

ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT

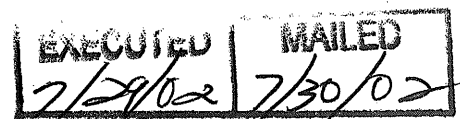
IN THE MATTER OF )  
 )  
 TYSON FOODS, INC. )  
 EMPIRE, ALABAMA )  
 )  
 NPDES PERMIT NO. AL0024856 )

CONSENT ORDER NO. 02-210-CWP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama, 1975, §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Water Pollution Control Act, Code of Alabama, 1975, §§ 22-22-1 through 22-22-14, as amended, and the National Pollutant Discharge Elimination System administered by the Alabama Department of Environmental Management (hereinafter "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act § 402, 33 U.S.C. § 1342, and with the consent of Tyson Foods, Inc., the Department makes the following FINDINGS, which Tyson Foods, Inc. (hereinafter "the Permittee") neither admits nor denies:

1. The Permittee operates a poultry hatchery located in Empire, Alabama (hereinafter, "the Facility").
2. The Permittee was issued National Pollutant Discharge Elimination Permit #AL0024856 (hereinafter, "the Permit") by the Department which authorized the discharge of pollutants and industrial wastes to an unnamed tributary to Ward Creek, a water of the State, subject to certain terms, limitations and conditions.



3. The Permit was renewed by the Department, with an effective date of October 1, 2000. The renewed Permit contained, among other things, more stringent effluent discharge limitations. The Permit was modified on September 28, 2001, as a result of revised water quality modeling.
4. The Permittee violated the terms, limitations and conditions of its Permit by exceeding the BOD and TSS limitations at least 47 times since October 1, 2000. In addition, the Permittee did not satisfy the entire Permit monitoring and reporting requirements for October 2000.
5. The Facility's existing wastewater treatment system was not designed to achieve compliance with the more stringent Permit effluent discharge limitations.
6. Although the Permittee does not agree with certain Findings presented in this Consent Order, it does agree, in the spirit of cooperation and with the desire to amicably resolve this matter with the Department, not to contest this Order. In view of the aforementioned and its desire to comply with the provisions of the Alabama Water Pollution Control Act and its implementing regulations, the Permittee also agrees to all the terms of this Consent Order.
7. Likewise, the Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

## ORDER

Based upon the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5 and 22-22-9, as amended, and with the consent of the Permittee, it is hereby ORDERED:

A. That, not later than 30 days after the parties' execution of this Order, the Permittee shall pay to the Department a civil penalty in the amount of Nine Thousand Four Hundred Dollars (\$9,400.00) for the violations cited herein.

B. That within 30 days after the parties' execution of this Order, the Permittee shall submit to the Department plans and specifications regarding recent modifications or additions to the Facility's existing wastewater treatment system or other steps necessary to achieve full compliance with the Permit.

C. That the Permittee will comply with the discharge limitations of the Permit within one year from the date of the parties' execution of this Order, and will maintain compliance thereafter until the expiration of the Permit. For two years from the date of the parties' execution of this Order, the Permittee will pay to the Department stipulated penalties in the amount of Two Hundred Dollars (\$200.00) for the violation of any daily maximum limitation of the Permit and Four Hundred Dollars (\$400.00) for the violation of any monthly average limitation of the Permit. If, after one year from the date of this Order, the Permittee continues to violate the Permit, the Department reserves the right to proceed unilaterally and in lieu of the collection of stipulated penalties to address those violations through subsequent orders, litigation and/or suspension or revocation of the Permit.

D. That 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.

E. That this Consent Order is intended to operate as a full resolution of past violations which are cited in this Consent Order and of violations for which stipulated penalties are paid pursuant to Paragraph C above.

F. That the Permittee is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. That, for purposes of this Order only, the Permittee agrees that the Département may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court for Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Consent Order, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Consent Order, and physical impossibility.

H. That this Consent Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning the Permittee which would constitute possible violations not addressed in this Consent Order, or if the violations noted herein continue more than two years after the parties' execution of this Order, then such future violations shall be addressed in Orders as may be issued by the Department, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order.

I. That, by the agreement of the parties, this Consent Order shall be considered final and effective upon the signature of all parties. This Consent Order shall not be appealable, and the Permittee does hereby waive any administrative hearing on the terms and conditions of same.

TYSON FOODS, INCORPORATED

Signed: James H. Mardis

Printed: James H. Mardis

Its: Director of Environmental Compliance

July 21, 2002  
Date

ALABAMA DEPARTMENT  
OF ENVIRONMENTAL  
MANAGEMENT

James W. Warr

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24 July 2002  
Date