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IND/MUN BRANCH  
WATER DIVISION

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Birmingham Hide and Tallow Company, Inc.  
5430 Johns Road  
Bessemer, Jefferson County, AL 35023

Consent Order No. 25-XXX-CWP

**Permit No.** ALG150144 and IU393700018

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("the Department") and Birmingham Hide and Tallow Company, 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 rendering facility resulting in the production of animal fat and protein ("Facility") located at 5430 Johns Road in the city of Bessemer, Jefferson 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 Ala. Code § 22-22A-4(n), 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 reissued National Pollutant Discharge Elimination System ("NPDES") Permit No. ALG150144 ("General Permit") on May 19, 2022, effective June 1, 2022, for discharges associated with the food and kindred products industries consisting of storm water, and

miscellaneous non-process wastewaters to waters of the state. The General Permit establishes limitations/conditions on the discharges of pollutants from Outfall Nos. DSN001-1 and DSN001-2 for the discharge of storm water from food production and kindred industries; and DSN007-1 for discharges of uncontaminated storm water from equipment maintenance and storage, fueling, and petroleum storage, and handling areas into Valley Creek, a water of the state. The General Permit requires that the Permittee monitor its discharges semiannually and annually and submit semiannual and annual Discharge Monitoring Reports ("DMRs") to the Department describing the results of the monitoring. Permit Condition IV.B.1. states the Permittee shall prepare and implement a Best Management Practices ("BMP") Plan. Permit Condition IV.B.4.A requires a copy of the BMP plan to be maintained at the facility that shall be available for inspection by representatives of the Department.

5. The Department issued State Indirect Discharge ("SID") Permit No. IU393700018 ("the SID Permit"), in accordance with ADEM Admin. Code chap. 335-6-5 and the AWPCA, to Birmingham Hide and Tallow Company, Inc. on September 30, 2019, effective October 1, 2019, establishing limitations on the discharges of pollutants from a point source, designated therein as outfall number S011, to the Valley Creek Water Reclamation Facility. The SID Permit was subsequently reissued on May 28, 2024, effective October 1, 2024, The SID Permit requires that the Permittee monitor its discharges daily, weekly and monthly and submit monthly DMRs to the Department describing the results of the monitoring.

6. The DMRs submitted to the Department by the Permittee indicate that the Permittee has discharged pollutants in violation of the limits imposed by Part I.A. of the SID Permit. The effluent violations noted are listed in Attachment #1.

7. Permit Condition II.B.1 of the General Permit and Permit Condition II.A.1 of the SID Permit state that the Permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenance) which are installed and used by the Permittee to achieve compliance with the conditions of the permit.



8. Ala. Code § 22-22-9(i)(3) requires every person to apply for and obtain a permit before discharging any new or increased pollution into any waters of the state. ADEM Admin. Code r. 335-6-6-.03(1) states: "No person shall discharge pollutants into waters of the state without first having obtained a valid NPDES permit or coverage under a valid General NPDES Permit." Permit Condition II.E.1.c. of the General Permit states that the discharge of a pollutant from a source not specifically identified in the Notice of Intent to be covered under this General Permit and not specifically included in the description of an outfall in the Permit is not authorized and shall constitute noncompliance with the Permit.

9. Permit Condition IV.B.1.b of the General Permit requires the Permittee to prevent the spillage or loss of fluids, oil, grease, gasoline, etc. thereby prevent the contamination of stormwater from these substances.

10. ADEM Admin. Code r. 335-6-10-.06(b) states that state waters shall be free from floating debris, oil, scum, and other floating materials attributable to sewage, industrial wastes, or other wastes in amounts sufficient to be unsightly or interfere directly or indirectly with any classified water use.

11. ADEM Admin. Code r. 335-6-10-.09(6)(e)1. states that for the Limited Warmwater Fishery water use classification, treated sewage, industrial wastes, or other wastes shall not cause the dissolved oxygen to be less than 3.0 mg/l from May through November.

12. On July 14, 2024, the Department received notification via a National Response Center Report that the Permittee had reported a spill due to heavy rain causing a wastewater holding pond to overflow. Approximately 1000 gallons of animal fat, grease, and other organic materials from their processing of animal byproducts overflowed the holding pond into the wooded area behind the facility and discharge into Vally Creek. During the ER response on July 14, 2024, Department personnel observed animal fat floating in Valley Creek in violation of ADEM Admin. Code r. 335-6-10-.06(b). The Permittee's discharge of animal fat into Valley Creek is in violation of Ala. Code § 22-22-9(i)(3), Permit Condition II.E.1.c of the General Permit, Permit Condition II.B.1 of the General Permit and Condition II.A.1 of the SID Permit. During the ER response, Department

personnel observed overturned barrels, grease stains, and red liquid on the ground in violation of Condition IV.B.1.b of the General Permit.

