permittee agree that this Consent Order shall terminate upon the Department's written acceptance of the certification required by Paragraph H.

Executed in duplicate, with each part being an original.

TYSON FARMS INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

By: Kenneth K. Beard By: _____

Its: V.P. operations Its: _____

Date: 03/30/2020 Date: _____

Attachment 1: Effluent Violations / Invalid Test Methods

Monitoring Period	Outfall	Parameter	Limit	Reported	Unit	Violation Type
April-June 2018	001Q	Toxicity, Ceriodaphnia Chronic	0	1	pass(0)/ fail(1)	Maximum Daily
July-September 2018	001Q	Toxicity, Ceriodaphnia Chronic	0	1	pass(0)/ fail(1)	Maximum Daily
July-September 2018	001Q	Toxicity, Pimephales Chronic	0	*H	pass(0)/ fail(1)	Maximum Daily
July-December 2018	004S	E. Coli	REPORT	*T	col/100mL	Maximum Daily
January-March 2019	001Q	Toxicity, Ceriodaphnia Chronic	0	1	pass(0)/ fail(1)	Maximum Daily
April-June 2019	001Q	Toxicity, Ceriodaphnia Chronic	0	1	pass(0)/ fail(1)	Maximum Daily
January-June 2019	002S	E. Coli	REPORT	*T	col/100mL	Maximum Daily
January-June 2019	003S	E. Coli	REPORT	*T	col/100mL	Maximum Daily
January-June 2019	004S	E. Coli	REPORT	*T	col/100mL	Maximum Daily
July-September 2019	001Q	Toxicity, Ceriodaphnia Chronic	0	1	pass(0)/ fail(1)	Maximum Daily
October -December 2019	001Q	Toxicity, Ceriodaphnia Chronic	0	1	pass(0)/ fail(1)	Maximum Daily
June 26, 2018	001Q	Accelerated Toxicity Tests	0	1	pass(0)/ fail(1)	Maximum Daily
July 12, 2018	001Q	Accelerated Toxicity Tests	0	1	pass(0)/ fail(1)	Maximum Daily
July 17, 2018	001Q	Accelerated Toxicity Tests	0	1	pass(0)/ fail(1)	Maximum Daily
July 24, 2018	001Q	Accelerated Toxicity Tests	0	1	pass(0)/ fail(1)	Maximum Daily
July 31, 2018	001Q	Accelerated Toxicity Tests	0	1	pass(0)/ fail(1)	Maximum Daily
September 18, 2018	001Q	Accelerated Toxicity Tests	0	1	pass(0)/ fail(1)	Maximum Daily
October 2, 2018	001Q	Accelerated Toxicity Tests	0	1	pass(0)/ fail(1)	Maximum Daily

October 9, 2018	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
November 6, 2018	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
January 15, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
February 6, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
February 12, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
April 1, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
May 6, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
May 13, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
June 3, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
June 10, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
July 15, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
July 22, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
August 5, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
August 22, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
September 22, 2019	001Q	Accelerated Toxicity Tests	0	*H	pass(0)/fail(1)	Maximum Daily
October 13, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
October 27, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
November 10, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily
December 8, 2019	001Q	Accelerated Toxicity Tests	0	*H	pass(0)/fail(1)	Maximum Daily
December 16, 2019	001Q	Accelerated Toxicity Tests	0	1	pass(0)/fail(1)	Maximum Daily

*T= Too Numerous To Count

*H= Invalid Test

Attachment 2: Penalty Synopsis

Attachment 2

**Tyson Farms
Blountsville, Blount County
AL0001449**

Violation*	Number of Violations*	(A)	(B)	(C)	
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Effluent Violations/Invalid Test	34	\$ 26,600.00	\$ -	\$ 1,400.00	
Late NCF	1	\$ 500.00	\$ 250.00	\$ -	
Failure to sample in accordance with Permit	4	\$ 2,000.00	\$ 500.00		
Late Toxicity Reports	1	\$ 500.00	\$ 250.00	\$ -	
		\$29,600.00	\$1,000.00	\$1,400.00	
		Total (A)	Total (B)	Total (C)	
		Base Penalty Total [Total (A) + Total (B) + Total (C)]			\$32,000.00
		Mitigating Factors (-)			
		Economic Benefit (+)			
		Ability to Pay (-)			
		Other Factors (+/-)			
		INITIAL PENALTY			\$32,000.00
		Total Adjustments (+/-)			-\$5,000.00
		FINAL PENALTY			\$27,000.00

Additional Adjustments due to negotiations, receipt of additional information, or public comment

Mitigating Factors (-)	
Economic Benefit (+)	
Ability to Pay (-)	
Other Factors (+/-)	-\$5,000.00
Total Adjustments (+/-)	-\$5,000.00

Footnotes

*See the "Stipulations" and "Contentions of the Department" portion of the Order for a detailed description of each violation and the penalty factors