13. On July 16, 2024, the Department received instream Dissolved Oxygen (DO) readings from the Permittee. The Permittee reported three DO values at the spill site and downstream of the spill below 3.0 mg/l in violation of ADEM Admin. Code r. 335-6-.10-09(6)(e)1. The DO reading at the point where the spill enters Valley Creek was reported as 0.8 mg/l at the 3 foot depth and 0.5 mg/l at the 4 foot depth.

14. On July 18, 2024, the Department received the 5-day incident report via email from the Permittee which indicated that the cause of the release was due to the anaerobic pond being "overfilled by rain water and not properly drained."

15. As part of proper facility operation and maintenance and the implementation best management practices, Permit Condition II.B.2.b of the General Permit and Permit Condition II.A.2.b of the SID Permit require the Permittee prepare, implement, and maintain a Spill Prevention, Control and Countermeasures ("SPCC") Plan in accordance with 40 CFR Part 112 if required thereby. In accordance with 40 CFR § 112.5(b), such facilities must complete a review and evaluation of the SPCC Plan at least once every five years. Certain on-site changes may require more frequent reviews and amendment(s). Except as provided by § 112.6, a professional engineer must certify any technical amendments to the plan in accordance with § 112.3(d).

16. Permit Condition II.B.3 of the General Permit and Permit Condition II.A.3 of the SID Permit state the Permittee shall provide spill prevention, control, and/or management sufficient to prevent any spills of pollutants from entering a water of the state or publicly or privately owned treatment works. Any containment system used to implement this requirement shall be constructed of materials compatible with the substance(s) contained and which shall prevent the contamination of groundwater and such containment system shall be capable of retaining a volume equal to 110 percent of the capacity of the largest tank for which containment is provided.

17. On August 26, 2024, a compliance evaluation inspection (CEI) was conducted by ADEM personnel. During the inspection Department personnel observed a tote of oil stored outside



of the secondary containment, oil staining and pools of oil on the ground, and damaged secondary containment for a petroleum storage area in violation of Permit Condition II.B.3 of the General Permit and Permit Condition II.A.3 of the SID Permit. The SPCC Plan presented was dated July 1, 2014 in violation of Permit Condition II.B.2.b of the General Permit and Permit Condition II.A.2.b of the SID Permit.

18. On August 29, 2024, the Department issued a Notice of Violation citing violations as noted above and requiring an engineering report within 30 days of receipt of the notice.

19. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

20. 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 this civil penalty (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 General and SID Permits, ADEM Admin. Code div. 335-6, 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 Permittee failed to implement a proper standard of care by failing to ensure the pond was properly maintained which resulted in an unpermitted discharge. In consideration of the standard of care manifested by the Permittee, the Department has enhanced the penalty based on this factor.

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: Birmingham Hide and Tallow Company made the following efforts to minimize or mitigate the effects of the violations upon the environment: A third-party contractor was called and responded to the request for assistance; booms were deployed in Valley Creek to prevent fats from migrating downstream; pool nets were deployed to remove fats from the creek; and vacuum trucks were used to remove fats from the site.

E.       HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of any previous violations.

F.       THE ABILITY TO PAY: The Permittee has alleged an inability to pay the civil penalty due to a plant fire which has severely impacted its ongoing cashflow. In addition, the Permittee has indicated that it will be forced to demolish and rebuild the plant building. In consideration of the alleged inability to pay the Department has adjusted the penalty accordingly.



G. 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 the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

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

### **ORDER**

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully 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 forty thousand dollars (\$40,000.00), in settlement of the violations alleged herein, payable in twelve monthly installments. The first three installment payments shall be in the amount of \$500.00, the eight subsequent installments payments shall be in the amount of \$4,275.00, and the last installment shall be in the amount of \$4,300.00. The first installment shall be due 30 days from the issuance of this Consent Order, with each subsequent payment due on the first of each month thereafter. Failure to pay the civil penalty within twelve months 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. The Permittee shall prepare and submit to the Department, not later than **sixty days after the issuance** of this Consent Order, a Report prepared by and signed by a professional engineer licensed to practice in the State of Alabama 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 General and SID Permits. The Report shall include a Compliance Plan with a schedule for implementation of necessary corrective actions and cost 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 and the need for additional containment to avoid spills and releases. The Report should also contain a map of the Facility that identifies all stormwater outfalls. The report should clarify whether the outfall locations in the current Permits are accurate. If the outfall locations are not accurate or additional outfalls are needed, applications to modify the Permit(s) shall be submitted within 90 days after issuance of this Consent Order. If the Department determines through its review of the submitted Report that the Report is not sufficient, then the Report shall be modified accordingly. The Permittee shall submit modifications to the 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 Report **not later than 180 days after the issuance** of this Consent Order.

D. The Permittee shall comply with all other terms, conditions, and limitations of the SID and General Permits immediately upon the issuance of this Consent Order.

E. 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 210 days after issuance** of this Consent Order.

F. 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 set forth in or established by Paragraphs C and E 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

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

G. Cumulative stipulated penalties described in paragraph F. above shall under no circumstances exceed \$15,000.00. Once stipulated penalties of \$15,000.00 are due to the Department and violations continue to occur, or should violations continue to occur after 210 days from the issuance of this Consent Order, the Department reserves the right to issue an additional order or file suit against the Permittee in the Circuit Court of Montgomery or other court of competent jurisdiction to enforce compliance of this Consent Order.

H. Payment of stipulated penalties for violations of milestone dates under this Consent Order are due no later than the 28<sup>th</sup> 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.

I. 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.

J. 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.

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

L. 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 (10) 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.

M. 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.

N. 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.

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

P. 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.

Q. 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.

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

S. 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,

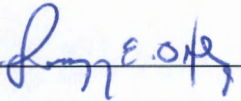
and shall not be construed to waive or relieve the Permittee of its obligation to comply in the future with any permit.

Executed in duplicate, with each part being an original.

BIRMINGHAM HIDE AND TALLOW  
COMPANY, INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

By: <u></u>	By: _____
Its: <u>REGIONAL VP</u>	Its: _____
Date: <u>8/14/25</u>	Date: _____



Attachment 1: Effluent Violations

Monitoring Period	Outfall	Parameter	Limit	Reported	Unit	Violation Type
January 2025	S011	Oil & Grease	150	187	mg/l	Maximum Daily
December 2024	S011	Oil & Grease	150	363.0	mg/l	Maximum Daily
December 2024	S011	Oil & Grease	100	160.6	mg/l	Monthly Average
November 2024	S011	Oil & Grease	150	299.0	mg/l	Maximum Daily
November 2024	S011	Oil & Grease	100	219.5	mg/l	Monthly Average
October 2024	S011	Oil & Grease	150	166	mg/l	Maximum Daily
July 2024	S011	Oil & Grease	150	165	mg/l	Maximum Daily
July 2024	S011	Oil & Grease	100	105.17	mg/l	Monthly Average

**Attachment 2**

**Birmingham Hide and Tallow  
Birmingham, Jefferson County  
IU39-37-00018, ALG150144**

Violation*	Number of Violations*	(A)	(B)	(C)										
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*										
Unpermitted Discharge	1	\$ 15,000.00	\$ 10,000.00	\$ -										
Water Quality Standard (Free from Floating Debris)	1	\$ 15,000.00	\$ 10,000.00	\$ -										
DO instream violations / Water Quality Standard	1	\$ 4,000.00	\$ 1,000.00	\$ -										
Improper Operation and Maintenance of Pond	1	\$ 7,500.00	\$ 7,500.00	\$ -										
Failure to Maintain/Implement SPCC Plan	1	\$ 2,500.00	\$ 2,500.00	\$ -										
SID Effluent Violations	8	\$ 3,100.00	\$ -	\$ -										
Failure to Implement Adequate BMPs	1	\$ 1,000.00	\$ 1,000.00											
		\$48,100.00	\$32,000.00	\$0.00										
		Total (A)	Total (B)	Total (C)										
<div>Additional Adjustments due to negotiations, receipt of additional information, or public comment</div> <table><tr><td>Mitigating Factors (-)</td><td></td></tr><tr><td>Economic Benefit (+)</td><td></td></tr><tr><td>Ability to Pay (-)</td><td>-\$20,000.00</td></tr><tr><td>Other Factors (+/-)</td><td>-\$20,100.00</td></tr><tr><td>Total Adjustments (+/-)</td><td>-\$40,100.00</td></tr></table>		Mitigating Factors (-)		Economic Benefit (+)		Ability to Pay (-)	-\$20,000.00	Other Factors (+/-)	-\$20,100.00	Total Adjustments (+/-)	-\$40,100.00	Base Penalty Total [Total (A) + Total (B) + Total (C)]		\$80,100.00
		Mitigating Factors (-)												
		Economic Benefit (+)												
		Ability to Pay (-)	-\$20,000.00											
		Other Factors (+/-)	-\$20,100.00											
		Total Adjustments (+/-)	-\$40,100.00											
Mitigating Factors (-)														
Economic Benefit (+)														
Ability to Pay (-)														
Other Factors (+/-)														
		INITIAL PENALTY	\$80,100.00											
		Total Adjustments (+/-)	-\$40,100.00											
		FINAL PENALTY	\$40,000.00											

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

<b>Mitigating Factors (-)</b>	
<b>Economic Benefit (+)</b>	
<b>Ability to Pay (-)</b>	-\$20,000.00
<b>Other Factors (+/-)</b>	-\$20,100.00
<b>Total Adjustments (+/-)</b>	-\$40,100.00

Footnotes

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